BETWEEN SOVEREIGNTY AND FREEDOM:
TOCQUEVILLE AND THE PROJECT OF FRENCH LIBERALISM

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Abstract

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Tocqueville’s understanding of freedom has been notoriously difficult to determine. His contribution becomes more apparent when he is seen as attempting to solve problems that emerge from the tradition of French political thought and practice. French liberalism after Rousseau sought to empower popular sovereignty so as to enable political freedom, while also restraining political power so as to ensure individual freedom. Indeed, the French Revolution revealed that the constituent power that made political freedom possible also endangered individual liberty. Simultaneously, French liberals such as Benjamin Constant and François Guizot also feared that if the people were overly concerned with their individual liberty they would become prey to a strong state. While paying heed to the numerous variants of freedom within his thought, I argue that Tocqueville’s philosophy of freedom solves the dilemma of French liberalism by developing the idea of non-sovereign freedom. This is the notion that participatory political freedom occurs primarily when the people do not exercise their constituent
power as a sovereign body. This shifts the meaning of political freedom away from a model of strong autonomy found in Rousseau, or exercising final control over one’s life and actions, towards participation in *la chose publique* more broadly, which includes, but is not exhausted by, the institutions of government. Non-sovereign freedom sees individual and political freedom as mutually reinforcing rather than mutually corrosive. It also enables a higher form of individual freedom that Tocqueville calls individuality, or the development of an independent and original personality. Tocqueville’s account of non-sovereign freedom, I argue, is an alternative source of inspiration for those working within democratic theory and who are attempting to combine democratic dynamism and institutional stability. Instead of looking to figures who largely shunned the institutions of liberal democracy, democratic theory should return to the tradition of French liberalism.
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INTRODUCTION

INSURGENCY OR STATISM: THE IMPASSE OF DEMOCRATIC THEORY

Is democracy a paradoxical enterprise? As a regime of equals it eschews all hierarchy. As the rule of the people, democracy promises unity and openness, or the ability of the people to change course at their will. But in practice democracy seems unable to achieve its aspirations. In order for it to be stable, continuous, and wise, it is forced to create structures that are seemingly undemocratic: representation, permanent institutions, and hierarchy. As these become fixed they inhibit the equality and openness that democracy promises. The double requirement for democracy to be a regime of no-rule, of pure horizontality, and yet for that regime to incorporate elementary structures that ensure other goods such as institutional continuity and judicious leadership forces democracy into a series of unhappy antinomies: authority or anarchy, closure or openness, unity or fragmentation, stability or change, hierarchy or equality. Is it possible to combine the antinomies or will democracy forever be torn between its elements?

Recent democratic theory has sought to resolve this set of antinomies. One of the most influential attempts has been the work of Sheldon Wolin. In a seminal and provocative essay entitled “Fugitive Democracy” published in Constellations in 1994, and later incorporated into his sprawling masterpiece Politics and Vision, Wolin accepts the fundamentally anarchic, fragmented, and episodic nature of democracy. “The modern
regime, regardless of form, is shaped by the need to maintain continuous functions: promotion of the economy, law enforcement, military preparedness, revenue collection, protection and control of systems of communication...[such that] [w]hen democracy is settled into a stable form, such as prescribed by a written constitution, it is also settled down and rendered predictable” (Wolin, 2006, 602).\(^1\) Since all government is inherently “hierarchical and elitist”, a democracy that governs is no longer democracy (Wolin, 2006, 602-3). Democracy should not govern; it doesn’t even want to (Wolin, 2006, 602-3). It must remain “an ephemeral phenomenon rather than a settled system”, “protean”, “amorphous”, and “occasional” rather than fixed, stable, and institutionalized, not a form of government but a “moment of experience” (Wolin, 2006, 602). And that is the experience of “protest” (Wolin, 2006, 603). Democracy is insurgency.\(^2\)

But Wolin is unsatisfied with democracy merely as the experience of revolt. The momentary experience does not consistently forestall the privatization of individuals, the fragmentation of the people, or disrupt entrenched groups of power. So Wolin postulates a second version of democracy as continuously operative in local politics. Denying that democracy must necessarily be oppositional, in his most recent book *Democracy Incorporated*, Wolin theorizes how the majority can recapture political power by reversing what he calls Inverted Totalitarianism and Managerial Democracy. That is, Wolin seeks to theorize what he previously thought impossible, a permanent majoritarian democracy with institutions that work on its behalf. But to do so, Wolin must revert to

\[\text{Wolin (2006)}\]

\[\text{“[Democratic theory] should recognize that in the contemporary world democracy is not hegemonic but beleaguered and permanently in opposition to structures it cannot command” (Wolin, 2006, 601).}\]
what he once rejected: the notion that a majority forms a coherent unity, stable political form, and permanence. Wolin’s thought repeats rather than extricates democracy from its antinomies. His politics sees in double vision: here openness and change, there power and stability, here equality and no-rule, there rule of the people. These double postures led to two contrary emotions that color most of Wolin’s work: the exaltation, promise, and optimism of revolutionary possibility, and the nostalgia, regret, memory, and disillusionment of inevitable closure. In the end, unsatisfied with democracy destined, as in the ancien régime, to a permanent discourse of critical opposition, Wolin tries to make it a philosophy of government that can “generate and continuously renew direct political experience” (Wolin, 2006, 604). That is, he returns to Tocqueville to diagnose the pathologies of the contemporary world. He even calls him “the last influential theorist who can be said to have truly cared about political life” (Wolin, 2003, 5).³

Wolin looks to Tocqueville because he sees in him an analogue to his own situation. Tocqueville was a theorist between two worlds, between the ancien régime which was no more and modern democracy which was just on the horizon. As Tocqueville stood between the aristocratic past and the democrat future, so Wolin sees himself standing between the democratic age which is no more and the post-democratic age which is arriving. Like Tocqueville, who tried to infuse aristocratic elements from the

³ Sheldon Wolin Between Two Worlds ([2001], 2003). That book, the fruit of a very long labor, was first published in 2001. In that same year another volume was published by Princeton University Press to commemorate the work of Wolin. In it are some of the most important thinkers that were influenced by Wolin’s work, including William Connolly, George Kateb, Fred Dallmayr, Charles Taylor, Wendy Brown, and Peter Euben. While oftentimes pieces included in such volumes are quickly written occasionals, it is strange that Tocqueville is only mentioned twice in the entire book, and once to show that Wolin “reversed” him. Wolin has written on many authors, but he wrote by far the most pages on Tocqueville. This is not the path taken, however, by his “successors.” See Democracy and Vision, ed., Connelly et al. (Princeton, 2001).
old regime into modern politics, so Wolin attempts to theorize how to maintain democratic elements in the post-democratic age (Wolin, 2001, 9). He looks to Tocqueville to theorize what he at another point calls political polytheism, or the idea that a regime should have multiple and dispersed centers of power. (Wolin, 2001, 5). Wolin wants to return to localism and federalism.

While this dissertation follows Wolin in a return to Tocqueville, this is not the path taken by the new generation of democratic theorists. Instead, a number of prominent young turks have turned to Hannah Arendt and Carl Schmitt for theoretical resources to move beyond the democratic antinomies.

Patchen Markell turns to Arendt to help him problematize and rethink the rule of the demos. The turn to Arendt to solve the democratic dilemma seems to be a quixotic enterprise, Markell notes, because Arendt exhibits the same duality he seeks to overcome. In *The Human Condition* she develops a novel and radical theory of the activity of human freedom that one could call performative initiation. She seeks to displace all notions of freedom as autonomy or sovereignty in which the agent attempts to control the consequences of action in order to produce a pre-given end. Her new philosophy of freedom stresses the radical openness of the new beginning. But in *On Revolution*, Arendt lays much emphasis on the need for the stability, continuity, and

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4 If the old adage was that what united the far left and the far right was their mutual distaste for liberalism, they are now united by their mutual distaste for statism and centralization. Wolin and Rahe (2009) share a number of concerns. What distinguishes them is that Wolin sees Tocqueville’s use of religion as a last vestigial element of the ancient regime and Rahe, as well as Mitchell and Lawler, as one of Tocqueville’s most lasting achievements.


institutionalization of freedom. Hers is not Wolin’s freedom without form, but a freedom decidedly within form. Markell notices that Arendt scholarship tracks these two poles of her thought. Some scholars focus on her rejection of non-political ideas such as sovereignty and rule as a way to unlock democratic openness, new beginnings, rupture, change, and innovation; other scholars focus on her insistence on democratic stability, continuity, constitutional order, and institutional durability (Markell, 2006, 3-4). Markell seeks to avoid these antinomies by clarifying Arendt’s understanding of action so as to make beginning compatible with “existing patterns” and “regularities” rather than a category of pure disruption and discontinuity (Markell, 2006, 7). Yet to do this he is forced to domesticate the radicalness of Arendt’s category of natality and make it amenable to a wider and hence more commonplace range of political activities. Markell’s reconceptualization of Arendt’s theory of action to capture both the energy of novelty and the continuity of stability, and thereby avoid the democratic dilemma, is perfectly well and good in theory, but how does it work in practice?

Markell thinks seeing action as what he calls “attunement” which calls for a “response” leads to new avenues for “democratic critique”, makes us aware of the “erosion of contexts”, and impels us to the “re-presentation of happenings” (Markell, 2006, 13). He signals his own anxiety about this line of interpretation by trying to distance himself from “implicit intellectualism” or the reduction of his compelling article to the banal conclusion, that horror of horrors, that we just need a change in attitude (Markell, 2006, 8). He seeks to avoid this charge by repeating Arendt’s appropriation of Jefferson’s ward republics, and interpreting them as significant, not because of the constituting sovereign power that they gave the people, but because they sustain
“attunement to events” (Markell, 2006, 13). But the problem with this approach is that it does not account for the fact that Jefferson’s ward systems, as Arendt understands them, are a radical departure from the current institutional arrangement of the United States. That is to say, to institutionalize Arendt’s view of freedom cannot simply affirm the modern world as it is. Markell’s appropriation of Arendt must do injustice to her thought in either one of two ways: he must radically reinterpret her view of freedom to make it compatible with modern mass, representative democracy, which she clearly thought was not possible, thereby abandoning her understanding of the political; or he can accept her view of freedom and follow her in her radical questioning of existing democratic reality, and thus abandon his insistence that attunement is an Arenditan alternative for our era. The problem is not, in fact, Markell’s. The essential difficulty of turning to Arendt to extract democratic theory from its impasse is that Arendt’s thought, without considerable alteration, is incapable of being actualized under modern conditions. She says so herself.

In a similar project, Andreas Kalyvas turns to Hannah Arendt and Carl Schmitt to incorporate revolutionary vitality into the normalized operation of democratic political life. Kalyvas repeats a familiar litany of charges against the contemporary world: ordinary politics is “monopolized by political elites, entrenched interests groups, bureaucratic parties, rigid institutionalized procedures, the principal of representation, and parliamentary-electoral politics...[it fosters] civic privatism, depoliticization,

7 On Arendt’s rejection of representation, OR, 237; on the general lack of freedom in the modern world, OR 269, 275-7; on her critique of the founders, OR 232-7, 253-5. In their monumental study of civil society Cohen and Arato make the same claim: “The actual political reemergence and reinstitutionalization of [Arendt’s] values requires an almost total rupture with all existing institutions” Civil Society and Political Theory, (MIT, 1992), 177.

8 Andreas Kalyvas, Democracy and the Politics of the Extraordinary (Cambridge, 2008).
passivity, [and it is] carried out by political elites, professional bureaucrats, and social technicians” (Kalyvas, 2008, 6). As opposed to the tawdry status quo extraordinary politics involves “high levels of collective mobilization; extensive popular support for fundamental changes; the emergence of irregular and informal public spaces; and the formation of extra-institutional and anti-statist movements that directly challenge the established balance of forces, the prevailing political-social status quo, state legality, and the dominant value system” (Kalyvas, 2008, 6). In extraordinary moments “politics opens up to make room for conscious popular participation and extra-institutional, spontaneous collective intervention”, reducing the distance between ruler and ruled, representatives and represented (Kalyvas, 2008, 7). Extraordinary politics aims at core constitutional matters, or cultural meanings, or economic values. Kalyvas’s book asks the important question: How to theorize “radical democracy without falling into the trap of a one-dimensional model that reduces popular sovereignty to a constant mobilization and permanent participation, making it virtually unrealistic under modern conditions?” (Kalyvas, 2008, 13). Unfortunately, he drives into the same cul-de-sac as Markell.

Kalyvas sees democratic theory as trapped between overly legalistic attempts to revitalize the openness of democracy, exemplified by Ackerman and other constitutional lawyers, and contrarily, those who sacrifice stability, continuity, and reference to norms for the sake of democracy, exemplified by Negri and Wolin. Charting a middle way between those who do too little and those who do too much, Kalyvas’s goal is to harness the unificatory, participatory energy of revolutionary, insurgent movements and make them an ordinary part of democratic life, finding the mean between constitutional

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fetishization and pure anti-constitutional revolt. He does so by theorizing a three level model of the extraordinary: the founding moment of novelty, the solidifying moment of continuity, and the regenerative moment of “spontaneous and unpredictable forms of popular mobilization and informal participatory agitations” (Kalyvas, 2008, 12). He is primarily interested in the third mode, which calls “semi-extraordinary” or “quasi-extraordinary” politics, neither too ordinary nor too extraordinary.

Kalyvas turns to the brilliant Nazi jurist Carl Schmitt to think about the democratic semi-extraordinary. This seems a strange route to take when Kalyvas himself recognizes that Schmitt endorses “an omnipotent personalistic executive power with a plenitude of dictatorial powers”, that his abandonment of speech and deliberation left with him with a “mute” and “crippled demos”, and that his politics have no concern at all with “freedom” (Kalyvas, 2008, 14-15, 86-87). But Kalyvas thinks that one can isolate and extract elements of Schmitt’s analysis for radical democracy without committing to his entire project (Kalyvas, 2008, 81). He does this, on his own puzzling admission, by focusing “mainly on his constitutional writings” and by “avoiding [his troubling writings] for the most part” (Kalyvas, 2008, 81). In other words, Kalyvas’s project must dissociate Constitutional Theory from Political Theology and Concept of the Political in order to salvage the good while discarding the ugly. *Pace* Kalyvas, to do so is to fundamentally misconstrue the nature of Schmitt’s project.

One example will suffice. The most necessary thing for Kalyvas to do to make his reading of Schmitt persuasive, is to disassociate the extraordinary from violence. Yet Schmitt’s definition of sovereignty in the first sentence of *Political Theology* is that it reopens the exception, which suspends, totally or partially, the constitution. In this
suspension, as it occurs in times of emergencies, reopens for Schmitt the primordial notion of the political, or the confrontation with an enemy during an existential threat.\(^\text{10}\) Schmitt draws our attention to two facts about the extraordinary. The first is the close kinship between the exception and violence. Kalyvas tries to inoculate himself from this charge by making a strong distinction between the extraordinary and the exception. But what Kalyvas occludes is precisely that Schmitt’s thought tends in the direction of a continuous return to the foundational moment, which, like Machiavelli, is a moment of violence.\(^\text{11}\) The most striking fact about Kalyvas’s paean to the virtues of the extraordinary is that he has little to say about violence. But this is precisely the lesson of almost every story of founding myths and of those moments of political reinvigoration that return to the founding: Cain and Abel, Romulus and Remus, the French and American Revolutions, and the American Civil War. In addition, classic philosophers who emphasize the importance of foundings themselves highlight the sad necessity of violence: Machiavelli, Jefferson, Lincoln’s understanding of the founding in the Lyceum Address (which Kalyvas quotes) and at Gettysburg, and finally, Carl Schmitt’s notion of

\(^\text{10}\) Schmitt associates the a politics of solidarity with a concrete enemy, and an enemy with the possibility of actual combat: “For to the enemy concept belongs the ever present possibility of combat \([\text{Kampf}]\)” (\textit{CP} 32) with “However one may look at it, in the orientation toward the possible extreme case of an actual battle against a real enemy, the political entity is essential, and it is the decisive [entscheidende] entity for the friend-or-enemy grouping; and in this (and not in any kind of absolutist sense) it is sovereign. Otherwise the political entity is non-existent” (\textit{CP} 39, also 29). And finally: “A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction of friend and enemy and hence a world without politics. It is conceivable that such a world might contain many very interesting antitheses and contrasts, competitions and intrigues of very kind, but there would not be a meaningful antithesis whereby men could be required to sacrifice life, authorized to shed blood, and kill other human beings” (\textit{CP}, 35).

\(^\text{11}\) Notice how Schmitt treats the ordinary with disdain. “a philosophy of \textit{concrete life} must not withdraw from the exception” since it must be true to “the \textit{seriousness} of an insight” and that “in the exception \textit{the power of real life} breaks through the crust of a mechanism that has become \textit{torpid by repetition}” (\textit{PT} 15 [emphasis added]) I agree with Stephen Holmes (1996) that the appropriation of Schmitt for democratic theory seems misguided.
the political. The second idea Carl Schmitt draws our attention to is that solidarity is produced in opposition to another group. The extraordinary presupposes the enemy: the Americans against the British or the North against South. But how is the enemy to be domesticated for domestic politics? Without accounting for how the extraordinary, and that is to say insurgent and revolutionary moments, can be dissociated from violence and from enemies it is hard to see how they can be incorporated into normalized democratic life.

Kalyvas’s use of Arendt is equally unconvincing. “I argue that On Revolution goes beyond a mere hypostatization of the moment of foundings” Kalyvas argues, “to articulate a methodical, coherent alternative model of extraordinary politics that demands the same attention as any of her other ideas” (Kalyvas, 2008, 190). Arendt, Kalyvas claims, develops the idea of the “federal constitutional republic” (Kalyvas, 2008, 255). And yet he forewarned us in the beginning that Arendt has only “fragmentary reflections” on how to achieve a lasting democratic semi-extraordinary (Kalyvas, 2008, 12). But in his conclusion Kalyvas goes even farther, and admits that Arendt’s account is problematic (281), that her ward councils make no institutional sense (Kalyvas, 2008, 282), that, in sum, she “never developed a comprehensive and systematic alternative to democracy and liberalism...” (Kalyvas, 2008, 275). Since Arendt’s ward republics cannot be institutionalized today, Kalyvas finishes his account with a discussion of civil disobedience, with those semi-revolutionary moments that occur outside mainstream political institutions. But since these movements cannot be institutionalized, Kalyvas is subject to the same critique that Arendt leveled against the founders, that he cannot provide a durable, institutional space of freedom in the modern world. Since these
movements are not fostered by institutions, Kalyvas is forced into a posture of patient
listening, waiting for them to happen.

Which brings me to my last point. By placing OR at the center of his
interpretation of Arendt, Kalyvas fails to remain true to the radical novelty of her
insights. Here is his definition of freedom that the democratic extraordinary will provide:
“the normative ideals of political freedom and collective autonomy at the center of
democratic theory” which is that citizens will be “the authors of their destiny and [will]
decide about the central rules and higher normative significations that will shape and
determine their political and social life” (Kalyvas, 2008, 8-9). This definition of freedom
could not be farther from Arendt’s core insight about the need to fundamentally reorient
our understanding of freedom away from collective authorship. Like Markell, Kalyvas
must abandon Arendt in order to salvage her for today’s world.

Markell and Kalyvas’s return to Schmitt and Arendt are unable to produce
workable institutional solutions for the contemporary age of mass democracy and
representative government. Markell concedes that that is not the goal of the limited scope
of his interpretation of Arendt (Markell, 2006, 1-2). And yet while Markell seeks to open
new avenues for democratic theory by questioning and ultimately displacing the category
of rule, in his repetition of Arendt’s critiques of the American project, and its inability to
institutionalize democratic freedom, we can already glimpse on the horizon the shoals on
which his boat is bound to flounder. Any attempt to institutionalize and envision how his
novel theory of freedom and non-rule might work in practice, when not hopelessly vague,
must necessarily revert to the same old dichotomy the new path was meant to avoid:
institutional stability and order, the reestablishment of hierarchy, and eventual democratic
stagnation, only to be challenged by revolutionary novelty, insurgent movements, and political disruption. Kalyavs has even deeper problems. His book has no historical referents to show how his theory of the democratic extraordinary might work in practice. Even more extraordinary in the case of Kalyvas is that there is little discussion of the kind of political freedom that these quasi-insurgent moments are supposed to enact, and even more dangerously, of the way in which individual freedoms (and especially those who disagree with the insurgent movement) are to be protected. In fact, his reconceptualization of Arendt and Schmitt is not thinking democratic possibility with Schmitt and Arendt but against both. Instead of turning to Schmitt and Arendt to solve problems of popular sovereignty and freedom, he should have had recourse to the one tradition that took this problem as its explicit theme: the tradition of Rousseau and Sièyes, of Constant and Guizot, and of Alexis de Tocqueville.

In this dissertation I argue that the development of non-sovereign freedom in Alexis de Tocqueville, as a response to the problems attending the achievement of individual and political liberty in large, representative, commercial regimes, allows us to avoid the Scylla of revolutionary democratic immediacy and the Charybdis of stagnating, privatized statism. French liberalism, and especially the thought of Alexis de Tocqueville, offers an appealing and practicable alternative for those seeking to salvage participatory political freedom in the democratic age without sacrificing liberalism’s hard won protections from political freedom. It enables a higher form of individual freedom that Tocqueville calls individuality, or the development of an independent and original personality.
While Tocqueville has multiple understandings of political freedom that include limited collective self-determination, representative government, and identification with the democratic norms that legitimate a republic, by non-sovereign freedom I intend to capture what I claim is the Tocquevillian innovation in French liberalism: the idea that participatory political freedom occurs primarily when the people do not exercise their constituent power as a sovereign body. This shifts the meaning of political freedom away from a strong notion of autonomy or exercising final control over one’s life and regime to freedom as participation in la chose publique, which includes, but is not exhausted by, the institutions of government. Non-sovereign freedom, in Tocqueville’s mind, allows for both democratic dynamism and institutional stability.

The notion of non-sovereign freedom was a long time in the making. It emerged as a response to specific problems in the development of French political thought. The story begins with the problems attending popular sovereignty as it transitioned from a critical discourse against monarchical absolutism to a philosophy of government after the French Revolution. As a rhetoric of opposition, popular sovereignty was seen as entirely compatible with monarchical authority. While some opponents of monarchical rule appealed to the republics of classic antiquity, for the most part ancient republicanism was a mode of opposition rather than a recommendation for concrete revolutionary change. Montesquieu, for instance, knew quite well that ancient republicanism was both impracticable and undesirable in 18th century France. His definition of political freedom as security, as protection from political power, was a concession that the collective sovereignty of the ancients was not a form of self government available to the moderns.

Under modern conditions of large, commercial nation states, political freedom would be mostly voting for representatives and participating in public debates. Moderns, Montesquieu thought, would primarily get involved in political life to protect their individual freedoms. To be free it was not necessary to affirm the collective sovereignty of the ancients.

This all changed with Rousseau. The political freedom to vote for representatives was not enough to satisfy his republican vision for the moderns. He demanded that political freedom be autonomy. It must mean that the laws citizens obey are really ones made by them. And citizens should actively participate in the formation of those laws. For Rousseau, it is when the people are sovereign that they are most free. But there were three fundamental problems in Rousseau’s thought: direct popular rule is impossible in a large nation state; popular sovereignty is inalienable; and the will of the people is not the same of the general will, requiring that they be formed by a legislator. These three problems made Rousseau’s philosophy for all practical purposes dead on arrival. When coupled with Rousseau’s vision of popular sovereignty as a complete transfer of power from the king to the people, with all its unity and absoluteness, his republican vision was not only unworkable but dangerous. During the French Revolution neither political nor individual liberty was forthcoming. The birth pangs of popular sovereignty required an urgent rethinking of a way to institutionalize political liberty while protecting individual liberty.

Post-revolutionary liberals like Benjamin Constant and François Guizot turned to representative government for a solution, reconciling themselves to the fact that political liberty in the modern era was going to mean less participation in public life than in
classical antiquity or even feudal Europe. If individual liberty is to be ensured, they thought, popular sovereignty must remain an oppositional concept, a power that the people would rarely exercise. The retreat from sovereignty was an attempt to deny that any earthly power could be absolute and to deny that the government is the unique expositor of the people’s will. For Guizot, the conditions of political liberty were largely satisfied if, by means of supervision and other controls, the government carried out the people’s enlightened will by means of its representatives. Getting what they should want, the people could be said to be free. For Constant, however, in order to protect individual rights the people should participate often in public affairs. Political liberty ensured individual liberty, and individual liberty fosters politicization.

Constant and Guizot’s retreat from collective sovereignty prepared the way for Alexis de Tocqueville, who most thoroughly rethought the nature, conditions, and relation of individual and political liberty in French liberalism. Tocqueville agreed with his predecessors’ analysis of the French past that highlighted a double movement towards individualism and statism. He even inscribed this dynamic into the heart of his analysis of democracy. But he was unsatisfied with his predecessors’ solutions. While they both desired localism, because they still thought of participatory freedom largely in terms of exercising sovereignty, their understanding of the amount of political activity required to sustain free regimes was too restrictive for Tocqueville. In order to theorize how to empower the people while also protecting individual rights and ensuring democratic continuity, Tocqueville dropped the emphasis on the recurrence to the constituent power of the people that was so central to Rousseau’s republican vision. Tocqueville’s notion of political freedom shifts away from the exercise of sovereignty and towards the act of
participation itself, or non-sovereign freedom. The people are considered sovereign but they do not exercise their sovereignty on a regular basis. Rather, they lodge their will in a constitution, which denies sovereignty to the government and protects individual rights. Popular sovereignty becomes the “dogma” or theory that legitimizes a free and equal political order. It retains its role as a discourse of critique that prevents usurpation by the government, and is, if need be, occasionally active. But it cannot be the central form of freedom in the modern world. Tocqueville’s experience of America convinced him that a wide range of activities qualify as political freedom, not all of which have to do with holding any sort of political power. He thus shifts the locus of freedom from power over the formal institutions of political life to participation in a more expansive conception of the public world that includes civil society. It is by participating in that world that we protect our individual freedom from political power and develop our characters to achieve a higher form of individual freedom that Tocqueville calls *individualité*. An active and largely non-sovereign public sphere prevents the need to revert to the revolutionary immediacy of direct popular sovereignty, and it prevents the degeneration of pure liberalism into privatized statism. It is by ensuring individual liberty and a large space of non-interference by the state for political freedom that the energy and revolutionary dynamism of democracy is unleashed, contained, and maintained.

That non-sovereign freedom takes place in an expanded public sphere, the main loci of which are local government and associational life, impels us to rethink the types of activities that count as political. Arendt, Schmitt, and those who seek to use them for contemporary democratic theory are caught between a rock and hard place: to stay true to their insights is to restrict the political to a small set of practices carried out by an elite, or
they must do injustice to their thought by expanding the political to encompass a
sweeping ubiquity of activities the thinkers they take for inspiration did not endorse. We
must define the political as sufficiently broad to encompass our common sense notions of
public activity, but restrictive enough to exclude those activities which have only
tangential public significance. Tocqueville helps us lower and expand our threshold for
political freedom. He includes a number of public activities that range from associations
that distribute books or advance causes to the great parliamentary speech in the assembly.
Political freedom is much more a continuum than an either/or.

The significance of French liberalism, and especially of Constant and
Tocqueville, is that they reorient our expectations, detaching us from an obsessive
nostalgia for the ancient polis or aristocratic grandeur. They attach us to what is in front
of our eyes. They impel us to think the latent possibilities of the democratic age. It is only
then that we can theorize institutions and practices that are appropriate for us, ones that
respect freedom from politics and others that harness the political openness and vitality
that the democratic age does offer, and continues to offer. Only then will we not stumble
into longing for a revolution that will initiate the new dawn of light, or fall into
democratic despair that the dark age is already upon us. The core insight of those great
thinker-statesmen of the nineteenth century was that only when a philosophy transitions
from a discourse of critique to a practical foundation of government will it have a
responsible and lasting effect on the world.
CHAPTER 1:

SOVEREIGNTY, SOCIETY, AND FREEDOM IN THE ANCIEN RÉGIME

1.1 Introduction: The Dilemma of French Liberalism

“Religion, love of subjects, the goodness of the prince, honor, the spirit of family, provincial prejudices, custom, and public opinion bounded the power of kings and confined their authority within an invisible circle. The constitutions of peoples then were despotic and their mores free. Princes had the right but neither the ability nor the desire to do everything. Of the barriers that formerly stopped tyranny, what remains to us today?”

(DA I.ii.9, M 299).

Politics is about rule: who does, who wants to, and what authorizes it.

The history of political ideas presents a surprisingly regular response to the question of what ought to rule. It is always some variation on an impersonal norm, whether it be justice, nature, law, or reason. Those who rule should know and apply that norm. Cities will not be healed until philosophers rule, for he is, in Aristotle’s phrase, nomos empsuchos, an ensouled norm. Athens herself had magistrates called the guardians of the laws. They were seven. They sat above the assembly, in the high seats, as the norm stands over man. If an orator suggested a violation of the law, the assembly was
The dynamic holds for the Pope or the king, vicars of the divine on earth. Also for Rousseau’s legislator, who is the incorporated general will. These are all variations on the same aspiration: that the rulers be the fullest embodiment of the norm.

If an impersonal norm authorizes all personal power, the nature of that impersonal norm and who is to be its judge is a subject of fierce contestation. In the early modern era this contest is undertaken through the idiom of sovereignty. To ask who is sovereign is to ask who rules, and implicitly, who should rule. In the early modern imaginary the sovereign is the judge; to ask who is sovereign is to ask who adjudicates disputes. Since who should judge is a disputed question, sovereignty is inherently a polemical concept. One notion of sovereignty affirms a view of the proper arrangement of the world and by that very fact denies and excludes others: that the Pope has *pletitudo potestatis* excludes ipso facto that national sovereigns are the final judge of the law within a given territory; that the people are sovereign is to deny that a king or a Church is. As a consequence of its exclusivity, the sovereign’s authority is unitary and absolute. If divided, conflict is inevitable. If there is conflict over sovereignty one power will be victorious and another defeated. Whoever triumphs, is sovereign. Its authority cannot be overruled. If it is, whoever can, is sovereign. To be recognized as the highest underived power is to be sovereign. To embody the norm is to be a legitimate sovereign.

Popular sovereignty is one variety of sovereignty. It is the idea that the people as a collective body authorize all political power and are the final authority. It does not inherently imply a democratic government. Popular sovereignty says nothing about the

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particular form of government that the people authorize. It is compatible with monarchy, as the Huguenot monarchomachs thought, or with a variety of republican forms of government, as Rousseau believed. But since it is, after Locke and Rousseau, based on the idea that everyone is free and equal by nature its tendency is towards a democratic form of government as well as a democratic social order.

In every modern period of crisis, in which the foundation of political authority is no longer an agreed upon fact but a contested battle, the question of who is sovereign reappears. Since the end of feudalism to the present day there have only been three such eras. Each was the product of an age of violence on an unprecedented scale. The first era was the solidification of the monarchical nation state in the seventeenth century over the authority of nobles, the Church in Rome, and the Holy Roman Empire. The outcome of this contest had significant domestic and international legal outcomes. Internationally it produced what scholars of international relations call the *Westphalian System*. Domestically, the consolidation of monarchical authority meant that neither the *parlaments* in France, nor any lesser noble authority, could overrule the King’s law, only counsel him. The second crisis of sovereignty in the modern era, the period of the American and French Revolutions, brought the sovereignty of the king into question. In the age of revolutions the locus of sovereignty was transferred from the king to the people. When the French revolutionaries claimed that only the people are sovereign they looked upon their monarchical neighbors as illegitimate states. The wars of the Revolution threw the Westphalian system into crisis. Domestically, the king and nobles were stripped of all political power. The people became the highest undervived authority. The third era of sovereign contestation is after the period of the First and Second World
Wars in which the sovereignty of the nation state to be the final arbiter of moral norms became dubious. The horror of the Totalitarian experience prompted the creation of international regimes of rights to serve as moral checks on sovereign state authority. We live today in age that mixes the second and third eras. From a domestic perspective there is no other legitimate sovereign but the people. And yet in international law we recognize that no people are fully sovereign since they must conform to the United Nations human rights conventions. In Europe traditional notions of sovereign power are in flux. Ours is an age still working itself out.

This chapter looks at the transition from the first to the second era. This is the world of 18th century France. It was witness to the moral and social collapse of the feudal-monarchical imaginary and its slow and then dramatic replacement by the emergent democratic one. This was understood as the transition from monarchical sovereignty to popular sovereignty. It would be wrong, however, to see the two eras as antinomies. In fact, as I will argue below, the democratic era as theorized by Rousseau retained essential features of monarchical sovereignty (such as unity, indivisibility, and moral limitations) by transposing sovereignty *in toto* from the King’s body to the *persona ficta* of the people. Thus Rousseau’s account of popular sovereignty encodes many of the schizophrenic legal questions of the ancient regime, including whether the impersonal law or the king personally was sovereign, which is the same question as whether the people or the general will is sovereign, whether the people’s power was absolute or limited, and if so, by what?14

14 I take the language of impersonal norm and personal sovereign from Schmitt, *CPD*, 42.
While Rousseau’s transposition retained the “traditional” features of sovereignty intact, they entailed revolutionary consequences such as the destruction of the lingering feudal world of Estates, social hierarchy, and cozy Church-State relations. The difficulty, made painfully obvious by the Revolution, was that monarchical sovereignty emerged out of a very specific feudal world it was meant to affirm and legitimize. Sovereignty, with its unity, indivisibility, and absoluteness in its sphere, stitched together a pluralistic social tapestry that was not at all unified. Power was dispersed throughout society. The theological, juridical, and social nature of the feudal world limited sovereignty’s seemingly absolutist tendencies. Rousseau’s appropriation of them for a democratic world with immanent sources of authority and a regime of leveled equals made society, and especially the individual, set loose from all corporate groupings, more vulnerable to sovereign power. In fact Rousseau’s project intensifies sovereign power because he intertwines the achievement of freedom understood as autonomy or self-determination with popular sovereignty. For political freedom to be possible the individual must participate in the sovereign, and yet the very empowerment of the democratic people endangers the individual who is the source of all authority. This double project of empowering popular sovereignty so that the people actually do rule, and taming and institutionally limiting it so that the individual is not tyrannized by it, forms the theoretical problem that the French tradition that seeks to solve. To do so is to balance liberalism and democracy.  

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15 Setting up a discussion of Tocqueville by beginning with ancien regime, Rousseau, and the Doctrinaires is rare in the Anglophone world. This is true for the interrelation of sovereignty and liberty. For historical contextualizations that do not stress liberty and sovereignty see Boesche (1987), Kelly (1992), Kahan (2001), and Rahe (2009). French scholarship has long situated Tocqueville historically and
1.2 Sovereignty and Society in the late Ancien Régime

“As if anyone could forget that the sovereign power resides in my person only, that sovereign power of which the natural characteristics are the spirit of consultation, justice, and reason; that my courts derive their existence and their authority from me alone; that the plenitude of that authority, which they only exercise in my name, always remains with me, and that it can never be employed against me; that to me alone belongs legislative power without subordination and undivided; that it is by my authority alone that the officers of my courts proceed, not to the formation, but to the registration, the publication, the execution of the law, and that it is permitted for them to remonstrate only within the limits of the duty of good and useful councilors; that public order in its entirety emanates from me, and that the rights and interests of the nation, which some dare to regard as a separate body from the monarch, are necessarily united with my rights and


16 A second advantage is that this will allow me to clarify Tocqueville’s relation to Rousseau. Scholars have generally attributed little in Tocqueville to Rousseau, or if they have, they think it largely derivative of Pascal and Montesquieu. Focusing on the dynamic of sovereignty and liberty, which is not prominent in either Pascal or Montesquieu, is one way to reveal Rousseau’s influence on Tocqueville. A running theme of the footnotes in the next few chapters will be to show how Rousseau influenced Tocqueville in multiple ways, and that a major trend of current Tocqueville scholarship needs to be recalibrated. Those who think Rousseau exerts little influence on Tocqueville are Rahe (2009), Jaume (2008), Lawler (1993) and (1995), and to a lesser extent Mitchell (1995); for those who emphasize Rousseau’s influence see Koritansky (1986), Lakoff (1987), Zuckert (1993), Richter (1995), Strong (2001), and to my mind the best article, Hennis (1982).
interests, and repose only in my hands” (Louis XV, Scéance de la Flagellation Baker [1987], 49).  

Recent scholarship has done much to uncover the medieval origins of the concept of sovereignty out of the rise of nominalist theology and the rediscovery of Roman law. For the purposes of this study of French Liberalism it would be a distraction to enter deeply into the medieval and Roman heritage embedded within the notion of sovereignty. I skip over that period in order to look more closely at two others. The first is the consolidation of sovereign authority in the King in the sixteenth and seventeenth centuries. This consolidation entailed stripping the universalist Roman Church and feudal lords of their authority. The transfer of authority and power to the national King is typically seen as the triumph of authoritative order over feudal chaos, and of national unity over plurality and division. While absolutely and uniquely sovereign in theory, monarchy in the ancien régime was at first limited by the legal, theological, and social context out of which it emerged and which it was meant to justify and maintain. Sovereignty as concept however spins inherently towards absolutism. There were many attempts to limit the sovereignty the king’s sovereignty (one of which led to the reprimand of the Parisian parlament cited above). Arguments on behalf of limitations range from the Protestant monarchomachs, who argued for a legitimate right of rebellion, to the more absolutist tendencies in Jean Bodin and Jacques-Bénigne Bossuet, who both

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nevertheless concur that the idea of absolute and unbounded sovereignty is inadmissible.\(^{19}\) In the sixteenth and seventeenth centuries, then, the King’s power was in fact limited by customary practices, long traditions, and strong independent authorities. France was not a despotic regime (Furet, 1995, 4-5). But in what can be considered the second moment of absolute sovereignty, in the late seventeenth and eighteen centuries, this began to change. While at first absolutist theory belied loose and lenient practices, later it bespoke limited theory and absolutist practices.

The concept of sovereignty has absolutist tendencies because it emphasizes unity over division and plurality. The monistic tendency of sovereign power is a result of the social problems that it sought to resolve. The conflict of multiple authorities -- the Church and the monarchy, the warring factions of Christianity, and the King and rival powers in the provinces -- required the erection of a single and ultimate authority beyond which there was no higher appeal. To be sovereign is to be the highest judge, who shares his power with no other. And this is precisely the project, in very simplified form, of Jean Bodin in France and Thomas Hobbes in England.\(^ {20}\) But it was not simply the antagonistic clash of rival claims to ultimate authority in each state which incited the establishment of

\(^{19}\) On the Ancien Régime see Furet (1988), chapter 1; “Ancien Régime” in Dictionary of the French Revolution, and Baker (1990), esp. part 3. For an extensive bibliography of literature on the ancien régime see Furet (1988), pgs. 567-9. To understand the spirit of the Old Regime the classic writers are: Jean Bodin (1530-1596), the 17th century French jurist Charles Loyseau (1564-1627), on whom Bertrand de Jouvenel relies heavily in his erudite study of the history of sovereignty, and finally, the court theologian and tutor to the son of Louis XIV, Jacques-Bénigne Bossuet (1627-1704). To read their three main works, respectively Les Six livres de la République (1576), Traité des ordres et simples dignités (1610), and Politique tirée des propres paroles de l’Ecriture sainte (1709) is to have a sense of the spirit, institutions, and aspirations of the ancien regime monarchy. There is, of course, much difference between them. Loyseau emphasizes the king’s duties to the social order while Bossuet stresses the king’s duties to god. These have divergent political ramifications, but they unite in seeing even the king himself as subordinated to, and required to carry out, higher law.

\(^{20}\) Bodin I.8; Loyseau, cited in De Jouvenel, 216-7; Leviathan xviii.16, 115.
a single power. Society itself in the old regime in France, with its motley tapestry of corporate and hierarchical bodies, from the lowest wigmakers guild to the heteroclite Third Estate, was so deeply pluralistic that it could only be unified at the top by a single King. Just as the Church is unified by the body of Jesus, it was through the immortal body of the sovereign King which established the national community, so to say, at the apex and outside of society.\textsuperscript{21} It is only through the unity of the king’s body that an agglomeration becomes a unified community.\textsuperscript{22} The transition from feudal rivals to monarchical unity is represented architecturally by the movement away from spires (such as the great ones in Bologna) that symbolize independent feudal authority to the cupola which unites all social powers at a single central point.\textsuperscript{23} The king is the unifying central site at which a pluralistic society is defined and activated, but the king in France relies on and is limited by the strong semi-autonomous authorities which support his authority.

\textsuperscript{21} Leviathan xvii.13, pg. 109; xxxix.12 and 15, 213-5.

\textsuperscript{22} Leviathan xvii.13, pg. 109; xxxix.12 and 15, 213-5. The Leviathan is anomalous in the French monarchical tradition insofar as neither Bodin, Bousset, Loyseau, or even any of the Huguenot monarchomachs who advocated limited popular sovereignty and a right of rebellion have any place for individuals as political actors separate from corporations, be it Estates or guilds. See Theodore Beza, The Rights of Magistrates (1574), VI; Vindicea Contra Tyrannos, 48-50, 61, 76-8. What distinguishes the monarchomachs from Bodin and other thinkers such as Hobbes is that they supported the right of rebellion. To defend this claim they had recourse to a form of very limited popular sovereignty. But it was a popular sovereignty of resistance, not of activity. They also attempted to place genuine limitations on monarchical authority by giving the Estates more power to interpret divine and natural law. Nevertheless, they have a strikingly similar conception of sovereignty as Bodin or Loyseau and are much closer to medieval political thought than to the individualistic popular sovereignty of Rousseau. Their disagreements were, however, to prove aporetic as one can endlessly debate the political ramifications of divine law. In the end, then, the main distinction between the Protestant monarchomachs and Catholic divine right thinkers was that the former preferred an absolute Protestant to an absolute Catholic king. On the monarchomachs see Rosanvallion (1992), 21-38.

\textsuperscript{23} This idea is wonderfully expressed in the image by Eugenio d’Ors, cited by Bertand de Jouvenel: “But the Middle Ages are over. The kings have subjugated the seignors. At the same time, in the same spirit and for the same reasons, cupolas replace spires. A cupola crowning a great public building seems as though it were its soul. It gathers up all the structural lines of the building, draws them together and makes them meet at a single point.” Eugenio d’Ors, “Coupole et Monarchie” Les Cahiers d’Occident, VI, 2nd series (1926), cited in De Jouvenel ([1957], 1997), 207.
Another reason that sovereignty is a dangerous concept is the idea that sovereign power by definition is absolute within its sphere. The absoluteness of sovereign power also followed axiomatically from the social requirements that gave rise to it. The sovereign, like an earthly God, is the highest judge and the final court of appeal. There is no appeal to any earthly authority above and beyond it. For it is exactly that type of appeal, associated with a right of rebellion in the eyes of monarchical apologists, that leads to political anarchy. The judgments of the sovereign must be final. And in this sense sovereign power is absolute. But absolute authority does not imply that the sovereign could do anything it wanted. Even proponents of divine right sovereignty made a distinction between absolute and arbitrary power. To rule absolutely is not to rule arbitrarily. The wielder of sovereign power is subject to legal, theological, and social objectives that both restrain and direct the use of power.

Sovereign power was limited in theory by the theological presuppositions that legitimated it. The king ruled by divine right. He was God’s lieutenant on earth. The kingship was sacred and the king’s person holy. Many were the rituals in the French Monarchy that exemplified the king’s subordination to God, and that his agency was in the name of a higher authority. The King at his coronation was anointed with holy oil from an ampoule that contained sanctified water used for the conversional baptism of Clovis in the 5th century; like Jesus, the King was able to cure scrofula with his touch, a

24 Bodin, I.8. Even the parlamentaire opposition to monarchical authority accepted the idea that sovereign authority was absolute. They wanted, however, to partake in that authority. The best study of the notions of sovereignty and the competing claims of king and parlament in the 15th and 16th centuries is Julian Franklin’s Jean Bodin and the Rise of Absolutist Theory (Cambridge, 1973). See also Leviathan, xx.3, 128.

25 Bossuet, Book 4, Article 1 (Baker, 36).
particularly hideous form of tuberculosis that causes ghastly lesions on the neck; and his person itself was considered a sacred vessel, a vehicle for God’s presence on earth, such that a crime against the king was both treason and sacrilege.\(^\text{26}\) The theological justification of monarchical legitimacy was also a salutary restraint on his power. While the French King was the highest sovereign in the realm, he only exercised his sovereignty in the name of God’s sovereign authority.\(^\text{27}\) By subordinating the king to a higher authority, in whose name he ruled, sovereign power was limited in the objects, and means to achieve them, by the very authority that legitimated it. To act in ways unchristian was to delegitimize the use of force. Given that restraint, subordinate social forces were able to appeal to a moral foundation that was recognized as beyond or higher than monarchical power in order to remind him of his duties. The sovereign power was the highest earthly judge, but he was not the highest judge of all things. Another consequence of the theological legitimation of political authority that had become enmeshed in the fabric of regal self-conception was that sovereign power was limited by divinely ordained natural law. This idea can be found without fail in all writings either for or against absolute monarchy. However, since the king was the highest judge and interpreter of God’s will, such moral limitations were in no way institutionally binding and usually of little practical effect. Even though the Ecclesiastical order and Rome could remind the king of his duties, it was up to the king whether or not he wanted to heed their counsel. This is quite characteristic of the old regime, in which sovereign power was limited in

\(^{26}\) Bossuet Book III, Proposition 3 (Baker, 34).

\(^{27}\) Bossuet, Book III, Loyseau VII; *Vindiciae contra tyrannos*, I (pgs. 14-19). Jean Bodin says: “All princes of the earth are subject to the laws of God and of nature...All the princes of the earth are subject to them, and cannot contravene them without treason and rebellion against God. His yoke is upon them, and they must bow their heads in fear and reverence before His divine majesty. The absolute power of princes and sovereign lords does not extend to the laws of God and of nature” (Bodin, I.8).
theory, but those limitations were never effectually institutionalized in practice.

Nevertheless, it is a significant fact that monarchical sovereignty was universally acknowledged in the old regime to be limited by God and divine law, both in the ends it could pursue and the means that could be employed.²⁸

Sovereign power was also limited by the legal and social context out of which it emerged and which it was meant to maintain. If one returns to the epigraph of Louis XV from the Scéance de la Flagellation that adorns the incipit of this section, one sees the following precise formulation of the limited nature of sovereignty. This crie de coeur of absolutism belies in fact that it is a statement of the traditional interpretation of the French monarchy, even though in practice this theory of the culturally limited monarchy had already been slowly crumbling for almost a century. Sovereign power is limited by “the spirit of consultation, justice, and reason.” Each term in this trinity refers to something quite specific.

In addition to divine law, sovereignty is limited by what Louis XV calls the spirit of consultation and of reason. The king was required to consult his subjects for two reasons. First, consultation was considered to be the mechanism by which consent was given to law. Consent is a medieval idea, and it was always implicitly understood that the King’s power is partially legitimated by the fact that he rules by consent. For example, the King’s power derived from an original pactum between the King and the people, which is renewed at each coronation. The king was also required to consult the nation before acting. This limitation follows from the fact that the kings power was granted to

²⁸ De Jouvenel, 219-221, who also points out that the limitations imposed by Christianity on sovereign power collapses when it is no longer universally acknowledged that Christianity is the true or universal religion or is the religion of the state; also Leviathan chapter XXX.1.
him by the lesser authorities and the right of consultation was considered the price the King must pay for their obedience. The need for consultation allows follows from the fallibility of man and the inevitably limited cognitive powers of any one man or group of men. God is always right, but the man who represents God on earth is often mistaken, a consequence of his fallen and hence imperfect nature.  

So too the King (like the citizens of the Social Contract) always wants the general good and therefore can never be wrong, only mistaken. What Blackstone in his Commentaries said of the English King could just as well be applied to the French monarch: the King “is not only incapable of doing wrong, but even of thinking wrong: he can never mean to do an improper thing: in him is no folly or weakness.” Of course this was the ideal portrait. In reality it was understood that the King could not discern the public good alone. He had to have counselors whom he was required to consult. First among those counselors was the nation, understood in terms of its Estates, provinces, cities, and other corporate entities, each of which had their representatives. The place of consent was not, however, in the formation but in the registration or application of the law. Royal edicts could not become law before they were consented to by the parlaments, who were also able, if they disagreed, to reason with the king by presenting him with remonstrances. The king was free to ignore and

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29 For a good general discussion of the place of consent in 16th century French legal thought, see Franklin (1973), 10-19.

30 Tocqueville, picking up on this theme says: “The French under the former monarchy held as a constant that the king could never fail; and when he happened to do evil, they thought that the fault was in his counselors. That marvelously facilitated obedience. One could murmur against the law without ceasing to love and respect the legislator. The Americans have the same opinion of the majority” (DA I.ii.7, 237).


32 There were 13 parlaments in France. The oldest was in Paris. Its officeships were held hereditarily by the aristocracy, as well as by the bourgeoisie who bought noble status. In strict theory, but not in practice, provincial parlaments were extensions of the parlament in Paris and followed its suit. They
override those remonstrances and pass the law through a lit de justice. While he used this tactic sparingly for fear of provoking the nobles, we see the same duality in the spirit of consultation and reason as limitations on divine right sovereignty as the divine law itself: a strict and universally acknowledged limitation on sovereign power in theory, and a juridically and institutionally loose limitation in practice.\textsuperscript{33} Again, the very idea that legitimated sovereignty and gave it its ends, the idea that sovereignty requires consent and consultation, also limited it.

That law, or at least fundamental law, could not be made without the consent of the governed was understood in a third way: the idea of justice. This term was also used by Louis XV in a specific way. To rule justly was to render to all subjects what was due to them. Justice, in the words of the 1776 Remonstrance against Turgot’s attempt to suppress the corvée, “is the first duty of kings”; and the “first rule of justice is to preserve for every man what belongs to him. This is the fundamental rule of natural law...a rule that consists not only in maintaining the rights of property, but also in preserving the rights attached to the person and those which derive from the prerogatives of birth and Estate” (Baker, 119).\textsuperscript{34} The rights and privileges of the nobility which the King was each had ecclesiastical as well as lay responsibilities, and judged both criminal and civil cases. The most important of their functions was the registration of royal edicts that gave them the force of law so that they could be upheld in courts and by the police. This registration was tantamount to the consent of the province that the parliament represented, and the refusal to register was the refusal of the same. While they did not propose law, they were allowed to hinder its enforcement and force the king to reconsider. Their reasons were given in formal remonstrances.

\textsuperscript{33} Bodin, I.8: “As for laws relating to the subject, whether general or particular, which do not involve any question of the constitution, it has always been usual only to change them with the concurrence of the three estates, either assembled in the States-General of the whole of France, or in each bailiwick separately. Not that the king is bound to take their advice, or debarred from acting in a way quite contrary to what they wish, if his acts are based on justice and natural reason.”

\textsuperscript{34} Bodin, I.8: “But supposing the prince should swear to keep the laws and customs of his country, is he not bound by that oath?...he is nevertheless not bound to do so...” and “It remains true in principle that
contractually obliged to uphold were understood differently than the natural rights elaborated by the Enlightenment. They were not derived from the pure light of reason and based on the moral imperatives derived from a universal human nature. In the understanding of the old regime, rights inhere in the person, but they are not natural. They are historically acquired and are coterminous with, if they do not antedate, the establishment of the French monarchy. They were privileges and immunities owed to the nobles as recompense for their military and political service to the crown. Later these privileges were bought by all who could afford to purchase them. In both cases the privileges and immunities of the nobility were considered as property rights that the King could not deny without subverting the constitution of the realm. Even the supposedly absolutist Bodin recognizes this.  

Thus the great uproar against Turgot’s attempt to suppress the corvée, a tax considered a long standing privilege of the aristocracy. These privileges were understood to be what made the aristocracy free. Any infringement or alteration of the social standing, political privilege, or tax exemption of a noble was an attack on their liberty without consent, an injustice, and thus an act of despotism.

Therefore the traditional role of the sovereign king, far from being an absolute will that could do whatever it pleased, was constrained to a largely conservative role by

the sovereign prince can set aside the laws which he has promised or sworn to observe, if they no longer satisfy the requirements of justice, and he may do this without the consent of his subjects.” Nevertheless, even Bodin thinks it important that the king uphold “the constitutional laws of the realm” because “on this is founded and sustained his very claim to sovereign majesty.”

35 Bodin, I.8, pg. 42.

36 Sovereign authority as the guarantor of rights is one of the most prominent themes in the literature on the Ancien Regime. Of it Keith Baker says “The government’s function was essentially judicial: to ensure that each corporation, order, and estate received its due in light of the rights, responsibilities, and privileges defined by the traditional hierarchy” (Baker, 845). See also the quote by Loyseau in De Jouvenel, 219
the juridical traditions that legitimated his power. Rather than being an agent of social change, his role was to maintain each family or class in its station as the guarantor of preexisting rights. Sovereignty in the sixteenth and seventeenth centuries in old regime monarchy was in theory unlimited and in practice limited.

This began to change in the late seventeenth and throughout the eighteenth centuries. The sweeping changes that took place during the middle of the 18th century that gave rise to the centralized administrative state greatly expanded its field of action and stripped the nobles of all significant independent political roles. But it is important to note that the rise of the central state was in fact an attempt to bring France into the modern age. In the words of François Furet, the state “aimed at uniting the nation...bound by the same laws, the same regulations and the same taxes” (Furet, 1995, 7). Social and economic progress was impeded by the French feudal legacy of pluralism and independent authorities. The process of rationalization and standardization is what produced the French nation. The state was in charge of “town building, public health, agricultural and commercial development, market unification, education. [From the early 18th century] the intendant was well and truly in command...He wrested from the clergy and the nobility almost all their remaining functions in local supervision” (Furet, 1995, 10). Thus “far from being reactionary, or imprisoned by self-interest, the monarchical state in the eighteenth century was one of the foremost agents of change and progress--a permanent building ground for ‘enlightened’ reform”’” (Furet, 1995, 10). Furet is of course just reiterating the story of that Tocqueville traces in the Old Regime and the Revolution. The overcoming of Feudalism was the work of the monarchy. But by bringing France into the modern age it also destroyed the traditional limitations on its
own power. One could call this the battle of rational administration versus political plurality. It is not a battle of pure good and pure evil. Both have distinct advantages and disadvantages.

The slow rise of the centralized, administrative state in the 17th and 18th centuries created a crisis of sovereignty. National sovereignty centered in the monarchy, and shared to an increasingly smaller extent with the parlements, developed as an ad hoc solution to two political problems: the unification of feudal regimes through the subjection of local lords and provinces, and as an attempt to gain independence from the Catholic Church and the Holy Roman Empire. The main themes of sovereign power (its unity, sanctity, absoluteness) were a political program and a legitimation of a social situation wrapped in the prestigious mantle of tradition and theology. The ancien régime understanding of sovereignty was meant to legitimize both the authority of the monarchy but also the privileges and rights (understood as liberties) of the aristocracy. But sovereignty did not just legitimize monarchical authority, it justified, and was thus tied to, a whole social universe of hierarchical Estates, corporations, particular privileges and a Christian political theology that interpreted that society as the fulfillment of God’s will. But this social universe was a vestige of feudalism. As soon as the administrative state assumed the feudal political responsibilities of the aristocracy (which Tocqueville traces in great detail in the Ancien Regime), and society, rather than being a fixed and immortal mirror of the universe, was forced to discard its feudal past, the social and political world that the ancien régime understanding of sovereignty was meant to legitimize began to crumble.\footnote{The jarring disjunct between the social, theological, and political assumptions}

\footnote{Bodin, 1.8.}
of monarchical sovereignty and the new emerging social world of salons, publicity, religious skepticism, a rich bourgeoisie, an active central state that attempted to reshape society according to new economic ideas, and the rising significance of the moral importance of the individual in French political thought required a reworking of sovereignty and freedom.

1.3 The Promise and Problem of Rousseau

The first of all goods is not authority but freedom ...that is my fundamental maxim

Emile II: 84

That reworking of sovereignty is most thoroughly done by Rousseau. He unequivocally rejects the old regime as philosophically untenable. Its sources of legitimation, divine, natural and traditional, are not based on the true source of all legitimate authority: the consenting will of the individual (SC I.1-4). This revolution in political legitimacy entails a destruction of the feudal legacy of French political life and the dismantling of its corporate bodies, its hierarchical structure, and its identification of sovereignty with the divine person of the king. But Rousseau’s thought is not simply a negative critique. He represents a pivot point precisely because he seeks to reconstruct the social world he destroyed on the basis of rational, non-arbitrary standards of political right. That reconstruction entails the development of a theory of sovereignty that attempts to combine liberalism and republicanism. Political freedom is only possible when a democratic community has been formed and when each individual participates equally in
the sovereign, while the formal constraints on the contract that gives rise to sovereign power protect the individual from it. Rousseau replaces the old regime with one committed to a radically new idea of individual and political freedom.

The first section below is on sovereignty and freedom in Rousseau. The final section argues that rather than making a break with the features of sovereignty in the ancien régime, Rousseau exacerbates the dangerous absolutist tendencies of sovereignty.

1.3.1 Sovereignty, Liberty, and the General Will

“Here...is the great problem of politics, which I compare to the squaring of the circle in Geometry...to find a form of government that might place the law above man” (Letter to Mirabeau, 270).

For most of the eighteenth century popular sovereignty was a discourse of opposition rather than a philosophy of government. It was for instance a theme of the Huguenot opposition in France. It was also embedded in appeals to the republicanism of classical antiquity. But this critical opposition in France was meant to moderate the king, not kill him. Rousseau’s Social Contract changes all that, making a modern republic not a fantasy meant only to chide but a moral requirement that we should strive to achieve. In

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38 While I focus in this section on citizenship, Rousseau’s thought has other solutions to the problems of man’s heteronomy and disunity. One is romantic love, which is explored in the *Emile* and the unfinished sequel, *Emile et Sophie* (where Emile is captured by the Barbary Pirates and Sophie has a child with another man!). Another is the life of the solitary walker, who is re-submerged in a sublimated nature. Whether Rousseau’s thought is unified or ultimately characterized by antinomies is a significant debate in the scholarship. These problems are considered by Gauthier (2006); Melzer (1990); Riesert (2003);
this Rousseau departs from the mighty Montesquieu. Following Montesquieu’s lead Rousseau fully recognizes that a variety of different governments are compatible with the Social Contract, as all sensible persons think circumstances, tradition, and character make different arrangements suitable for different environments (SC, III.8). But the notion that all legitimate authority flows from the popular sovereign, itself made up of individuals, is invariable. According to Rousseau, what Montesquieu gets wrong is that all legitimate government a republic of popular sovereignty. Montesquieu also did not fully understand political freedom. While for Montesquieu England, or an ideal version of it, is a quite suitable modern regime, for Rousseau the English are miserably unfree. Freedom is only possible because I have consented to the regime that I live in (the liberal moment) and because the laws that I obey are my own creation (the republican moment).

Rousseau bases all legitimate government on popular sovereignty. He is not the first to do this. Natural law thinkers such as Grotius and Pufendorf thought popular

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39 And this is where Rousseau criticizes Montesquieu, that “famous author” and “noble genius” for not seeing that all legitimate governments are based on popular sovereignty: “he failed to see that since Sovereign authority is everywhere the same, the same principle must obtain in every well-constituted State, more or less, it is true, according to the form of government” (SC III.4 [92]).

40 SC, II.6, 67; III.15, 114; Gov. Pol, 201; EL, II.11.6. While both Montesquieu and Rousseau express the aspiration to combine some form of liberal republicanism they each do so by sacrificing one to the other, Montesquieu sacrificing republicanism for liberalism, and Rousseau sacrificing liberalism for republicanism. The aspiration to combine the two can be seen, additionally, in the Déclaration des Droits de l’homme et du Citoyen which speaks of the duties of the citizen and has a slightly more republican flavor than the Declaration of Independence.


42 On freedom in Rousseau: Kaufman (1997), pp. 25-52 ; Yack (1986), 49-55; Miller 181-191
sovereignty was the foundation of the legitimate regime. The difference is that they thought popular sovereignty could be alienated to a king. Rousseau’s innovation is to insist that sovereignty is not alienable. And this because popular sovereignty follows from, and is an extension of, the fact of human spirituality or free agency. Individual free agency is man’s most remarkable quality, his defining characteristic. So much so that to alienate one’s free agency is to destroy one’s humanity. Rousseau calls this fact of human free agency natural liberty. Since all men are free and equal by nature, and thus no one has any natural title to rule another, the only regime that coheres with that moral fact is one in which the individual consents to the regime. Rousseau extends non-alienability to the community formed by the consenting wills of individuals. Appropriating the monarchal notion of the *persona ficta* of the King in the ancien regime (as well as in Hobbes), Rousseau conceptualizes the sovereign as a single individual. Just as an

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43 This is the thesis of the wonderfully erudite study of Rousseau by Dérathé, *Jean Jacques Rousseau et la science politique de son temps*. Divine right sovereignty, as opposed to medieval understanding of sovereignty, never admitted that the people were the original proprietors of sovereignty. Popular sovereignty was affirmed by the monarchomachs and Huguenot thinkers, whose view of sovereignty lost out to Bodin and Bossuet. Popular sovereignty was also affirmed by the natural rights thinkers, such as Pufendorf and Grotius. But even those thinkers who argued that popular sovereignty was originally with the people that they could alienate it. The absurdity of theories is most apparent in one examines the establishment of sovereignty by war, which is legitimate, and which Rousseau goes to some length to disprove in the *SC*. Comparing Rousseau’s understanding of sovereignty to the old regime is rarer than a comparison to Hobbes, see, for example, Joshua Cohen, *Rousseau: A free community of equals* (62-8).

44 *Emile* IV: 280-1; SC Liv 45

45 “At once, in place of the private person of each contracting party, this act of association produces a moral and collective body made up of as many members as the assembly has voices, and which receives by this same act its unity, its common *self*, its life and its will. The public person thus formed by the union of all the others…” (SC I.6-7; Cambridge 50,52, 66; OC III...378). On the tradition of the embodied kingship see Kantorowitz, *The Kings Two Bodies*. This tradition goes all the way back to Plato, and there is also the possibility that Rousseau was thinking of the city-soul analogy in the *Republic*. For it is not just that the community is a single body, it is also the fact that the interior life of the individual should mirror the city as a whole: it’s will should be his will. On the *Republic* and the *Emile* see Laurence Cooper “Human Nature and the Love of Wisdom: Rousseau’s Hidden (and modified) Platonism” *Journal of Politics* 64:108-25, 2002.
individual cannot alienate his liberty without losing his humanity, a community cannot alienate its sovereignty without dissolving itself. Popular sovereignty inalienably inheres in the body politic as liberty inheres in the individual body, and just as a person has a moral right to self-government, so too the community has the moral right to govern itself. Freedom is both the essence of the human and the central aim of political life.

But the natural freedom of the individual is different from the civil freedom of the citizen. Civil freedom is possible only after the establishment of a sovereign community. In the state of nature there is no such thing as sovereignty. There is, however, freedom. That freedom is the consciousness that one wills and the right to will whatever one wants. But natural liberty gives rise to a double problem. The object of one’s will is random or determined by one’s appetite, and it (eventually) comes into conflict with the wills of others. As there is no sovereign in the state of nature there is no standard to adjudicate between conflicting wills (SC, I.6, 50). It is a situation of judicial anarchy that incites the need for a non-arbitrary judge. The erection of such a standard gives rise to two problems: (1) how is it possible to submit a conflict of wills to the arbitration of a sovereign power while not simultaneously alienating one’s natural freedom such that one still obeys oneself (2) and how is it possible that the superior power to which one submits oneself is not an arbitrary but a rational standard?

These problems are solved by the terms of the social compact itself and later by the general will. Both the social compact and the general will have significant liberal

46 *Emile* 280-1; *Second Discourse* [SD] (Cambridge edition) 140-1

47 “To find a form of association that will defend and protect the person and goods of each associate with the fully common force, and by means of which each, uniting with all, nevertheless obey only himself and remain as freed as before” (SC I.6, 49-50).
aspirations embedded within them. By liberal I mean that Rousseau builds political legitimacy off the individual’s consent and seeks to protect the individual from political power.\textsuperscript{48} The notion of will is so important for Rousseau, as Patrick Riley points out, precisely because he wants to agree with Hobbes and Locke that all political authority is legitimized by assent of the individual’s will.\textsuperscript{49} Since the individual’s will is the general will, when obeying it the individual still only obeys himself. Moreover in what does not harm the public Rousseau insists that the individual is “perfectly free” and that “subjects therefore only owe the sovereign an account of their opinions insofar as those opinions matter to the community” (SC IV.8, 150 n*).\textsuperscript{50} Just as the general will is a “law of reason” so too must the sovereign give reasons for its action that conform to the public utility (SC IV, 61).\textsuperscript{51} The sovereign thus cannot ask anything of citizens if it has no relation to the public good (SC II.IV). Rousseau takes pains to build protections for individual freedom into the social contract.

\textsuperscript{48} There are a few options for the interpretation of the general will, which are not mutually exclusive. One is the substantive view, which emphasizes that the general will has objective content (SC I.7, Cambridge, 53, also 61, 71; OC 373, 383). This is the idea that the general will binds the community, a type of common interest (SC II.1; 57). On the other hand the general will can be interpreted in a procedural way: it is the rules of right conduct by which laws are made, or the procedural requirements of generality, but without much substance to it. For interpretations of the general will: Ripstein (1994), pp. 444-467; Patrick Riley, “Rousseau’s General Will” in Cambridge Companion to Rousseau (2001), 124-153; Judith Shklar “General Will” in Dictionary of the History of Ideas, ed., P. Winer (New York: Schriberns, 1973), Vol. 2. ; Frederick Neuhouser, “Freedom, Dependence, and the General Will,” The Philosophical Review 102, no. 3 July 1993): 363-95; David Lay Williams “Justice and the General Will: Affirming Rousseau’s Ancient Orientation” Journal of the History of Ideas, Vol. 66, No. 3 (Jul., 2005), pp. 383-411.

\textsuperscript{49} Riley, “Rousseau’s General Will”, 128.

\textsuperscript{50} Rousseau’s republican tendencies however give a wide interpretation to what opinions interest the state, including religious ones.

\textsuperscript{51} See also II.7 (71) and “One should not confuse independence and liberty. These two things are so different that they are mutually exclusive. When everyone does what he pleases, we often do what is disfavorable to others, and that is not called a free state. Freedom consists less in doing one’s will than not being subjected to that of another. It is also not subjecting others to our will. Whoever is a master cannot be free, and to rule is to obey” (Lettres Écrites de la Montagne, OC, III, 841 [my translation]).
The idea of the general will is one of the hallmarks of Rousseau’s philosophy. The notion of generality does a lot of work in Rousseau’s thought. Man’s inherent or natural free agency that gave rise to the requirement of individual consent in the formation of sovereignty is also meant to express the idea that mankind is capable of escaping the causal determinism of nature through the exercise of his free will. Man is a different being than the one supposed in Hobbesian thought, a being who is always impelled by his passions and is thus determined. Rousseau wants man to live a self-determined life; he wants man to be a cause. So the fact the man can rationally will something and act according to it raises him above nature. But a problem arises. Even if I can determine myself through my will, is it the case that anything I will is right? Rousseau does not want to countenance that idea, but insists that what the individual wills must be connected to a higher moral purpose. But if man is to be a self-determiner that purpose cannot be imposed upon him from without but must come from within. Generality helps solve this problem too, for it is by generalizing wills, by seeing how they are compatible with others, that morality emerges. By obeying the general will my individual will is connected to reason. This is why Rousseau calls the general will the “law of reason” and life in the legitimate regime a “moral existence” (SC II.7, 69). Society is capable of substituting “justice for instinct” and “duty for physical impulsion” (SC I.8, 53). It is sovereignty, man’s entry into a community with a general will, that makes what one can call rational freedom possible.

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52 Emile, 279-281; SD, 140-1
53 “Sovereignty...is nothing but the exercise of the general will” (II.1, 57; OC..., see also 61). “...the declaration of this will is an act of sovereignty and constitutes law” (SC II.2, 58; OC III...); and “There is in the state a common force that sustains it, a volonté générale that directs this force, and that application of the other to the other is sovereignty. By which we see that the sovereign is a moral person,
The general will is not some abstract ideal inhabiting an ethereal realm. As a will it must be the actual will of individuals. Like God enfleshed in Jesus or sovereignty in the king, it is incorporated. It is a very real thing that exists within each citizen, who should be the general will in microcosm. For this to happen a civic culture must be in place. It is that culture that converts a selfish being who cares only about himself or his caste at the expense of others into someone who extends his thoughts and interests to encompass and envelop the whole community. My moi must become commun. This in turn requires a long process of socialization for citizens to mold their personalities so that they recognize and act according to the general will.\footnote{For it is no easy thing. To obey a law of one’s own creation requires that one recognize law as one’s own creation. Liberty is a cognitive achievement that is consciously aware of its own activity. }\footnote{This conscious recognition of one’s own activity is a sublimation of natural liberty, which is less willing whatever one wants than the consciousness that one wills SD in OC} For that to occur Rousseau thinks there needs to be an entire constellation of beliefs and practices that continually forms the citizen: “…the hearts of the citizens, which is the State’s genuine constitution…I speak of morals, customs, and above all of opinion” (SC II.12, 81, OC III, 394). The general will thus requires a revolution in each person’s that he only has an abstract and collective existence, and that the sense that we attach to this world cannot be applied to a simple individual” (Geneva Manuscript, I.iv).\footnote{For an interpretation of the general will that puts this problem at its center, see Riley “Rousseau’s General Will” (2001). This is also the paradox that Rousseau poses when he says the effect must become the cause (SC II). This is also the issue of the education of Emile in miniature. The general will wants every subject to say to it: “I have decided to be what you made me.” On the general will as education see Affeldt (1999).}
identity. Like a religious slow conversion that fundamentally alters one’s personality, the
general will is a transformative process, one that seeks to realize itself within the “hearts
and minds” of each citizen. The general will is a regulative utopia since it is always
imperfectly realized, but it represents the aspiration that the perfection of the regime is
the complete identification of the individual with the general will. And this is why
Rousseau has what I call an identification model of freedom, since to be free is to identify
with the general will. There is nothing more easily distortable than a complex philosophic
notion reduced to its elementary insight and expressed in plain language. For Rousseau
autonomy is patriotism in the right sort of regime. To be patriotic is nothing other than
identifying oneself with one’s country.

The fact that the people should conform to the general will, but do not always do
so, brings out the duality in Rousseau’s theory of sovereignty. He shifts between the
people as sovereign and the general will as sovereign. This is the same debate over
whether an impersonal norm or the king personally was sovereign. In each case there is a
disjunct between the is and the ought. The people always want what is best, and that is
the general will, but since they do not always discern it they are in need of a legislator to
help them see what they really want. The appearance of the legislator is like the
apparition of the great man in Aristotle, who is nomos empsuchos, literally, the living

57 “Anyone who dares to institute a people must feel capable of, so to speak, changing human
nature; of transforming each individual who by himself is a perfect and solitary whole into part of a larger
whole from which that individual would as it were receive his life an his being...of substituting a partial
and moral existence for the independent and physical existence we have all received from nature” (SC II.7,
69; OC III, 381). See also Emile book 1: “Good social institutions are those that know best how to denature
man, to remove form his his absolute existence in order to give him a relative one, and to transport the moi
into the common unity, such that each individual doesn’t think himself one, but part of the unity and is only
conscious of being part of the whole” (OC III, 1462-3).
law.\textsuperscript{58} For Aristotle the great man should be given absolute power over the laws because his wisdom gives him the right to rule. Rousseau rejects that a man can be ruled without his consent and thus that one cannot subvert popular sovereignty in the name of the general will: “Thus he who drafts the laws has, then, or should have no legislative right, and the people itself cannot divest itself of this non-transferable right, even if it wanted to do so; because according to the fundamental pact only the general will obligates particulars, and there can never be any assurance that a particular will conforms to the general will unless it has been submitted to the free suffrage of the people” (SC II.7, 70).

But how do we get the people to do want what they should want when they are yet to have undergone the character formation of the general will? The solution is a \textit{deus ex machina}, an appeal to the Gods that reconciles the will of the people with what they should will. In my reading the chapter on the legislator is meant to express the idea that the foundations of most regimes are mythic and that the people are more likely to follow the general will if the founding figure is seen as god-like. The soul of the legislator is the true miracle, not the fact that he had birds whisper in his ear or made bushes burn without them being consumed.\textsuperscript{59} In addition to the founding figure, Rousseau has a second explanation of how a people might see and consent to the general will. In Rousseau’s “Schmititan moment” he has recourse to violence to mold the people according to the dictates of the general will: “Just as some illness overwhelms men’s minds and deprives them of the memory of the past, there may not also sometimes occur periods of violence

\textsuperscript{58} Rousseau even demands something more than Jesus, who was both fully God and fully man; the legislator “[sees] all of man’s passions and yet experience[s] none of them” (SC, II.7). Aristotle

\textsuperscript{59} To support this reading adduce the fact that the discussions in Book II.7-9 have much to do with a people in their “infancy” and “youth” and as they become older they become “incorrigible” (SC II.8, 72).
in the lifetime of States when revolutions do to peoples what certain crises do to individuals...and when the State aflame with civil wars is so to speak reborn from the ashes” (SC, II.8, 72). This is the insight, dangerous as it is, that people are more likely to see the patrie in times of war, such as the Revolution and the Civil War in America, which provided for significant moments of political foundation and re-foundation. To put it forcefully, violence is what may reconcile the disjunct between what the people want and what they should want by jolting them out of received notions and opening up new political possibilities, reconciling the personal will of the sovereign and the impersonal norm, popular sovereignty and the general will. Civil religion carries on the legacy of the divinized founder figures and the violent struggles which made the country, keeping the revolutionary spirit alive.60

Rousseau does not think that there is ever a perfect reconciliation of norm and reality, for that would imply that the people would be a race of Gods which would govern themselves democratically, and, alas, “So perfect a government is not suited to men” (SC, III.4, 92). Rousseau rejects direct democracy à la Athens: it is too unstable, it leads to civil wars, the sovereign is easily corrupted, and it is only suitable to a small regime with no luxury and significant equality (SC, III.4). This raises a significant issue: the people are the ultimate source of political authority, but since sovereignty cannot be alienated they must rule in some sense. But when they do rule it leads to bad government. Rousseau solves this dilemma by reconciling, as the first sentence of the book states, legitimacy with some “sure rule of administration” (SC I.1). That is to say, given that the

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60 Compare Rousseau’s insistence on the importance of violence with the tame and largely anodyne place of the “extraordinary” in Kalyvas.
people should not directly rule, how is it possible to form a government that best rules on their behalf, i.e., in the name of the general will. Rousseau solves the paradox of sovereignty, or that the people rule without recourse to direct democracy, through the general will. If everyone wills the same thing then there is an identity between the will of the government and the will of the people. The general will is a system of shared cultural identities and aspirations. Since the people rule through the general will it is by identifying with the general will that the individual becomes a self-legislator. It is in this way that one can be the author of the regime without actually ruling. It is an analogous idea to the notion that when I authorize the Constitution through my free consent, even if it was not made by me, I in a sense become its author, it is as if I wrote it myself. One can thus be politically free in Rousseau without the sovereign being active and without even actively participating in the government.

But the fact that the people don’t always participate in the government, in fact the institution of government itself, gives rise to a another significant problem. Rousseau is not so naive to think that the government will always have the people’s best interest in mind. Moreover he also thinks the less active the sovereign is the weaker it gets, since it loses the habits and practices that sustain the general will. For the sovereign to remain powerful it must remain active. But when the sovereign is active it is formless, which is why democracy according to Rousseau is inconstant. For a stable regime to exist the sovereign must recede and the government instituted, but every institution of government weakens the sovereign by making it inactive. Rousseau recognizes that in every regime there is a double movement away from the sovereign general will. From the bottom, citizens continually replace the space occupied by the general will in their habits, desires,
and self-conceptions with their own particular wills that they have always had but which had been silenced by the denaturation process. To the extent that the sovereign is not active the regime tends towards privatization, atomization, and self-interest. And because the presence of the government means the inactivity of the sovereign, Rousseau thinks all regimes tend towards privatization by their very nature. Privatization in turn gives rise to the other movement away from the sovereign general will, this time from the top, as the corporate will of the government usurps the retreating power of the sovereign by replacing it with its own will. All regimes tend towards privatism and statism, and especially in Rousseau’s regime where the corporative plurality of feudalism has been delegitimized. Thus, “As the particular will acts incessantly against the general will, so the government makes a continual effort against the Sovereignty...as there is here no longer any corporate will that can resist that of the Prince and to give rise to some sort of equilibrium, it must arrive sooner or later that the Prince oppresses the Sovereign and breaks the social treaty. That is the inherent and inevitable vice that from the birth of the political body tends without pause to destroy it...” (SC, OC III: 421). This double movement, which erodes civic norms and thereby the sovereign’s ability to resist encroaching statist power, is what Rousseau calls the “natural path” of all regimes (SC, OC III: 424). As the process wears itself out, the regime is destroyed and people are returned to the state of nature, but now not as happy brutes but as corrupt, aimless subjects not guided by rational norms. At this point the denaturing process must begin anew. The Social Contract can be read as a novel, with the general will as its protagonist, following the story of its triumphant rise, brief reign, and inevitable fall.
In order to forestall this inevitable decline Rousseau recommends a constant return to sovereignty, since he thinks with Schmitt that the absence of the sovereign hides it. Rousseau attempts to de-revolutionize the summoning of the sovereign by calling it at fixed periods according to law, “which nothing can abolish or prorogue” (SC, III.13, 111). This not only shows Rousseau's attempt to strengthen sovereignty but also his desire to regulate it, since only those sovereign moments that assemble lawfully are legitimate. Rousseau is no fan of insurgencies. He does not say explicitly say often the sovereign should appear. Jefferson pondered whether the sovereign should be called every generation, or about every 20 years; Madison thought that plan was madness; Rousseau mentions that the Roman sovereign appeared almost every week (SC, III.12). Rousseau then does demand that the sovereign should be “periodically” called and he thinks those moments are when political freedom is most active. In addition to identification with the regime, Rousseau has a participatory model of freedom which occurs when the sovereign is active. Since the appearance of the sovereign is the suspension of the government, Rousseau does not have a non-sovereign vision of republican participatory political freedom, especially since he preferred an elected aristocracy. But this gives rise to a significant problem. If the people are most free when the sovereign is assembled, then for their freedom to be active there must be frequent recurrence to the sovereign assembly; yet “among us the Sovereign can henceforth preserve the exercise of its rights unless the City is very small” (SC III.15, 116). But since modern regimes are large they must have recourse to representation, which is a minimalist view of freedom (Gov. Pol., 200). If a regime is small it will be conquered

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61 Jefferson, letter to Samuel Kercheval, 12 July 1816
(SC III.15 166). This is a problem. Rousseau thinks he has a solution, but he never wrote his book on international relations. To anticipate, I will argue in chapter 4 that Tocqueville’s understanding of American federalism solves the twin problems of having a normalized, non-sovereign participatory freedom and one that is not subject to foreign conquest.

There are two other problems with Rousseau’s theory of the general will that problematize his identification model of freedom. The first is that the general will is decided upon in majoritarian fashion. But this leads to a much noted problem: “When the opinion contrary to my own prevails, it proves nothing more than that I made a mistake and that what I took to be the general will was not. If my particular opinion had prevailed, I would have done something other than what I had willed, and it is then that I would not have been free” (SC IV.2, 124). It is the identification model of freedom that forces Rousseau to such an extreme, because if I do not identify with the general will then I am not obeying a law I have given myself. But it is very hard to imagine that the minority who loses the vote on the general will would actually identify themselves with the outcome and admit their “mistake.” It is far more likely they would feel alienated, and in the case of the identification model to be alienated from the general will is to be unfree. Moreover if a minority of the population is consistently alienated from the general will this reestablishes the distinction between ruler and ruled that the general will was meant to solve. Since citizens no longer think they are obeying “no one but only their own will” they must be obeying the will of another. Faction returns man to the state of nature. The feeling of unity, of identification, is necessary for political freedom in a republic, a necessity that seems ill at ease with what the all regimes inevitably produce.
The final problem is the inverse of the previous one. Rousseau clearly recognizes the difference between “the will of all and the general will” (SC II.3, 60). The major reason why a legislator is needed is because he discerns the general will and can realize it better than everyone else. In that case it is clear a minority is the vanguard of freedom and the majority is mistaken. The gulf between the general will and the will of all opens up a dangerous and pernicious gulf for anti-majoritarian revolutionary dictatorship. Rousseau attempts to inoculate the regime against such a possibility by requiring a majority of votes to carry through an interpretation of the general will, but the fact that even he admits a majority can be wrong opens up a dangerous possibility.

Therefore the identification model of freedom can be interpreted in two strikingly different ways, one that is revolutionary and one that is compatible with reformative conservatism. The revolutionary model asserts that civic culture precedes civic consciousness. For civic culture to emerge a social and political revolution that brings about a truly common world, a genuine res publica, needs to occur. Revolution precedes freedom. The conservative interpretation stresses a slow cognitive shift, a changed attitude. Remember that Rousseau claims in the avertissement that he will not release man from his chains but only make those chains legitimate. A changed attitude reconceives the individual's relation to the institutions that govern him. This is the difference between seeing one’s governor as the ruler that one obeys rather than the agent that carries out one’s will. The governor is still there, it might even be the same person, but the different attitude will lead to different expectations, and ultimately, outcomes. The conservative model suggests that attitudes precede radical social and political change; the revolutionary model suggests social and political change shifts attitudes.
Ultimately the two converge at some point, as the changes go hand in hand. The sharp distinction is a helpful analytic tool that illuminates how freedom as autonomy is connected to a set of attitudes in addition to a practice, in fact freedom cannot be those attitudes without the practice.

1.3.2 From King to Demos:

Rousseau and the Problem of Sovereignty

“the nation...stepped into the shoes of the absolute prince”

Arendt, OR, 268

Rousseau’s notion of freedom is revolutionary. Liberty is no longer reserved to a class, nor is it synonymous with immunities and exclusive privileges that were a hallmark of liberty since feudalism. It is not the acquired property of a noble but inheres in every individual as a consequence of man’s spiritual nature. Rousseau’s great innovation in the theory of sovereignty, as Robert Derathé emphasized in his classic 1950 study, is that popular sovereignty cannot be alienated. Nevertheless Rousseau’s theory of sovereignty is a near complete transfer of monarchical sovereignty with all its characteristics of unity, sanctity, embodiment, and absoluteness to the people. And this is precisely the problem for French liberalism. While Rousseau infuses French political thought with republican vigor, post-revolutionary figures lament that rather than destroying the old regime, Rousseau’s thought tended to exacerbate its most dangerous tendencies. In the ancien
régime those tendencies were mitigated by the society out of which sovereignty arose. After Rousseau that society is moribund.

It is a strange saga to see one who wished to destroy the ancien régime preserve many of its features. One of the most salient characteristics of sovereignty in the French monarchical tradition is that it is unified. The unity of sovereignty was necessary to prevent wars between multiple and competing sources of authority. In every state there must be a final judge to arbitrate conflict beyond which there was no higher appeal. Rousseau continues this tradition in its entirety. But Rousseau’s notion of unity has the potential to be far more absolute than that of the ancien régime. Monarchical unity in the ancien régime was meant to unify a society that was a baroque tapestry composed of numerous semi-autonomous corporations. The unity of society was manifest only at the top, and, so to say, external to society, in the person of the monarch. In Rousseau, the unity of the regime is no longer represented by one man, the King, but by the idea of the nation or the general will. And the idea of the nation resides within each individual. The regime subsists because it constantly creates citizens who prefer the general will to their particular wills. For the general will to be maintained man’s particular will needs to be combated and suppressed. This has led some scholars to speak of the danger of Rousseau’s general will as fostering a view of the enemy within, and as inherently totalitarian.62 While this evades the complexity of Rousseau’s struggle to reconcile the best community with consent, there is much to be said, at the very least, for the extent to

62 “To ask how far the respective rights of sovereign and citizens extend is to ask how far the citizens can commit themselves to one another, each to all, and all to each” (SC II.4, 63). The sovereign power is “absolute, sacred” (63). For those who have seen Rousseau as a “totalitarian” or at least paternalist, see J.L. Talmon (1970) as well as Isaiah Berlin (1990).
which the search for the unified body politic takes on in Rousseau’s thought a very high pitch of intensity. For him, sovereign unity requires a degree of uniformity unprecedented in the old regime. Instead of sovereign unity stitching together, at the top and external to society, a motley social tapestry whose main characteristic was plurality, with Rousseau unity descends into heart of society itself and, so to say, into the breast of every citizen. Plurality is the enemy of the regime. There is only one general will, not multiple perspectives that clash.\textsuperscript{63}

This social unity entails a complete elimination of the secondary bodies that were for Montesquieu and the Parlementarians a check on central authority. Monarchical sovereignty was not only an assemblage of rights and powers, granted to it by the people and the nobles, but its central purpose was to guarantee the very privileges and powers of the vestigial feudal regime. Rousseau thinks these lingering feudal rights nothing short of cancers in the body politic.\textsuperscript{64} And for a very simple reason: a constitution that admits of particular privileges destroys both the equality and unity required for the body politic to be legitimate and non-arbitrary. They impede a regime of laws and not of men. The construction of a regime consonant with the requirements of individual will and rational freedom eliminates the social bodies that were focal points of resistance to centralized encroachment. Rousseau’s rejection of feudal society and his attempt to recompose it on

\textsuperscript{63} For a view that the general will is compatible with disagreement see Joshua Cohen \textit{Rousseau: A Free Community of equals} (Oxford: 2010), 70-3.

\textsuperscript{64} SC II, 3, 60
the basis of individual freedom leaves citizens isolated and weak, unable to resist a centralized authority that speaks in their names.65

In addition to being more unified than the ancien régime monarchy, Rousseau’s vision of sovereignty is also more absolute. In the earlier section the dual character of the absolute monarchy was shown to be a strict limitation of sovereign power in theory combined with a more unlimited sovereign power in practice. In theory, old regime sovereignty was limited by the antecedent property rights of the nobles (and their institutional expression in the *parlements*), the public good, and by divine law. There was always some level of appeal the moral status of which existed anterior to or beyond the sovereign. The moral weight of these appeals disappears in Rousseau. There is no appeal, for example, to a property right antecedent to the social contract. In Rousseau property in goods, unlike in Locke, is determined by the contract itself, which endows goods otherwise usurped with the prestigious moral mantle of generally recognized property rights. There is also nothing higher than the social contract to which one can appeal in order to limit it. There is no longer any appeal to a divine law which the king himself must obey because it is what legitimates his power. The social contract is limited only by the terms of the contact itself and by the general will. It is not limited by divine or natural law. There is nothing exterior to society that imposes itself on it and restrains it. One can only appeal to the majority, but it is precisely the majority that has rejected one’s

65 In rejecting lingering feudal encrustations, Rousseau makes strange bedfellows with the new absolutist, central state. Rousseau’s thought affirms the social changes that were taking place in 18th century France. The development of the centralized administrative monarchy that bypassed and eroded the traditional political roles of the aristocracy reduced the plurality of the aristocratic regime to a duality: there was nothing but the state and the citizen. This duality is affirmed by the *Social Contract* in which the only two entities are the citizens and the government. Rather than lamenting the passing of the social bodies that were able to check the monarchy, as do post-revolutionary French liberals, Rousseau celebrates the fact as an advance towards social unity.
interpretation of the general will. Rousseau offers only two options: obedience ridden with guilt, or insurrection.

This same dynamic can be seen in Rousseau’s preservation of the sanctity of sovereignty (SC II.4, 63). This final characteristic of old regime sovereignty that Rousseau preserves is perhaps the most bizarre. In the ancien régime the sanctity of sovereignty derived from its relation to Christianity, and all the theological-political contortions of that religion in the holiness of the King’s person and the rituals surrounding it. However incredulous this secular age may be about the ability of a national church to represent the will of God and to represent his rule on earth, the sanctity of the monarchy is at least plausibly connected by analogy to the Catholic Church, and grounded in an exegesis of Christian texts. Rousseau’s Social Contract rejects the divine as a foundational source of legitimate authority. And yet the regime is sacred, according to Rousseau. Since it is the people themselves who create the body politic, sacredness is a human construct. And this is not the only religious trope that is embedded within the Social Contract. It repeats the story, however briefly, of man’s fall and his redemption. That redemption is made possible by a salvific Jesus figure, who is quite explicitly a prophet founder. But the crucial difference is that humanity, rather than the divine, both sanctifies the state and redeems itself. Not god but “the great soul of the lawgiver is the true miracle” (SC, II.7 [71]). Man is the cause of his own redemption. The Social Contract is parasitic on theological but discards the theos.

All of this is not to say that Rousseau thinks sovereignty is completely unlimited. It is characterized by the same paradox as the old regime: it is both absolute and limited. Sovereign power cannot exceed the limits of “general conventions” and “the public utility” (SC II.4 and IV.8). It is limited by the terms of the contract and the general will—which is to say that it is self-limiting. Rousseau replaces the universal limitations imposed by divine and natural law, which are always subject to contentious debate and thus are a dubious limitation at best anyway, with the general will. He calls the general will the law of reason. It always wants the public good. Sovereignty is thus limited by reason or the public good. By reason Rousseau means two things. Reason succeeds appetite when one is forced to act on principals other than one’s own particular and arbitrary will by having to factor in everyone else’s will in the community. Reason is thus the procedural requirement of generality imposed by the general will itself. Since laws must apply equally to everyone, there is little reason to suspect that we would legislate terrible things that no one wants. Sovereignty is limited by the procedures through which it must express itself, procedures that tend, because of their generality, towards the common good. A second meaning of reason is more substantive: sovereignty is limited

67 “The sovereign power has no need of a guarantor towards it subjects, because it is impossible for the body to want to harm its members...The sovereign, by the mere fact that it is, is always everything it ought to be” (SC I.7, 52) and “just as nature gives each man absolute power over his members, the social pact gives the body politic absolute power over all of its members” (61). Derathé has an apt formulation: According to Derathé “Le pouvoir souverain présente donc ce double caractère d’être à la fois absolu et limité. Il est absolu parce qu’il n’existe pas de puissance humaine qui lui soit supérieure, et que ses droits ou ses prérogatives ne sauraient être fixés par la constitution de l’Etat” Derathé (1970), 356-7. And it is limited because it cannot pronounce on an individual object.

68 The place of the natural law in Rousseau is a debated question. Williams (2005), esp. 399-401 takes the position that Rousseau holds to some standard of natural law that is above all general wills, as opposed to Melzer (1990), chapter 9 and Strauss (1975), 91. Derathé argues that Rousseau never resolved the problem of the relation between the natural law or individual conscience and the general will (Derathé, 342-3), the same conclusion arrived at by Strauss (1954).
by the public good, and that is to say, by the general will, for the general will always wants the public good. It cannot err. The difficulty is that the people do not always perceive the public good; they make mistakes. One is able to call foul and recall the regime back to itself by claiming that the regime has either (a) skirted the procedural requirements for the promulgation of law, or (b) departed from the general will. But instead of an appeal to something prior to or superior to the regime, both (a) and (b) are internal critiques of the regime by its own standards. Immanent critique and proceduralism replace god and the natural law. We now appeal to the Declaration of Rights and due process of government, not to divine law. In sum, far from destroying the old regime’s view of sovereignty, Rousseau’s popularization of it preserves and extends several of its most characteristic features: its unity, indivisibility, absoluteness and sanctity. But the limitations he places on sovereignty are dramatically re-conceived.

Rousseau formulates the promise of democratic modernity with more force than anyone in the French tradition. With Rousseau liberty and equality, the two cornerstones of the Tocquevillian analysis of modernity, become moral requirements of political life, embedding them within the notion of sovereignty itself. After Rousseau a principled commitment to modernity must entail a commitment to popular sovereignty, which becomes the moral bedrock of modern political life. One cannot abandon it without simultaneously jettisoning the moral insights of human freedom and equality that underpin the Revolutionary project. But it is precisely this commitment which worries

69 Rousseau calls the Social Contract sacred numerous times. Given that the social contract is artificial, the sacred is also a human creation (SC, I.vii, II.iv), Political Economy, 115.
French liberals--for they saw popular sovereignty, festooned with all the slogans of the ancien régime appropriated by Rousseau as a major obstacle to realizing freedom.
CHAPTER 2:
SOVEREIGNTY, SOCIETY AND FREEDOM IN POST-REVOLUTIONARY FRANCE

French liberalism during the Restoration was an attempt to systematically rethink the philosophic basis and practical realization of liberal democracy in light of the Revolutionary experience and the challenge of counter-revolutionary thought. Liberals such as Benjamin Constant (1767-1830) and François Guizot (1787-1874) developed a liberalism based not on seemingly ahistorical and atheistic premises but on tradition, religion, and community. They wanted to protect the individual from despotic power while avoiding a decline into complete social privatization. This new liberalism sought to counter what they saw as the two extremes of French politics. On the one side stood reactionaries such as Joseph de Maistre (1753-1821), who sought to reestablish the old regime, assailing democracy for its anarchy, ahistoricity, and atheism. On the other side were those who thought the Revolution had not yet gone far enough, prematurely stopped in its course by the Restoration and the Charter of 1814 that established a hereditary constitutional monarchy, a bicameral legislature, the upper house of which was appointed, and an essentially plutocratic franchise. The philosophic imperative to defend liberal free government against its enemies while simultaneously rethinking the foundations of the philosophic underpinnings of liberalism is the quandary confronting
the post-revolutionary generation. And it is precisely this philosophic and political
tension that made 19th century French liberalism so interesting to the young Tocqueville.
He called it the time of “great men and great parties.”

For men such as François Guizot and Benjamin Constant, as well as for Maistre, a
philosophic reconsideration of the relation of liberty and sovereignty, and thereby a
response to events of the French Revolution, meant ultimately a return to the philosophy
of Rousseau. Reactionaries identified two elements of his thought which were
particularly dangerous, criticisms later repeated by Carl Schmitt. The first was the moral
primacy of the individual and the notion that all legitimate regimes are based on
voluntaristic consent. They believed this individualistic principle made unified
community and authority impossible. It also hubristically put man at the head of the
universe, with no principles standing above him. All regimes require some transcendent
standard to be maintained, they argued. The second problematic element of Rousseau's
thought was the moral requirement of popular sovereignty for any legitimate regime,
which the French Revolution revealed to be potentially despotic. For it was popular
sovereignty that prompted the worst excesses of the Terror and laid the groundwork for
Napoleon. Liberals and reactionaries alike saw the Revolution’s bad turn as a predictable
outcome of the impracticability of Rousseau’s political thought under modern conditions.
Because freedom meant that the will was inalienable, Rousseau’s thought proved
incapable of providing a practical basis for a liberal-democratic regime in a large and
populous state. All modern regimes require representation. Rousseau’s all but complete
rejection of it forced the revolution into two schizophrenic modes. On the one hand, the

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70 Cited in Craiutu (2003), 23.
people had to create a new regime but were unable to do so themselves, forcing them to delegate their authority to sovereign representatives who then oppressed them; and on the other hand, afraid that the government would betray the will of the nation, the people attempted to recover their sovereign power and rule directly through popular insurrection. Popular sovereignty tended towards the immediate rule of the people, creating political and social instability; or the desire to effectuate their will by means of a great legislator, leading to authoritarian democratic tyranny. In Rousseau’s thought and in the French Revolution the democratic antinomies that haunt current democratic theory are already fully present. Restoration liberalism tries to respond to the challenge of the counter-revolution and overcome the negative dynamic of Revolution itself. They wish to avoid both revolutionary democratic immediacy and a decline into a government that usurps popular sovereignty and speaks in the name of an absent public. But of course not all liberals retreated from Rousseau in the same way. Restoration liberalism was in fact a time of multiple liberalisms, with elements of convergence and divergence.  

Both Constant and Guizot argued that instead of being a break with tradition, the Revolution was the end result of a long historical process, exemplified by Madame de Staël’s Considerations on the Principal Events of the French Revolution (1818), over which Constant had no doubt substantial influence, and Guizot’s History of Civilization in Europe (1822) and Origins of the History of Representative Government in Europe (1828). In this turn to history to justify political events, French liberals were responding to reactionaries like Maistre who gravitated to a historical theodicy to repudiate the

71 On the different types of liberalisms during the Restoration, see Lucien Jaume (1997).
Revolution. This turn to history shifted the terrain of the battle over the French Revolution into a battle over the “correct” interpretation of the past. But in addition to being a political debate it was also a philosophic program. Both Constant and Guizot were as worried as Maistre about the disastrous consequences of the unfettered human will, with nothing above or beyond it to restrain it. It was the supposedly ahistorical voluntarism of Rousseau that allowed man to think himself capable of making his own history by imposing his will on the social order, remaking it according to some abstract idea of the good. Rather than making history, post-Revolutionary thinkers argued, man lived within it and was molded and limited by it. Their turn to history was thus not merely a polemical method to justify the Revolution in terms of a long tradition, but more importantly it represented a reconceptualization of the foundations of liberalism away from a voluntaristic philosophy of the individual in favor of a historical philosophy of the social. Not the human will but social structures, which created norms, needs, and desires (articulated by philosophy) should direct political life.

But while they converge in their turn to history, Constant and Guizot ultimately represent two different strands of post-revolutionary liberalism. The difference between them stems from their rejection of different parts of Rousseau’s general will. Guizot rejects the individualism of the general will in an attempt to curb the threat of social anarchy he thinks endemic to any contractual theory of political obligation; Constant rejects the communitarianism of the general will because of its intrusive and nefarious effects on individual freedom. They also attempt to limit popular sovereignty in different ways. Guizot attempts to limit popular sovereignty by denying it altogether. Sovereignty is supra-human, transcendent, and divine. It is received by man rather than made by him.
The individual is protected because the liberal regime is characterized by institutional and social plurality, publicity, and election. Constant adopts a different strategy. He reaffirms the moral insight at the heart of popular sovereignty that all legitimate authority stems from individual consent. He also attempts to limit the power derived from it by arguing that there is a part of human life that is always and inherently private. There are parts of human life that can never be alienated or subjected to social control.

These different worries about the trajectory of post-revolutionary society prompted two different understandings of the task of government and the nature of individual and political freedom. Constant’s worry is that democratic modernity will mistakenly attempt to revive ancient liberty, endangering individual freedom. In order to protect individual freedom he circumscribes or limits the power of government as well as adopts a number of classic liberal strategies such as constitutionalism and separation of powers. In addition, Constant lays emphasis on political liberty as necessary for protecting the individual from the designs of the state. But, as I emphasize below, both individual and political liberty in Constant are in the service of what I will call the developmental model, or the notion that freedom is for self-development. Like Constant, Guizot fears that post-revolutionary society tends to concentrate all authority at a single point, and like Constant, he recommends constitutional government, separation of powers, and freedoms of press, election, and assembly. But since Guizot’s primary fear is social disintegration his idea of freedom is obedience to a higher moral norm. It is very much like the identification mechanism in Rousseau, but unlike Rousseau that norm is not the product of my own will. For Guizot freedom is submission to moral authority.

Both Constant and Guizot depart from the idea that freedom is autonomy, or obeying a
law I have given myself. In so doing, I suggest, both thinkers evacuate political liberty of participatory content (though Constant less than Guizot), which will open the door to Alexis de Toqueville.

2.1 Theological Sovereignty:

De Maistre and the Counter-Revolutionary Challenge

Das sind die Folgen der Revolution und ihre fatale Doktrine,
Am schuldsten sind Jean-Jacques Rousseau, Voltaire, und die Guillotine.
[Those are the results of the Revolution and its fatal doctrine, the most guilty are Rousseau, Voltaire, and the Guillotine].

Heinrich Heine

Joseph de Maistre (1753-1821) is one of the greatest representatives of counter-revolutionary thought. Born in the beautiful and mountainous Savoy, Maistre worked as a lawyer in Chambéry, a small city where the young Rousseau also spent some time in the vagrant years of his youth. Maistre had a strict Catholic upbringing and was destined to lead a life of distinguished government service, which would no doubt have given him much practical influence and absolutely no historical significance. The French Revolution, miserable as it made him, gave him a cause célèbre and thus a raison d’être,

73 For a broader discussion of counterrevolutionary thought as a whole see Owen Bradley (1999) chapter 1 and Jacques Godechot (1972).
transforming him from a historical non-entity to a major European figure. When the revolutionary armies annexed Savoy he was forced to leave his children and wife for twenty years. This no doubt contributed much to poisoning him against all things revolutionary. His most famous book, Considerations on France, was published 1796 and made him the darling of the motley band of dispossessed emigrés, disgruntled clergy, and nervous foreign observers that formed the core constituency of counter-revolutionary pamphlets. In 1802 Maistre was appointed by the King of Piedmont as ambassador to Russia, where he remained until 1817. This gave him the opportunity to see the destruction of la grande armée at close quarters, which probably provoked Tchaikovsky-esque emotions. During this period he wrote a number of books on religious and political questions including the St. Petersburg Dialogues, The Pope, and Essay on the Generative Principles of Constitutions. He died in 1821. Given that the Bourbon Restoration signaled at least the partial failure of the Revolutionary project it is quite probable that Maistre died happily, thinking his thought vindicated by circumstances. Had he lived slightly longer, he might have changed his mind.

Maistre’s counter-revolutionary thought takes on the color of its extreme times. Rather than being a reasonable call for a return to a monarchy tempered with limited

74 This biographical portrait is based on the introduction to The Works of Joseph de Maistre by Jack Lively, the Introduction to Against Rousseau by Richard Lebrun, and to Berlin’s series of radio addresses that form the introduction to the Cambridge edition of Considerations on France. I have used the Lebrun edition for On the Origins of Sovereignty, hereafter OS, and the Lively edition for excerpts from St. Petersbourg dialogues and other minor writings. Considerations on France (CF) refers to the Berlin edition. Of Maistre Berlin says: “Maistre is painted, always, as a fanatical monarchist and a still more fanatical supporter of papal authority; proud, bigoted, inflexible, with a strong will and an unbelievable power of rigid reasoning from dogmatic premises to extreme and unpalatable conclusions; brilliant, embittered, a medieval doctor born out of his time, vainly seeking to arrest the current of history; a distinguished anomaly, formidable, hostile, solitary, and ultimately pathetic; at best a tragic patrician figure, defying and denouncing a vulgar and shifty world, into which he had been incongruously born” (Berlin, in Considerations, xii).
reforms, it is a wholesale rejection of the Revolution and its ideals. Maistre was fully convinced that the Revolution was caused by man’s revolt against God, a revolt given expression by Protestantism and the Enlightenment. The individualistic spirit of both are fused in the work of the son of a Genevan watchmaker: Rousseau. Like most things he disliked, Maistre attacks him with scornful sarcasm. His taste for philippic and the hard punch led him to write anti-Rousseau treaties such On the State of Nature and On the Sovereignty of the People (not published until 1884), many themes and phrases of which appear in his more famous Considerations on France. All three books are attempts to refute the core ideas underpinning the French Revolution: the notion that man is a maker of political life, that the individual is the final and highest arbiter of his beliefs and commitments, and thus the foundation of all legitimate authority, and that political unity and stability are possible without some transcendent (read: theological) foundation. But Maistre does not return to what I sketched in the previous chapter as a “traditional” understanding of sovereignty and political right. His thought leads to blind obedience, the deification of history, and the unlimited and absolute nature of authority.

His attack on the Enlightenment mixes the insightful and the banal. Scholars today largely agree that his vitriol overly simplifies and often misunderstands the complex, subtle, and enigmatic writings of Rousseau and the Encyclopedists.  

75 “Actually, the glory of having made the Revolution belongs exclusively neither to Voltaire nor Rousseau. The whole philosophic sect lays claim to its part of it; but it is just to consider Voltaire and Rousseau as the leaders...It is Rousseau whose stirring eloquence seduced the crowd over which imagination has more purchase than reason. He breathed everywhere scorn for authority and the spirit of insurrection. He is the one who traced the code of anarchy, and who, in the midst of some isolated and sterile truths that everyone before him knew, posed the disastrous principles of which the horrors we have seen are only the immediate consequences” (Maistre, CR 106).

it may, Maistre’s thought illuminates in a particularly clear way the key issues surrounding the battles over popular sovereignty during and after the Revolution, thereby clarifying the philosophic challenges that post-Revolutionary liberals had to confront. For it is in Maistre that one finds a clear indictment of 18th century philosophy, and especially popular sovereignty, that animated the Revolution.\textsuperscript{77} The indictment has three parts.

2.1.1 Anarchy

“In a government of several, the sovereignty is not at all a UNITY; and although the parts that make it up form a theoretical unity, they are far from making the same impression on the mind. The human imagination does not grasp this whole, this is only a metaphysical being” (Origins of Sovereignty [hereafter OS], 125).

For Maistre, sovereign authority has two characteristics: it is absolute and it is unified.\textsuperscript{78} Maistre thinks all regimes of popular sovereignty, which he equates with democracy, as inherently anarchic because they cannot give rise to unitary authority that can exact obedience. And this is because modern democracy is based on the convergence of Protestant theology and enlightenment philosophy that traces all authority to the

\textsuperscript{77} Maistre is not only in thinking this. It was also the opinion, in a watered down degree, of Tocqueville, and of the liberal and republican circles of Le Globe, that included Royer-Collard, Guizot, Charles de Rémusat, and others, (Furet, 1995, 317).

\textsuperscript{78} For definitions of sovereignty see On Popular Sovereignty 115-6, 119; Considerations on the Revolution, 11, 36
consenting individual. “What is philosophy in the modern sense? It is the substitution of individual reason for national dogmas” (Maistre, 105 [sic]). This substitution is based on an invented and therefore mistaken philosophic history. The individual is a pure philosophic construct, not a historical reality. History, the oracle of human nature, reveals that individuals are constituted by authority rather than constitutive of it. The false protestant-philosophic etiology has pernicious consequences.

First, it is purely negative. Maistre claims all political thought based on individual will or consent is by its nature critical and dissolving rather than constructive. “Let each man call upon his individual reason in the matter of religion, and immediately you will see the birth of an anarchy of belief or the annihilation of religious sovereignty. Likewise, if each man makes himself judge of the principles of government, you will at once see the birth of civil anarchy or the annihilation of political sovereignty” (OS, 87). And “The more human reason trusts in itself, the more it seeks all its resources from within itself, the more absurd it is and the more it reveals its impotence. That is why, in every century, the world’s greatest scourge has always been what is called Philosophy, for Philosophy is nothing but human reason acting alone, and human reason reduced to its own resources is nothing but a brute, all of whose power is restricted to destruction” (OS, 76). Maistre in essence repeats Thrasymachus’s criticism of Socrates. Socrates, or rationalism, can only refute. It cannot establish anything of his own.

79 While Maistre attacks Rousseau and the philosophes, he traces modern philosophy to Bacon and Descartes, and their followers Locke and Hévetius. With his typical wit he says “Contempt for Locke is the beginning of Wisdom” (cited in Greifer, Joseph de Maistre and the Reaction against the eighteenth century, 595).
The flip-side of the pernicious combination of Protestantism and philosophy's inherently corrosive character is its inability to construct stable, unified authority. Maistre gives a very simple argument.

All authority requires unity.
Reason cannot produce unity.
Reason cannot found authority.

What does reason produce then? Plurality. A philosophy or a religion that makes the individual the source and arbiter of dogmas, in fact of all things, can only produce “divergent opinions” (OS, 87). One can interpret this in a hard or a soft sense. In the hard sense a conflict of divergent opinions is thematized in early modern philosophy as the state of war of all against all. Sovereignty, or the unified authority that ends that war of divergent opinions, is the solution, a solution unavailable to all rationalism precisely because rationalism does not give rise to unitary belief. One can also interpret the syllogism in a soft sense: it is precisely the project of modern liberalism to permit divergent opinions in the private sphere and allow plurality to flourish. It is only the clash of fervently held beliefs that makes plurality dangerous. Maistre would claim that both scenarios prove his point. There is nothing more characteristic of Protestantism than schism, or more characteristic of rational dialogue than divergent opinions. Schism in politics is secession or disobedience. Unified authority exists precisely because it is not subject to unceasing rational scrutiny by every individual or group.
Maistre further claims that even if democratic modernity, i.e., Protestantism and philosophy, were able to magically construct authority, it still could not exact obedience. Since there is no sovereignty, that is to say, authority, in democratic communities, they are maintained by what Maistre calls the “spirit of association.”

Democracies are reliant on fellow-feeling, willing obedience, patriotism, and team-spirit. Maistre believes this spirit of association will eventually come apart. It a hallmark of sovereignty that it is an object of transcendent awe. But according to the theory of popular sovereignty, the people are the source of the law that they in turn obey. But the people cannot stand in awe of their own creations; and the more they envision the law as their own creation the more they will disdain it. It is an axiom of Maistre’s thought that all power can only be restrained by something higher and external do it. People are only inclined to obey something they venerate, and all veneration comes from transcendence. But democracy cannot create anything exterior or superior to the people’s will. Since democratic laws lack transcendence and majesty they are impotent. In addition, the Enlightenment view that democracy can be maintained without monarchical authority is made possible by a mistaken and therefore dangerous view of humanity as naturally good. To Maistre this view of man is naively utopian. Man is a violent, pitiless warmonger; an irrational beast, tainted by original sin, kept in check only by absolute authority backed up by the

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80 While there are many similar themes in Maistre’s *On the Sovereignty of the People* and Tocqueville’s *Democracy in America*, Tocqueville did not read it because it was not published until after his death.

81 “A certain family spirit, which is easier to feel than describe, dispenses sovereignty from acting in a host of circumstances where it would intervene elsewhere” (OS, 144).

82 “Since no nation, any more than any individual, can possess a coercive power over itself, if there exists a democracy in theoretical purity, clearly there would be no sovereignty at all in this state, for it is impossible to understand the word sovereignty in any other sense than of a restraining power that acts on the subject, and that is placed outside the subject” (OS, 143).
executioner (an occupation that plays a significant role in Maistre’s thought).\textsuperscript{83} Government, far from being the vehicle of human freedom, is a necessary force to maintain order in a chaotic and violent world.

That final fact reveals that democracy too ultimately recurs to a logic of sovereignty that it denies. Popular sovereignty tries to create a regime of no-rule such that I do not obey any other person but myself. But for this to occur I have to obey only an abstraction, like “the nation” or the “general will.” With Schmitt, Maistre thinks this obscures the true sovereign. In democracy “The people is a sovereign that cannot exercise sovereignty” (Considerations, 45). They never “touch” it.\textsuperscript{84} This is because the people are forced to delegate their authority to representatives who act in their names. “Up to the moment when the people judge it appropriate to recover their sovereignty by insurrection, it is completely in the hands of those who exercise it” (OS, 116). It is always the case that some people will be given authority over others. Democracy creates an elected aristocracy or an oligarchy, but it obscures this fact by thinking that it is obeying only “the general will” or the “will of the people” when it is in fact obeying the will of a person. No impersonal norm can be sovereign, only personal authority. Democracy inherently creates an obfuscating ideology that blinds it to its own obedience. “In certain aristocratic governments, or mixtures of aristocracy and democracy, the nature of these governments is such that sovereignty belongs by right to a certain body and by fact to

\textsuperscript{83} “[A]ll greatness, all power, all social order depends upon the executioner, he is the terror of human society and the tie that holds it together. Takeaway this incomprehensible force from the world and at that very moment order is superseded by chaos, thrones fall, society disappears. God who is the source of the power of the ruler, is also the source of punishment.” (Oeuvres, 4, 32-33; cited in Spektorowsky, 286). Bradley in A Modern Maistre highlights the Jansenist connection to his view of man (Bradley, 169-170).

\textsuperscript{84} “In a republic sovereignty is not tangible, as it is in a monarchy; it is a purely moral concept, and its greatness is incommunicable” (Considerations on France, 89).
another...” (OS, 117). Democracy cannot escape ruling and being ruled. This is the line of thought Wolin agrees with, and is why he rejects the idea that democracy should rule.

As opposed to Protestantism and individualistic philosophy, Maistre thinks it has always been religion that founds, maintains, and enforces authority. Popular sovereignty then, established by philosophic reasoning, is the antithesis of the sacred and of community. For Maistre, the twilight of the idols is the birth of tragedy.

2.1.2 Ahistoricity

“No historian cites the primary assemblies of Memphis or Babylon”

(On The Origins of Sovereignty, 59)

Maistre’s second criticism of the spirit animating the French Revolution and of Enlightenment philosophy is its ahistorical character. In an attempt to rebuff the philosophical underpinnings of the Revolution, Maistre replaces social contract voluntarism with historical organicism. It is not the human will that creates constitutions. They are complex consequences of geography, history, accident, and unintended consequences. Man is no author.

Maistre’s historical turn is towards the empirical or the actual and away from the speculative, rational, and apriori. It is no use, Maistre claims, to talk about man in the abstract. We know humanity by what it has done and by its history. The philosophy that animates the French Revolution is based on a mythic, invented story of the social contract in which atomistic individuals, somehow with all the mental trappings of social beings,
come together and agree to form a government. Since all are men (in a purely abstract sense), they are equal. Being equal, the only just source of authority is the individual, and when associated with his fellows, popular sovereignty or the sovereign community.

Maistre’s retort is simple. Exactly the contrary is the case. “Therefore, properly speaking, for man there has never been a time prior to society, because before the formation of political societies, man was not quite man, and because it is absurd to look for the characteristics of a particular being in the embryo of that being” (OS, 49). The mistake of social contract theory is that it assumes that there is such a thing as man’s universal nature. There are Frenchmen, Germans, and Russians, but no Men; to have recourse to the presocial is to give a normative standard for human community by looking at chimpanzees and gorillas. The theory of natural rights is based on pure fiction. There was never a historical moment of the social contract, nor is man solitary by nature, hence there is no such thing as the natural equality that underpins popular sovereignty.

However, that line of argument doesn’t get Maistre very far. It is of no interest to him to reflect on the social contract as a hypothetical device meant to reveal the nature of political right, an “inference from the passions”, as Hobbes calls it, rather than a historical condition. He rightly sees the revolutionary potential of social contract theory, but it is improbable that the mere explanation that there never was a historical social contract will achieve his objective because social contract theory does not primarily hinge on the presence of a historical event.

But it does embed a more sophisticated critique. For Maistre represents a turn to something like a philosophy of history. “Every question about the nature of man must be resolved by history” (OS, 49). History is experience, it tells us what man is. History
reveals that mankind is a constituted patient rather than a constituting agent. “The philosophers of this century who shook the bases of society never ceased to tell us about the views men had united in society. It suffices to cite Rousseau speaking for all of them. Peoples, he says, have given themselves Chiefs to defend their freedom and not to enslave themselves. This is a gross error, the mother of all others. Man gives himself nothing; he receives everything” (Maistre, On the State of Nature, 38). Regimes are the product of a slow, organic evolutionary processes that mix multiple causes such as geography, history, and unintended consequences. “One of the great errors of this century is to believe that the political constitution of nations is a purely human work, and that one can make a constitution as a clock maker makes a watch. This is quite false, but what is still more false is the belief that this great work can be executed by an assembly of men. The author of all things has only two ways of giving a government to a nation. Almost always he reserves its formation directly to himself by making it grow imperceptibly, as it were, like a plant, by the conjuncture of an infinity of circumstances we call fortuitous” or he “confides his powers to rare men” when he wants to set it up “all at once” (OS, 67-8). The political is an epiphenomenon of the social, and the social is the product of multiple causes. Change is either organically slow or done all at once by a world historical figure. But that figure is himself a conservative revolutionary. He “only combine[s] preexisting elements in customs and character of a people, and this gathering together, this rapid formation that resembles creation, is accomplished only in the name of the Divinity” (Considerations on France, 51). All social change eventually politicizes itself and becomes institutionalized. The social then not only gives rise to the political,

85 “Man cannot give rights to himself, and he can only defend those attributed to him by a
it constrains it. History reveals that man and the institutions that govern him are made for him.

The category of “givenness” is central to Maistre’s thought (and, as we shall see, also to Guizot’s). It is of course a religious category. It is the notion that the world is God’s gift to man and that he, and only he, is a creator. Maistre revives Montesquieu’s sociology in order to constrain voluntarism, but he infuses sociology with historical theology. History is purposeful. It is the working out of the divine on earth.

2.1.3 Atheism

“Take any republican government you like; ordinarily you will find a great Council in which sovereignty, properly speaking, resides. Who established this Council? Nature, time, circumstances--that is to say, God” (OS, 72).

Maistre’s emphasis on history, and its endowment with religious significance, is ultimately a means to replace the Enlightenment view of man as a maker of his social circumstances with a view of man as shaped definitively by his tradition, which is the work of God. Maistre’s thought thus combines social and cultural embeddedness with a historical theodicy. God works through man to achieve his purposes. Because history is

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superior power, and these rights are good customs, good because they are not written, and because they can be assigned neither a beginning nor an author” (Maistre, OS, 86). Thus, “the natural constitution of a nation is always prior to its written constitution” (Maistre, OS, 86).

86 When Maistre speaks of philosophism and its individualistic tendencies he is referring to Protestantism and its rejection of Rome. But his anti-Protestantism is more muted than his anti-philosophism. See Greifer (1961) 595.
the story of God’s will it is sanctified. Rather than a human creation, sovereignty remains
God’s rule of the universe, but only indirectly as it is manifested in tradition. To depart
from tradition on the basis of rational philosophy is not only foolhardy, it is sacrilegious.
It is demonic. It is rebellion against God.

Maistre thinks he can prove the sanctity of history by the following line of
thought. How are we to know the divine purposes in the world? Where do we look to
discern them? Are we to trust a fortuitous encounter or an inner voice as the sure
revelation of a living god? Maistre’s response is that we cannot trust ourselves, but only
universal reason, tradition, and common sense. All universal ideas are rooted in some
truth. Mankind has always prayed, hence man is a religious being; most people have
always believed in some immaterial substance, hence it is probably true. What most men
do not believe and what abuts against common sense is probably false (SPD, 246). The
general movement of history is the history of these universal ideas. Of those universal
ideas two stand out at the foundation of community: religion and patriotism, or the
unification of throne and altar. It follows that God wants man to be patriotic and
religiously observant. But to whom? God’s sovereignty as it is manifested in history is
given expression by what Maistre calls national dogmas. In the moral world “it is the
general mind that holds the scepter in this domain; and philosophy, that is to say, the
individual mind, becomes injurious and in consequence guilty if it dares contradict or put
in question the sacred laws of the sovereign, that is to say, the national dogmas” (Maistre,

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87 “If you look for what forms the great and solid bases of all possible first and second order
institutions, one will always find religion and patriotism. And if you reflect even more attentively you will
always find these two things intermingled, for there is no true patriotism without religion” (Maistre, 107).
OS, 108). What is meant by the general mind? Nothing other than the current state of society or culture, and the inherent moral ideals in it. What is, is sovereign. Every culture and every nation is as it should be. The real is the actual. Obedience to the state is man’s gateway into the divine. Maistre’s revolt against the Enlightenment terminates in a form of counter-revolutionary religious-nationalism: “Government is a true religion: it has its dogmas, its mysteries, and its ministers. To annihilate it or submit it to the discussion of each individual is the same thing; it lives only through national reason, that is to say through political faith, which is a creed. Man’s first need is that his nascent reason be curbed under this double yoke, that it be abased and lose itself in the national reason, so that it changes its individual existence into another common existence, just as a river that flows into the ocean always continues to exist in the mass of water, but without a name and without a distinct reality” (Maistre, OS, 87-8).

In elevating tradition over human construction, Maistre attempts to re-energize the political-theological tradition. Indeed, for Maistre, all politics is theology. Popular sovereignty, in its rejection of God, and its embodiment in the French revolution, represents the greatest conflict between the forces of good (God) and the forces of evil (philosophy) yet: “The present generation is witnessing one of the greatest spectacles ever beheld by human eyes; it is the fight to the death between Christianity and philosophism” (Considerations on France, 45). This is a battle between the forces of order and community against the forces of anarchy and immorality: “Institutions are strong and durable to the degree that they are, so to speak, deified. Not only is human

88 “What is really constitutional in every government is not was it written on paper; it is what is in the universal conscience” (Maistre, OS, 132).
reason, or what is ignorantly called, philosophy, incapable of supplying these foundations, which with equal ignorance are called superstitions, but philosophy is, on the contrary, an essentially disruptive force” (Considerations on France, 41). Man can only be free insofar as he chooses God. Since God manifests himself in national traditions to be free is to obey them. Freedom is obedience.

But if history is the working out of God’s plan then why isn’t the French Revolution of divine origin and to be supported? Maistre thinks it is. In fact, rather than disproving his theodicy, the French Revolution only adds more luster to it. The Revolution claims to be a radical departure from tradition. Maistre does not dispute this and this is why he calls the Revolution demonic. It is a human revolt. And all revolts bring about divine punishment. And that is Maistre’s interpretation of the Terror: God’s retribution of man’s hubris. The Revolution is God’s way of purifying France of nobles who had become useless conspirators of modern ideas, of Protestant sympathizers, and of philosophic and scientific enthusiasts. The great Revolution is in fact the great purge. The Revolution also gives the world the opportunity to see first hand the disastrous consequences of liberal thought. As both a purification of the old regime and a deracination of the Enlightenment, the Revolution was doubly good. The Terror is the expiation man had to pay for his sins; the guillotine the altar of his redemption.

We who are at some distance from the event might see an element of the absurd in all this. But is it really that absurd to see history through the lens of biblical categories? If there is a god, does he not punish man for his transgressions; does he not confound our pride? Is not this the meaning of Babel? For a believer it is no leap to see events in his own day as infused with divine purposes. And this is no unusual thought. Lincoln
wondered whether the Civil War was a scourge sent from god to purify the States. Maistre too thinks of the terror through the category of sin and redemption, and why shouldn’t he, in such fiery trails men naturally turn their gaze upward to thank, to scold, or to demand “Why?”.

But this introduces an insolvable theological problem into the political realm. Take the issue of slavery: how can we say that a just God would help one man get his bread from the sweat of another man’s brow. God does not will slavery. But if that is true why does he let it happen? If there is a God who wants man’s goodness, then surely he will bring it about; but if he brings it about man is not free. But if he leaves man alone to act freely then he does evil things; if man commits evil and God is all powerful then he let it happen. He is inculpated in and sullied by human suffering. This is the theological problem of evil. It is a debate that is perhaps unsolvable. Its insolubility is an indication that we are unaware of the exact ways that God works himself out in history. The notion that tradition is the vehicle to the truth is surely true in a restricted sense since our religious and political traditions, and even our language, encode deep layers of meaning and significance. But this takes no account of the fact that a tradition can be corrupt, that there can be mass delusion, that commonly held beliefs can be completely wrong. And this is precisely the point of the Enlightenment and the Reformation, conducted by reformers who looked around them and did not see the best of all possible worlds. They saw a Church using alms to support the gluttonous, philandering lives of Popes and Cardinals; they saw Kings and nobles who did little to alleviate the social misery and political non-existence of the majority of the population. They did not believe that in such a world the real was the actual.
2.1.4 Maistre’s Challenge

Maistre is a sworn enemy of popular sovereignty. Popular sovereignty is inherently anarchic, ahistorical, and atheistic. Maistre traces all these mistakes to social contract philosophy, with its hypothetical state of nature populated by equal individuals endowed with individual will. Maistre rejects the consenting individual will as the foundation of a legitimate regime. Such a view of politics is hopelessly anarchic because individual wills can never establish lasting authority, nor give law the power and majesty necessary for obedience. For Maistre, popular sovereignty as Enlightenment theorists understand it, is based on the mistaken notion that individual wills are sovereign. This view derives from a hypothetical, abstract view of humanity. In actuality all men are subordinate to something higher, restrained by circumstance, and shaped by tradition.

Men are not born free; they are born for monarchy. In his rejection of social contract theory, Maistre faults modern philosophy for its truncated, flat view of the individual. He purports to give a richer view of man. That view sees man as the product of history. Sovereignty is God’s participation and guiding of that process.

Maistre’s theological historicization of sovereignty is an intensification of absolute power rather than a retrieval of limited monarchy or the so called Gothic constitution. The monarchical absolutism that Maistre supports is a far cry from the limited monarchy that developed in Europe from the 13th to the 17th century, where the King’s powers were restrained by local and manorial rights, guilds, the Estates, and parlements. This is quite clear when he is compared with Aquinas or the Protestant
monarchomachs of the 16th and 17th centuries such as Theodore Beza or George Buchanon (or even Bodin, who opposed the monarchomachs but still thought it necessary to develop at least a rudimentary theory of tyranny and legitimate rebellion). \(^{89}\) Political sovereignty is limited only by the Pope in Rome, but there is little discussion in Maistre of the limitations imposed by the natural law and the duties of the King towards his subjects, or the limitations of the King’s power vis-à-vis the Estates. To begin such a theory in his eyes is to concede defeat. For Maistre, as for Schmitt, tyranny is not a word in his lexicon. Neither is liberty. \(^{90}\) There is no middle ground in Maistre between anarchy and tyranny: “I have never said that absolute power, under whatever form that it exists in the world, does not involve great drawbacks. On the contrary, I recognize this expressly and would never think of minimizing it. I say only that one is placed between two abysses.” \(^{91}\)

The abyss Maistre chooses leads to the very problems that liberalism arose to solve. For Maistre represents the attempt to see all sovereignty as rooted in god. But this gives rise to some evident problems. God is only sovereign when he actually rules on earth, which is one view of the messianic era. But that age isn’t ours. God’s will thus requires an interpreter. But which God and which interpreter? Catholicism is Maistre’s reply. Witness his iron clad logic: “no public morality or national character without

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\(^{89}\) Bodin, *On Sovereignty: Four Chapters from The Six books of the commonwealth*, 110-126.

\(^{90}\) Lebrun argues that Maistre had a limited view of sovereignty. He brings some revealing quotations to bear from *Du Pape* (Lebrun, 51). Nevertheless, it is quite clear that the main thrust of Maistre’s thought is absolutist, as even Lebrun admits on the next page. One must conclude that Maistre’s thought is confused about whether, to what extent, and how monarchy is limited by natural law and by ancestral local rights. This is not surprising; Maistre was not interested in developing a theory of limited monarchy.

\(^{91}\) *Oeuvres Complètes*, vol. 2, 175; cited in Lebrun, 54.
religion, no European religion without Christianity, no true Christianity without Catholicism; no Catholicism without the Pope, and no Pope without his inherent superiority.” All political authority must thus be authorized by the Pope. But if that’s the case then theological sovereignty encounters the same problem as popular sovereignty, namely, that not the impersonal norms but the person who wills is sovereign. God is never sovereign, his agents are, and his agents have final say over all things. This implies that the Pope can meddle in national affairs. These theological disputes were precisely the problems that the nation state and later liberalism were supposed to solve.

So Maistre takes a different route. He claims that God speaks through history and tradition. All powers that are, are willed by God. But given what we now know about the democratic age this historical theodicy seems somewhat foolhardy if not ridiculous. This is how Constant, for example, interpreted Napoleon: “no one has worked harder than that man to revive the dogma of divine right. He has had himself consecrated by the head of the Church; every focus of religious pomp has surrounded his throne. His elevation itself seemed to be something supernatural. All the sophisms of the mind were at his service, from the catechism to academic harangues” (Further Reflections on Usurpation, 159).

The revival of post-revolutionary divine kingship is a clunky, farcical affair.

But what is interesting as we turn to Benjamin Constant and François Guizot is that we will see them fight on Maistre’s turf. Like him, they both turn towards the historical and social as ways to limit a politics of autonomy which they connect with dangerous voluntarism. But they make that turn in the name of the French Revolution and liberty. The Revolution is the result of a long historical process, a process that Guizot and

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92 cited in Greifer, 597.
Madame de Stael also will endow with religious significance. Rather than the French Revolution being opposed to Christianity, the triumph of equality and liberty at the heart of the Revolution is the secular realization of Christian principles. The reconciliation of Christianity and politics takes place through the process of history in which Christian equality is infused into democracy. Finally, they think sovereignty is reconciled with freedom only when absolute and unitary power in all its forms is repudiated. And this means denying that any power on earth represents the divine will or is fully sovereign. With Maistre we have sovereignty with no freedom; with Constant and Guizot we have freedom by denying that any group is fully sovereign. Their debate is similar to the juxtaposition of Carl Schmitt and Hannah Arendt.

2.2 Representative Government Against Sovereignty:

Constant and the Developmental Model of Freedom

“For forty years I have defended the same principle, liberty in everything, in religion, in philosophy, in literature, in industry, in politics: and by liberty I mean the triumph of individuality, over both the authority wishing to rule despotically and the masses demanding the right to subject the minority to the majority.”

A biography of Kant or Hegel is a purely intellectual affair. As Heidegger says of Aristotle, they were born, they philosophized, they died. Quite the contrary is true of the

eventful life of Benjamin Constant, whose story would make a fine BBC miniseries.\textsuperscript{94} He was very much a European in the best sense. Born in Switzerland to a Calvinist family, Constant began his higher education in Bavaria and continued it in Edinburgh (where he was much influenced by the Scottish Enlightenment) and Paris, before returning to Switzerland at the still tender age of 19. There he indulged in a Barry-Lyndon-esque lifestyle of gambling, love affairs, duels, and a few unsuccessful attempts at suicide.

During the height of the Revolution, from 1789 to 1793, when a young man of his talents and ambition would have gone straight to Paris, Constant remained at the obscure German court of Brunswick with his first wife, whom he later divorced. At 27 he met Germaine de Stäel, then 28, the daughter of Turgot, the former minister under Louis XVI. She gave Constant access to the friends and consorts of a wealthy, famous, and politically powerful family. The grand salon of her exquisite chateau, Coppet, in Switzerland, with its Flemish tapestries and red furniture, saw the likes of Lord Byron and Jean Jacques Rousseau. It is easy to imagine the emotions of the young and ambitious Constant in those rooms. In such pampered settings, from such a family, and with such a mind it is quite natural that Constant would fall in love with De Stäel (he even once poisoned himself in an attempt to get her erotic attention). Following her brought him to Paris.

In Paris, Constant introduced himself to the political world with a number of pamphlets, including the well known 1796 \textit{De la Force du Gouvemment actuel}. He stood for elected office in Geneva, when Switzerland was annexed by France, but lost. He was redeemed from private life by Sièyes, an admirer of his political talents. He appointed

\textsuperscript{94} This biographical sketch relies heavily on the introduction to the Cambridge volume edited and introduced by Biancamaria Fontana.
Constant to the Tribunate, an unelected advisory body that was overthrown with the rest of the government in 1802 by Napoleon. Constant was promptly given his papers. From 1802 until 1814 he went into a self-imposed and vagrant exile. These years were intellectually very fruitful for him. He spent 1803-4 and 1812-13 in Weimar, where he was exposed to German romantic culture. He began his Principles of Politics Applicable to All Governments as well as an unfinished but planned work about republicanism in a large state. In 1806 he published his Romantic novel *Adolphe*, a melancholic history of an indecisive youth in a stormy relationship he can’t muster the strength to get himself out of. It’s a novel very much like Goethe’s *The Sorrows of Young Werther*. Goethe regretted his Werther. Constant should not regret *Adolphe*. It’s a well crafted tale that avoids the cheap imitation of a morbid denouement.

In 1813, when Napoleon looked to be just about finished, Constant wrote a two part series of pamphlets entitled *The Spirit of Conquest and Usurpation*, excoriating Napoleon’s military dictatorship. When Napoleon escaped from Elba he wrote more unflattering occasionals, comparing him to Genghis Kahn and Attila the Hun. Then Napoleon conquered Paris, proving that Constant’s sense of the political moment was not very finely tuned. He probably should have left Paris, but wanted to remain in case his love for Madame Recamier, the prudish Marilyn Monroe of her day who was immortalized in Roman garb by David, might come to fruition. Much to Constant’s

95 “Adolphe is in many ways a prototype of the liberal individual, and his story is a commentary on the human emptiness of negative freedom. He is preoccupied with ‘independence’, obsessed with disengaging himself from a tyrannical Ellénore. But when he finally achieves the freedom he craves, he becomes utterly wretched and irreconcilable with life” (Holmes, 13). Biancamera says in *Adolphe* “Constant denounced most forcefully the falsity, sufferings, and moral impoverishment of the modern age” (Biancamera, 19). For Manent, citing Hugo’s phrase that romanticism is “le libéralisme en littérature”, *Adolphe* represents the transition of liberalism to the sphere of belles lettres (Manent, 1980, 197). This is part of the thesis of Carl Schmitt’s book on *Political Romanticism*. 

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surprise he kept his head; in fact Napoleon asked him to use it to write the new French Constitution. It was so much associated with Constant that it was called the “Benjamine.” This collaboration with Napoleon tainted him in the eyes of posterity. From 1817 to his death in 1830 (with a hiatus from 1822-27) Constant was an important figure on the left in the parliamentary opposition to Bourbon rule. His main enemies were the Ultras, inspired by Maistre and Bonald, who wanted to restrict press freedoms, ban divorce, and restrict the franchise, in fine, to reestablish the old regime.\textsuperscript{96} In his parliamentary period he was known for his biting, sarcastic wit. He was buried in a state funeral, but was not included in the Pantheon, perhaps unjustly.

Though his life was eventful, it is hard to say it was completely successful in any domain. He had multiple failed marriages and multiple unsuccessful attempts to make famous women his mistress, all the escapades of which are recorded in his autobiographical sketch \textit{Le Cahier Rouge} and in his \textit{Journaux Intimes}. This made him seem in the eyes of posterity nothing but a sharp and somewhat clumsy roué. In his political career he made some large mistakes and was often marginalized, though he fought valiantly for liberal freedoms. In literature and philosophy he was widely respected, but the fact that he did not leave a complete, single masterpiece probably did much to diminish his posthumous influence. However, there has been in the last 50 years a revived interest in his life and thought. He now decidedly ranks as one of the great

\textsuperscript{96} See Holmes (1993), 220-1
French liberals, and in his breadth of concerns, attention to historical detail, and political ambition he certainly ranks among the best in the French tradition.  

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Constant’s primary political and philosophic goal was to achieve a stable, free, representative political regime. This begins with the affirmation of popular sovereignty and the rejection of the idea that political authority is based in any transcendent source, not on God as Maistre claims, but in the human will. Yet it is Constant’s contention that several of Rousseau’s core commitments, to whom he was on the whole quite sympathetic, paved the way for tyranny. “Long before the overturning of the throne, [he] made axiomatic all the maxims necessary to organize the most absolute despotism under the name of the republic” (Spirit, 108). Constant includes among those maxims the total alienation of the individual will, the idea that particular interests are not patriotic, that sovereign authority should be unlimited, and that a messianic figure who perfectly embodies the nation is required to found the regime (Spirit, 106 n1). Each of these notions were exploited during the Terror and Napoleon for anti-liberal, anti-democratic purposes. Constant’s liberalism stems from a complete rejection of the Terror’s appropriation of Rousseau’s republicanism. He despised laws that punish incivisime, informants and spies that invade private life and forbid intimate thoughts, laws that restrict a free press and that regulate religion by coercing the individual to worship L’être  

97 I have benefited most from the work of Stephen Holmes (1984), the unfinished work by George Armstrong Kelly (2007); and the two essays in the Cambridge Companion by Marcel Gauchet and Jeremy Jennings.
Supreme. Having read Smith and Hume on the distinctiveness of the modern age, and having already been an admirer of Greece in his youth, he thought that there was something deeply misplaced in the ancient revivalism of the Revolution. Its attempt to create a modern republic with the political vocabulary of Rousseau, cribbed from the ancient world, did not produce freedom but stamped out those individual freedoms that are the great advancements of modern civilization, such as privacy, the right to particular interests, to express views freely in public, to choose one’s religion and to peacefully assemble (AM, 310-11).

To figure out why this happened, and to prevent its recurrence, is Constant’s task. In his mind the Terror and Napoleon revealed a troubling vulnerability in democratic theory. Reminiscent of the critique of Maistre, Constant traces the problem to a discrepancy between theory and operation. While in theory popular sovereignty clearly means that the people are the source of power and final governing authority, in practice they cannot exercise the power they theoretically possess. This opens a problematic space between the source of power and the agent of power. Rousseau was right to claim that the agent of power is always a subordinate. But how is that to be arranged in practice when the people themselves are incapable of exercising the very power they are supposed to retain? Popular sovereignty seems necessarily to redound to the power of the state. Constant claims that Rousseau does not have a solution precisely because he thought sovereignty was inalienable and thus that the people themselves could exercise it from time to time.98 In a large republic this proposition is obviously impractical, rendering

98 “Horror-struck at the immense social power which he had thus created, he did not know into whose hands to commit such monstrous force...[except] an expedient which made its exercise impossible.
popular sovereignty maddeningly elusive. Since the people retain power but cannot exercise it, Constant believes, as does Maistre, that the people’s power is purely abstract and theoretical: “the abstract recognition of the sovereignty of the people does not in the least increase the amount of liberty given to individuals” (PP, 175). In fact precisely because the people are given only abstract authority they are more comfortable having someone exercise their power in their names. Again agreeing with Maistre, Constant contends that popular sovereignty creates a democratic ideology that masks the fact that the few rule and the many obey under the specious guise of the rule of all. “Because the action performed in the name of all is necessarily, whether we like it or not, at the disposal of a single individual or of a few, it happens that, in giving oneself to all, one does not give oneself to nobody, on the contrary one submits oneself to those who act in the name of all...some derive exclusive advantage from the sacrifice of the rest” (PP, 178).

When one couples the necessity that the people are under to delegate power with Rousseau’s insistence that the general will is different from, and higher than, the will of the people, it is clear that popular sovereignty unleashes a dangerous potential for despotism. Both the Terror and Napoleon could with some semblance of legitimacy claim to represent the people or be the vanguard of the Revolution. This gives rise to a

He declared that sovereignty could not be alienated, delegated, or represented. This was the equivalent of declaring, in other words, that it could not be exercised” (PP, 178).

99 “We are always hearing about the great empire, of the whole nation, abstract notions that have no reality...The whole nation is nothing separated from the parts that compose it. It is in defending the rights of these parts that one defends the rights of the whole nation...[and yet] the real beings are sacrificed to the abstract one. The people as individuals are sacrificed for the sake of the people en masse” (Spirit of Conquest, 77). The notion of the nation or the general will as an abstraction is all over Constant’s writings. See, e.g., “The share of the individual in national sovereignty was by no means, as it is now, an abstract supposition. The will of each individual had a real influence” (Spirit of Conquest, 102).
particularly modern phenomenon that Constant calls “pretexts” or the idea that power oppresses in the name of the oppressed.\footnote{“The subtle metaphysics of the Social Contract can only serve today to supply weapons and pretexts to all kinds of tyranny” (\textit{Spirit}, 106). And “Long before the overturning of the throne, [he] made axiomatic all the maxims necessary to organize the most absolute despotism under the name of the republic” (\textit{Spirit}, 108).} “Patriotism became the banal excuse for all crimes....It is in the name of liberty that were given prisons, scaffolds, countless persecutions” (\textit{Spirit of Conquest}, 113). The indeterminacy at the heart of popular sovereignty permits power to speak in the name of the people without their consent. This has its reverberations today in such wild stupidities as the so called People’s Republic of North Korea. A principal task of Constant’s liberalism is to render those pretexts unthinkable by making it nearly impossible to speak in the name of the entire people. He does this by giving the people a role in power through representative government, by denying that the government speaks in the name of all.

In Constant’s mind, almost all of the errors of Rousseau and the Revolution stem from one unique source. They took the ancient city states, especially Rome and Sparta, as models of political liberty, importing from them a whole host of notions, including political liberty as active participation in the collective sovereign, that were entirely unsuited to the modern situation. Constant thinks it necessary to rethink the nature of individual and political liberty for the modern age. Only then will we understand the type of institutions that are appropriate for us.
2.2.1 A world of compensations (or freedom, ancient and modern)

“The aim of the ancients was the sharing of political power among the citizens of the fatherland: this is what they called liberty. The aim of the moderns is the enjoyment of security in private pleasures; and they call liberty the guarantees accorded by institutions to these pleasures” (AM, 317).

Like Montesquieu, Maistre, and later Tocqueville, Constant believes that the political needs, institutions, and mores of a regime are formed by an antecedent social situation. These situations change over time, giving rise to different political needs. Rousseau and his epigones like the Abbé de Mably represent a failure of the French to recognize and reconcile themselves to the modern social state. Constant seeks to correct this mistake by revealing the true differences between the ancient social situation and the modern one. We are moderns, he proclaims, and we need to accept that fact, for it is only then that we can affirm the freedom of the moderns. We need a philosophy of the present, not of the past, a freedom of large, commercial, representative regimes, not a freedom of the polis.

Constant had a very practical mind. His differentiation between the ancients and moderns is entirely based on answers to a small number of very sensible questions, the alarming simplicity of which make them seem almost banal: how big is the country, how many people live there, what do people spend most of their time doing, what do they want, what are they capable of? Constant thought that if we focused on these simple questions it would be quite easy to see what separates us from the ancient polis.
The single defining characteristic of the ancient city state was that it was small. Because they were small, and surrounded by neighbors, the ancient cities were under constant threat. If defeated in war, their city would be razed, the men killed, and the women sold into slavery. “The warrior peoples of antiquity owed their bellicose spirit mainly to the situation in which they found themselves. Divided into small tribes, they contended by force of arms for the possession of a narrow territory. Driven by necessity against one another, they fought or threatened each other incessantly. Even those who had no ambition to be conquerors, could still not lay down their sword lest they should themselves be conquered. For all of them the price of their security, their independence, their whole existence was war” (Spirit, 52). Because the ancients needed warrior virtue they had to cultivate a citizen-soldier dedicated to the regime. This in turn required the strict regulation of private life, free speech, and individual freedoms. It also necessitated the farming out of menial tasks to slaves so as to give citizens sufficient time to undergo rough warrior training. This gave the ancient city, in a phrase Constant cribs from Montesquieu, the atmosphere of monastic barracks. But it would be a mistake to think this as purely a term of derision. Constant was very much a hellenophile. He describes the ancient city states with their vibrant political life and unending wars sometimes in the most laudatory terms. Ancient war “favored the development of [man’s] finest and grandest faculties...forms in him that greatness of soul...heroic devotion and sublime friendships” (Spirit, 51). The regime of monastic warrior virtue produced beautiful human types.

It is this social situation that gave rise to the type of liberty characteristic of the ancient city. To go through the rigorous training of a Spartan citizen, especially being
forced to eat their tasteless gruel twice a day, is not a thing one would normally freely choose. In order to make such a difficult life worthwhile the citizen was given a large share in political life. It was the “pleasure” of public life that compensated for the manly rigors of being a citizen-soldier. Ancient liberty, the liberty that Rousseau wants to import into modernity, really was active participation in the collective sovereign. But to be a citizen was to sacrifice one’s private life: “This renunciation was indeed necessary; since to enable a people to enjoy the widest possible political rights, that is that each citizen may have his share in sovereignty, it is necessary to have institutions which maintain equality, prevent the increase of fortunes, proscribe distinctions, and are set in opposition to the influence of wealth, talents, even virtue. Clearly all these institutions limit liberty and endanger individual security. Thus what we call civil liberty was unknown to the majority of the ancient peoples. All the Greek republics, with the exception of Athens, subjected individuals to an almost unlimited social jurisdiction. The same subjection of the individual characterized the great centuries of Rome; the citizen had in a way made himself the slave of the nation of which he formed a part. He submitted himself entirely to the decisions of the sovereign, of the legislator; he acknowledged the latter’s right to watch over his actions and constrain his will. But the reason was that he was himself, in his turn, that legislator and that sovereign” (Spirit, 103). Rousseau described the ancient city almost perfectly. But notice how Constant describes it in the lexicon of despotism: it is a regime of surveillance, a panopticon, that lacked all individuality. Constant highlights the precarious situation of the individual when he explains, in unflattering terms, what the ancient citizens did with their sovereignty: “as a member of the collective body, he interrogated, dismissed, condemned,
beggared, exiled, or sentenced to death his magistrates and superiors; as a subject of the collective body he could himself be deprived of his status, stripped of his privileges, banished, put to death, by the discretionary will of the whole to which he belonged” (AM, 312). Constant does not let us forget that the sovereignty of the ancient city is what killed Socrates and exiled Aristides, that the practice of collective sovereignty is deeply associated with political violence and the precariousness, if not absence, of individual freedom. But, Constant insists, the pleasure of active political liberty compensated for the renunciation of private life.

The key thing about modern life for Constant is that to trade individual independence for political liberty is no longer a square deal. And this derives almost principally from the fact that modern regimes are large and populous. In a big regime it’s just a plain fact that the individual doesn’t have much power. The vast majority have “no active part” in government (Spirit, 104). If they have some political freedom they will be represented by people chosen in democratic elections and who will act in their name and hopefully in their interest. This is essentially what Montesquieu says about the political freedom of England. But while Montesquieu thinks this level of freedom just about right, since it’s within the reach of the people to choose their representatives but not to govern, Constant is troubled by this prospect: “They are called at most to exercise sovereignty through representation, that is to say in a fictitious manner” (Spirit, 104 [emphasis added]). This is hardly to say that Constant thinks representative government that acts on behalf of the people unimportant. It is crucial to protect individual rights and for government to be responsive to the people. But we shouldn’t delude ourselves into thinking that this is political liberty. “The advantage that liberty brought people, as the
ancients conceived it, was actually to belong to the ranks of the rulers; this was a real advantage, a pleasure at the same time flattering and solid. The advantage that liberty brings people amongst the modernds is that of being represented, and of contributing to that representation by one’s choice. It is undoubtedly an advantage because it is a safeguard; but the immediate pleasure is less vivid; it does not include any of the enjoyments of power; it is a pleasure of reflection, while that of the ancients was one of action” (Spirit, 104). The political freedom of the moderns is to sit in Starbucks and debate with friends about the President, to blog about it, and finally, in the moment of decision, to cast a vote once every few years. This is to describe it somewhat flippantly, but it does give a picture of what Constant has in mind. Political liberty for the vast, vast majority of the population will be the liberty to debate about what other people are doing, and to have a minuscule influence over who is debating and what they are debating about. One could still say that we are the authors of the laws we obey if we authorize what our representatives are doing. But Constant recognizes that this authorization is a pleasure of “reflection” and not of “action.”

But this is a world of compensations. The large regime that made active, participatory political liberty all but impossible has opened up a space of individual independence. We no longer have to be citizen soldiers, we do not need the strict surveillance of a regime that is “theocratic” and “warlike” (AM 310). The strength of the large nation state implies that we no longer require the rigorous Spartan education for all citizens. This implies, in turn, that the state should not attempt to produce the cultural uniformity required to maintain citizen-soldiers. No more surveillance of private life, no
more regulation of speech, of life-plan, of religion or domestic relations.\textsuperscript{101} The modern regime, much larger and stronger, is able to tolerate diversity and plurality without endangering its independence. Concerns about atomism and social disintegration are of paramount importance in the ancient world, but are misplaced in modernity. This openness leads to a great advantage: the appearance of the individual. “The ancients, as Condorcet says, had no notion of individual rights. Men were, so to speak, merely machines of the law. The same subjection characterized the golden centuries of the Roman republic; the individual was in some way lost in the nation, the citizen in the city” (AM, 312). The ancient regime was the first “mass” society, a society without particularity. In modernity we can actually be somebody and that is partially because we have been liberated from the combined unifying forces of religion and politics, we are free not to be a citizen, a priest, or a metic.

### CHART 1

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<th>ANCIENT</th>
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<tr>
<td><strong>Size</strong></td>
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<td>“real influence” (102)</td>
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<td>Large</td>
<td>“No active part” (104)</td>
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<td>“some influence” (311)</td>
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<td><strong>Civil Freedom</strong></td>
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<td>Austerity</td>
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<td>Prosperity</td>
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\textsuperscript{101} These latter two, freedom of religion and sexuality, Constant thinks particularly paradigmatic of modern freedom. For sexual freedom, which I have not seen emphasized in the literature, see Constant’s use of the Spartan regulation of sexuality in AM 311 and Spirit 107.
The chart above sums up the differences.

Turning from the social structure of the modern state to the liberty characteristic of it, Constant highlights three aspects of modern liberty, the first two of which were absent in the ancient world. The first is a regime of laws in which the individual is protected: “it is the right to be subjected only to the laws and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals” (*AM*, 310). This freedom can be thought of as rights that are immunities from power, and when one is subject to power, only to general and equal laws. The second trait of modern liberty is rights as privileges to act freely without the interference of power: “It is the right of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives and undertakings” (*AM*, 311). Paradigmatic of these freedoms of privacy are freedoms of sexuality and religion. The third aspect of modern liberty that Constant highlights is the freedom to participate in politics, to have a right “to exercise some influence on the administration of government, either by electing all or particular officials, or through representations, petitions, demands to which the authorities are more or less compelled to pay heed” (*AM*, 311). Stephen Holmes rightly emphasizes that this is not only the freedom to have one’s voice registered in a vote but the freedom to be critical of the government, to speak one’s mind, to voice dissent.102 Whereas in the ancient social state the individual was under surveillance, in the modern social state the government is.

In addition to putting the government under surveillance we also subject ourselves to “reflection.” The movement from the ancient world to the modern one is from a world of “action” to a world of “reflection.” Echoing Hamlet’s dilemma, it is this reflection that makes modern man incapable of the same type of action as the ancients because we are always skeptical of our motivations, of being duped, of whether we are really acting sincerely or not. The age of the moderns is the age of doubt and of self-questioning. In a strange way Constant and Maistre both agree that the entry into the modern age of reason is experienced as a fall from innocence, from a world of beautiful myths that were salutary. While both turn to history, Constant is deeper than Maistre because he recognizes that the irreversibility of history depends not only on a change in the social state, but also because a conscious rebuilding of the ancient polis or the old regime becomes a farcical enterprise. And this is exactly how Constant describes Napoleon's attempt to revive the divine right of kings. The label of anachronism is so powerful precisely because the anachronistic is experienced as ridiculous. Maistre, while imbued with Biblical categories, did not see that most basic of all Biblical teachings: that once exiled from the Garden of Eden there is no going back. What is interesting about

103 “The ancients were in the childhood of morality; we are in its maturity, perhaps in its old age; we carry behind us always some background thought, born of experience, and that destroys enthusiasm. The first condition of enthusiasm is not to observe oneself with finesse. But, we are so much afraid of being duped, and especially of seeming duped, that we always observe ourselves very closely, even in our most violent impressions. The ancients had on all things an almost complete conviction; we have on almost nothing but a weak and tepid conviction...The word illusion is not found in any ancient language” (cited in Manent, 1987, 193).

104 “No one has worked harder than that man to revive the dogma of divine right. He has had himself consecrated by the head of the Church; every focus of religious pomp has surrounded his throne. His elevation itself seemed to be something supernatural. All the sophisms of the mind were at his service, from the catechism to academic harangues” (Further Reflections on Usurpation, 159)
Constant is that he turns the critical attitude that we employ to tyrannize ourselves into a means to check government: private unease, public virtue.

While the ancients found happiness in public life the moderns find their principal enjoyments in private life. “The progress of civilization, the commercial tendency of the age, the communication among the peoples, have infinitely multiplied and varied the means of individual happiness” (Spirit, 104). That happiness is advanced by commerce. “War and commerce are only two different means to achieve the same end, that of possessing what is desired” (Spirit, 53). Constant’s idea is that in the ancient world if a people wanted something they took it by force. This is surely quite reductionist and hardly accounts for what it is that people desire, but Constant does nevertheless have an insight: human beings are creatures who want to maximize whatever it is that they want and force is a pretty crude, though sometimes effective, way to get it. If the Romans need more women they take the Sabines, if the Athenians need more land they attack and expel their neighbors. In modern life women are mistresses of their own fate, land is purchased rather than taken. Man’s basic desires are historically stable, but the means pursued more civilized. In the ancient world concupiscence was a collective affair. If we want Sicily the whole regime has to get together and go conquer it. What is distinctive about modernity is that securing the objects of one’s desires is a private affair. The privacy of pleasure influences how the moderns see political life. In the ancient world the activity of political life was itself a pleasure, in the modern world politics is instrumentalized as a means to secure pleasure. “The people most attached to liberty in modern times is also that most attached to its pleasure. It holds to its liberty above all because it is enlightened enough to see in it the guarantee of its pleasures” (Spirit, 105). Since political life is largely
unavailable to most people, and since the pleasure of political reflection is not as keen as money and material goods, it’s not surprising that we see politics as the obstacle to our private pleasures, and we get involved in politics only to guarantee them.

For Constant the great advantage of the moderns is also their primary weakness. While the danger of ancient life was that the individual was never protected, in modern life it is that we will neglect *la chose publique*. “The danger of modern liberty is that, absorbed in the enjoyments of our private independence, and in the pursuit of our particular interests, we should surrender our right to share in political power too easily” (AM, 326). The problem is that in modern life we just don’t have the time. The ancients had time for politics because slavery relieved them of the need to make a living. We spend most of our days in the office trying to make money and then in our free time we raise a family. If there is time left over we pursue our private pleasures. We go to the movies, sporting events, and we meet with friends and family. Politics is subordinate to our occupations, family, and leisure. Constant is worried by this prospect.

For Constant, then, the question is how to infuse modern life with a small, manageable dose of ancient political liberty in order to form a distinctly modern synthesis.

2.2.2 A liberal republican synthesis

“For far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together” (AM, 327).
Constant tries to counter the extremes of over-politicization and de-politicization, too much privatization and not enough privatization. He is searching for some middle ground in which liberal rights and democratic participation are compatible if not mutually reinforcing.\textsuperscript{105} It is tempting to see that project as modeled on Athens, the most modern of the ancient regimes. It was a city of commerce and of citizenship. But Constant does not recommend a revitalization of Athenian politics. This would vitiate his historical critique of Rousseau. Rather, he calls for what I term a developmental model of freedom. By this I mean that both Constant’s liberalism and the limited republicanism he recommends the moderns adopt are in the service of freedom understood as the development of the individual's capacities, especially religious, artistic, and romantic. Commerce creates the habits and conditions of independence but it does not answer what man is going to do with his independence; politics, especially at the local level, offers some measure of satisfaction and protection of rights, but the great benefit of participation in public life is that it expands the individual’s capacities. The key task of politics is to secure a space for self-development by institutionalizing liberal freedoms and by securing a space for political participation through political subsidiarity.

Limited government is necessary to protect the modern space of individuality. This means that sovereignty must be limited. Constant has three broad strategies to accomplish this. The first is a strong affirmation of the private public distinction that permanently removes private aspects of life from public regulation: “There is...a part of

\textsuperscript{105} I fully endorse Holmes when he says: “Stated positively, Constant’s thesis is that, in modern Europe, political participation and individual rights are interdependent and indeed inseparable. The participation of citizens in public debate and electoral politics, and the participation of their representatives in the control of policy, is one form of freedom. The protection of citizens from police harassment and enforced orthodoxy is another form. Although analytically distinct, these two freedoms are in reality mutually reinforcing” (Holmes, 1993, 20).
human existence which by necessity remains individual and independent, and which is, by right, outside any social competence. Sovereignty has only relative and limited existence. At the point where independence and individual existence begin, the jurisdiction of sovereignty ends...There are acts that nothing could possibly sanction. Whenever some authority commits such acts, it hardly matters from which source it emanates” (*PP*, 177). Constant’s liberalism is the denial of absolute power in all its forms. That denial is institutionalized in limited government that affirms individual rights as exemptions from public power.

The second way Constant attempts to ensure individual independence is to prevent the government from plausibly claiming that it fully represents society. To achieve this he recommends constitutionalism and separation of powers. But the way he understands the division of powers is significant. It is to institutionalize division over what the will of the people is so that no one party, no one branch, not even all of them combined, can have a plausible claim to represent the people in its entirety.¹⁰⁶ As we will soon see this institutionalization of plurality, of multiple perspectives on the common good, is shared by Guizot. But notice how this changes the representative model of freedom in Montesquieu’s depiction of England. There he claims that the individual is free in a representative regime so long as he thinks that the representatives are carrying out his will. But if there is a clash of perspectives in the government on the nature of

¹⁰⁶ Bryan Garston, in his study of representation in Constant, puts it this way: “A chief purpose of representative government is to *multiply and challenge governmental claims to represent the people.* This goal is quite different from asking the government as a whole to represent the popular will as it can be found through any particular vote or poll. It is also different from the goal of asking it to represent the popular will as it could be imagined to emerge from a process of deliberation or from an independent analysis of the public interest” (Bryan Garston, 2009, 91).
what the popular will is, it becomes difficult to identify with the political outcome. The institutionalization of plurality vitiates the identification model of political freedom.

The third hallmark of Constant’s liberalism is his *pouvoir neutre*, inspired by the English Monarchy.¹⁰⁷ This is the notion that there is a third power (in addition to the people and the government) that stands above the elected branches of government. Constant’s idea is that the unity of the popular will must be denied in the government, but that nevertheless it should be placed somewhere since representation is not sufficient to ensure that sovereignty is not slowly usurped. Moreover the balance of powers theory requires that there be a watchdog to ensure that there is not collusion among the elements. Constant wants this body removed from the people so as to protect them. He thinks they should hold office for life. In the US we institutionalize this through the Supreme Court, with a power of constitutional review. It’s goal is to prevent the will of the people as it is expressed in the Constitution from being perverted, even by the people’s own representatives. Constant had a hereditary king in mind. He wanted to also be able to remove the people’s representatives from power by dissolving parliament.¹⁰⁸ This solves the problem raised by Maistre that law that is to represent the entirety of the people, or the unity of the sovereign, must be transcendent. Constant accepts the counter-revolutionary challenge, but solves it in a democratic way by combining kingship with separation and balance of powers. Through a king the people can prevent the usurpation of sovereignty without exercising it. This solution has its own dangers since the people confide the protection of their will to a small body or one person, which means that it

¹⁰⁷ *Principles of Politics* “The Nature of Royal power in a constitutional monarchy”

¹⁰⁸ Also Craiutu (2003), 126-8.
might be more easily usurped. But the power of the *pouvoir neutre* is entirely negative: it can only dissolve parliament, grant pardons, and create peers.

It is a hallmark of French liberalism to think that liberal constitutionalism and separation of powers is simply not sufficient to maintain limited government. Constant, following Rousseau and foreshadowing Tocqueville, insists that a free regime is also maintained by the vigilance and character of the people. Limited constitutional government is not a machine that functions as long as it is well greased, but only works because the people check it by being well informed and active. This means a very vibrant free press in which everything the government does is brought to light and scrutinized, and so the people’s interests can be brought to the knowledge of the government. It means the right to assemble so that people can petition government and show their force. It means that citizens, though largely privatized, make continual use of the political freedoms, especially voting, that they do retain in modern life.

Despite his rejection of the collective exercise of sovereignty à la Sparta, Constant consistently insists on the value of political liberty. He wants to effect a synthesis of ancient political vibrancy with limited, constitutional government and individual independence. “Therefore, Sirs, far from renouncing either of the two sorts of freedom which I have described to you, it is necessary, as I have shown, to learn to combine the two together” (AM, 327). Very much like Tocqueville, Constant believes that federalism and the principle of subsidiarity are the primary vehicles for energizing public life in modern representative democracies. “What concerns only a few should be decided by that few; what concerns only the individual must be decided by that individual alone...National authority, the authority of the district, the authority of the commune,
must remain, each of them, in its own sphere” (PP, 251). Subsidiarity is the only possibility of preventing the emergence a mass society that inevitably leads to privatization. If local liberty is destroyed then “All the interests are grouped in the capital city; there, all ambitions go to exercise themselves; the rest is immobile. The individuals, lost in an unnatural isolation, strangers to the place of their birth, cut off from all contact with the past, forced to live in a hurried present, scattered like atoms over an immense, flat plain, detach themselves from a fatherland which they can nowhere perceive, and whose whole becomes indifferent to them because they cannot place their affections in any of its parts” (PP, 255). The solution is to “multiply, multiply the bonds that unite men” make them first care for “family, then for...town, for the province, and finally for the state” (PP, 255). These expanding rings of connection, interest and affection will lead to greater generalized interest, greater participation, and thus greater protection of individual rights.

But Constant does not conceive of political freedom in modernity as a good in itself. For the moderns, political freedom is an instrumental good that helps us protect our private lives and interests. “As we are much more preoccupied with individual liberty than the ancients, we shall defend it, if it is attacked, with much more skill and persistence; and we have means to defend it which the ancients did not” (AM, 324). Constant’s idea is that the modern advantage of individual liberty, which can lead to depoliticization and indifference, can also be construed as a great political virtue and incentive to participate in politics. There is something deeply true about this idea, at least in the United States, that as long as there is an open and public political process people will publicly protect their interests and rights. The women’s movements, the marches to
end segregation, the gay rights movement and the tea party movement, all of these are different examples of a highly politicized segment of the population that seeks what are essentially individual rights, even if those rights have a strong public component (such as free, unfettered access to voting and other forms of participation). The happy byproduct of this political participation is an elevation reminiscent of ancient life, since participation “enlarges their spirit [and] ennobles their thoughts” (AM, 327).

And it is in that idea of enlarging the spirit and ennobling thoughts that we see the real rub. Constant demands individual liberty because it opens a space and protects personal independence, but he also thinks that space of personal independence is to be employed for further ends, just as he thinks political liberty is best for what it does not for what it is. Constant’s synthesis of liberal and republican forms of liberty converge on what I call the developmental model of freedom. This can be taken as the third model of freedom in the French tradition (Rousseau has an identification model, Montesquieu a representation model, and Tocqueville will have a non-sovereign model). The developmental model of freedom emphasizes that both “negative” individual liberty and “positive” political liberty are in the service of the development of the individual. “I bear witness to the better part of our nature, that noble disquiet which pursues and torments us, that desire to broaden our knowledge and develop our faculties. It is not to happiness alone, it is to self-development that our destiny calls us; and political liberty is the most effective means of self-development that heaven has given us” (AM, 327).

The developmental model is most vivid in Constant’s study of religion. It would do a great disservice to his thought to think that he has a purely negative model of freedom, that freedom is the lack of impediments to motion. One of Constant’s greatest
fears is that modern life will degenerate into a debased world in which everyone pursues their material self-interest. This society of “beavers” and “bees” will lose the qualities that makes man truly human: the taste for the sublime, the transcendent, the desire to lose oneself in something greater than oneself, devotion, sympathy, love, enthusiasm, all those things that Constant thinks take us “hors nous-mêmes”, or beyond ourselves (dlR, 29, 33, 49). Constant bundles all these high emotions into one and calls it the religious sentiment, which has had various manifestations throughout time in the different religions of mankind, all of which represent a single longing. Constant is Joseph Campbell avant la lettre.

Constant’s long treatise on the religious sentiment, which he began before he ever went to Paris with de Stäel, is meant to exhort modern man to live a private life that moves beyond the materialistic and utilitarian. “All systems reduce to two: One assigns us interest for our guide, and bien-être as a goal. The other offers us perfection, and for a guide our interior sentiments, the abnegation of ourselves and our faculty to sacrifice” (dlR, 33). It is by now clear that Constant did not envision religion like the radical enlightenment, as superstitious hogwash, a fool’s game, fit for young children and the moribund. He sees it as a central locus of humanity’s experience of the world, an integral part of who we are. As religious beings we are beings who desire transcendence. If our

109 All citations refer to the French edition (Thesaurus, edition Tzvetan Todorov and Etinne Hofmann, 1999). Translations are my own. “It is necessary that this disposition is inherent in man, because there is not one person who, with more or less force, has been seized by it, in the silence of the night, on the banks of the sea, in the solitude of the countryside. Everyone has, at least for an instant, forgotten themselves, and sensed being taken by the movements of vague contemplation, and sunken into an ocean of new thoughts, disinterested, without any relation to the small combinations of life” (dlR, 49).

110 The relation of the developmental model of freedom and religion is explored by Bryan Garston (2010).
private freedom is only a means to our well being then the “human race will deprive itself of all that constitutes its supremacy, abdicating its most beautiful titles, deviating from its true destination and enclosing itself within a sphere that is not its own by condemning itself to an abasement that is against its nature” (*dlR*, 29). Constant wants our individual lives to be rich, and that richness is proportionate to the extent that we can rise above our “particular and individual ideas” (*dlR*, 49). We develop ourselves to the extent that we move beyond private life as a mere means to secure well-being.

Constant’s (and Guizot and Tocqueville’s) admiration for religion complicates the simple notion that all partisans of religion were necessarily counter-revolutionaries. The pro-Revolutionary left also thought the atheism of the radical enlightenment went too far. The key difference, the great advantage of the Revolution, is that it makes religion a strictly private affair. Constant was as big an advocate as anyone that the individual explore his own religious sentiment that prompts him to some form of transcendence, but he insists that the state should not be in the business of helping people reach nirvana. Constant’s thought challenges simple dichotomies of privatization=egotism, immanence=solipsism, and neutral state=atheism. He insists on a rich, nuanced anthropology in which religion and love are integral to humanity’s experience of the world. But the key is that these are no longer the purview of the public sphere, and thus subject to strict governmental regulation. Politics is not the primary forum of human greatness, nor the state the sole vehicle of human transcendence. The chief advantage of modernity is that it opens up new spaces for human achievement, in religion, love, commerce, and the arts, all vehicles for the development of man.
Therefore Constant offers a different understanding of freedom than Rousseau does.\textsuperscript{111} Constant has neither the identification model of freedom nor does he think the people should participate collectively in the exercise of sovereignty. In fact, Constant drops Rousseau’s insistence on rational autonomy altogether. Rational autonomy in Rousseau is connected to his attempt to save human freedom from the mechanism of an arbitrary natural world that determines our passions. Mankind can rise above nature by the use of his reason. This is why the rationality and generality of the general will are so important to Rousseau. If one acts according to the general will, if one identifies with it, then Rousseau thinks man is free. Rousseau’s freedom mixes what Montesquieu calls philosophic freedom (questions of free will and necessity) and political freedom. All philosophic concerns with philosophic freedom are dropped by Constant. He is not at all interested in salvaging human freedom from a materialistic metaphysics, which is what interested German idealism in Rousseau. Constant, and Tocqueville after him, simply assume that man is a spiritual animal. Constant’s proofs are not very sophisticated—to ask why man is a religious being is to ask why a tree is a tree, it’s just the way it is. Constant, Guizot, and Tocqueville all assume that materialism is fundamentally wrong and move on.

Constant’s developmental model of freedom brings Rousseau’s romantic project from the Reveries, filtered through the artistic side of German Romanticism, into the heart of private life. What Rousseau thought achieved by a solitary walker, a romantic dreamer, in retreat and exile from political life, Constant thinks should be protected by political life. Constant was more optimistic about the possibility and potential of

\textsuperscript{111} See M. E. Brint (1985), 323-346.
bourgeois freedom than Rousseau was. Constant’s thought was not a social critique of modernity, but primarily a defense of modernity against republican revivalism, despotic power, and the reduction of man to a pleasure machine. He thought that modernity’s individual freedom and political opportunities of access, even if limited, provided a space for a new type of freedom that aims at neither freedom from politics or freedom for politics but reaches beyond both. Politics is no longer the center of human life.

But one can question whether Constant has truly found a place in modern life for the limited republicanism he extols. He sees the problem of politics very much like Tocqueville. How is it possible to keep a government of professional politicians in check by a populace that is primarily oriented towards private life and that often lacks the time and interest for politics? This is done not only through limited government but also through the politicization of the demos. The question is whether Constant’s thought has sufficient resources to continually fight the nefarious tendencies of democratic depoliticization under conditions of liberalism. Like Tocqueville (and Guizot) Constant wants to revive local liberties. But as I will argue in chapter 4, unlike Tocqueville Constant and Guizot do not have a theory of civil society, a locus of active public life that remains possible in the large nation state and that allows for a more vibrant articulation of spaces of participatory public freedom.

As a response to the dilemma of French liberalism, of all liberal thinkers, Constant was the most faithful to the original moral insight that liberalism is grounded on the freedom of the individual. But Constant’s liberalism is plagued by various philosophic difficulties. One is Constant’s ultimately problematic grounding of individual rights. Like most thinkers of his generation, liberal and reactionary alike, Constant
jettisoned the state of nature as a philosophic tool, thinking it both ahistorical and
philosophically naive. Moreover, the state of nature, in both Hobbes and Rousseau, led to
the erection and justification of a totalizing sovereign power. Constant chose not to
amend Rousseau or Hobbes’s state of nature with a return to the philosophy of Lockean
natural rights. Instead, he replaces the state of nature with history. For Constant it is
history that reveals the moral primacy of the individual, which both grounds and restricts
legitimate political authority. Any attempt to subsume the individual into the community,
and thus to deny him his rights, becomes an anachronistic, reactionary enterprise. But as
Maistre clearly understood, for history to have normative force it must be providential.
Constant’s grounding of individual rights is intricately linked, then, to a historical
theodicy. But how is one to discern God’s purposes so well that one knows history’s
terminus? Indeed, Constant’s historical narrative that modernity represents an advance
because it opens up a space for individual inquiry free from political and religious
coercion is challenged by Maistre, whose historical theodicy ends in a revitalization of
the Catholic Church. Stated otherwise, in carving out a realm of individual conscience,
Constant was ultimately protecting, though of course not exclusively, a realm of
individual religious exploration. And it is precisely this Protestant view of religious life
that Catholic thinkers like Maistre and Lamennais thought hopelessly anarchic and
confused, and surely not the terminus of history, but a cancer that history would
eventually purge. It seems impossible to adjudicate between a Catholic and Protestant
historical theodicy without entering into the mind of God. In the end, Constant’s
historical justification of individual rights reinvents the religious quarrel which liberalism
wanted to avoid by developing a philosophy grounded on the individual in the first place.
This is why he must have recourse to the idea that history is the advancement of equality, and that equality is natural and hence just. But Constant makes this turn in a minor writing, On the Perfectibility of the Human Species. It is not the centerpiece of Constant’s understanding of modernity. The fact that Tocqueville made this the center of his thought is testament to more than his observational acumen.

2.3 Representative Government Searching Sovereignty:
Guizot and Freedom as Obedience

François Pierre Guillaume Guizot (1787-1874) is one of the most impressive men of the impressive 19th century. His output is nothing short of astounding. He was a translator of Gibbon’s Decline and Fall of the Roman Empire and of Shakespeare, a biographer of Washington, and a prolific historian and theologian. The length of his memories is measured in pounds. If his only work in life were literary he would have left a substantial legacy.

But he was also a statesman. Along with Pierre Royer-Collard and Prosper de Barante, Guizot was recognized as the head of a center-left movement called the Doctrinaires. He was a key intellectual opponent of the ultra-royalist Ministry of Villèle (1822-7) that came to power after the assassination of the Duc de Berry, the heir to the throne, in 1820. The royalist government attempted to recreate the old regime. It

\[\text{Source:}\]

tried to restore primogeniture and entail, to restrict freedom of the press, to ban university lectures, and to re-establish the cozy relationship with the Church. During what became known as the “Great Debate” Guizot argued that the ultra-royalist attempt to “turn back the clock” ran contrary to hundreds of years of the progressive development of European civilization that had, since the Middle Ages, eroded the social and political power of the aristocracy. Guizot’s History of Origins of Representative Government [1822] turned the counter-revolutionary discourse completely on its head, arguing that liberalism was compatible with religion, transcendent sources of authority, and tradition. To prove this point Guizot dipped deep into the past, arguing through amazingly detailed and erudite historical studies that the rise of equality, the division of property, social mobility, and the reduction of the political power of the Church was a social process that was a long time in the making. The Revolution was not an imposition of will, pure creative voluntarism, but only tried to make political institutions catch up with antecedent social change. To want to overturn the Revolution was to go against hundreds of years of European history, and thus to overturn an entire society: an impossible enterprise. Like Constant, Guizot insists we should recognize the uniqueness of the modern historical situation, and in so doing, consolidate, institutionalize, and promote its gains: a free press, elected government responsible to the people, careers open to talents and a mobile society, a free market, and equality before the law.

Again like Constant, a primary theme of Guizot’s writings was that the Revolution revealed that the entire movement of the last few centuries of social change

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113 The historical trajectory traced by Tocqueville at the beginning of Democracy in America is essentially a reproduction of a Doctrinaire historical trajectory made prevalent at least 15 years earlier.

114 On the relation between Constant and Guizot on sovereignty, Craiutu (2003), chapter 5.
on the continent empowered the state and enfeebled local institutions and all social
to central power. Popular sovereignty and the democratic revolution did not
reverse but exacerbated this trend. A central theme of Guizot’s lectures (which was
present in already in Montesquieu, Rousseau, and will find its way into the heart of
Democracy in America) was that centralizing power and social atomization go hand in
hand. This idea was given eloquent expression by Pierre-Paul Royer Collard in 1822:
“We have seen the old society perish, and with it that crowd of domestic institutions and
independent magistracies which it carried within it...true republics within the monarchy.
These institutions did not, it is true, share sovereignty; but they opposed to it everywhere
limits which were defended obstinately. Not one of them has survived. The revolution
has left only individuals standing. It has dissolved even the (so to speak) physical
association of the commune. This is a spectacle without precedent! Before now one had
seen only in philosopher’s books a nation so decomposed and reduced to its ultimate
constituents. From an atomized society has emerged centralization. There is no need to
look elsewhere for its origin. Centralization has not arrived with its head erect, with the
authority of a principle; rather, it has developed modestly, as a consequence, a necessity.
Indeed, where there are only individuals, all business which is not theirs is necessarily
public business, the business of the state. Where there are no independent magistrates,
there are only agents of central power. That is how we have become an administered
people, under the hand of irresponsible civil servants, themselves centralized in the power
of which they are agents” (‘On the Liberty of the Press’, Discours, 2 January 1822, cited
in Siedentop, 27).115

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115 On how Tocqueville’s thought was influenced by Giuzot see Craiutu (2003) 88-115, and
Guizot’s liberalism, which he calls representative government, addresses itself to this problem. Its task is to counter social atomization by collecting the force of the people by means of government, and to counter the power of government by strengthening society. Guizot’s idea that the power of society was going to be collected and brought into government signals the difference between his thought and Constant’s. Constant’s thought is focused on protecting society and individuals from government. For Constant, liberalism is primarily a philosophy of opposition and critique of power. But for Guizot liberalism must govern. It cannot remain a pure spirit of opposition: “it is especially to the friends of la France nouvelle that it is necessary to understand the nature and conditions of power. They have a government, a government of the revolution to found. It is necessary, to succeed, other means than those of war and theories of opposition” (cited in Manent, 2007).

Guizot recognizes that society has demands that it wants accomplished, and it can only do it through government. Guizot also takes a high opinion of government. To see in the government of a great nation just an arbiter of interests carried about by some lowly clerk, to see in it just self-interest, is to profoundly mistake the nature of the enterprise. Government attracts men of high ambition and great talents, what Guizot calls men of capacité. Government is meant to serve society and to lead it, to help it formulate, concretize, and carry out its wishes. It is the focal point which allows society to make sense of itself as a community actuated by higher purposes. Guizot’s is a simple and practical insight. It is not surprising that it comes from a man with political ambitions. A man who wants to “get things done.” But it is this simple insight that eludes the thought

Manent (1991). Royer Collard was one of Tocqueville’s close friends.
of Kalyvas and confounds Wolin. They are both subject to Maistre’s critique that
democracy is sterile, that it cannot found anything, that it cannot govern, and that when it
governs it is not democracy or liberalism but something else: elitism, oligarchy, or
representative government (all taken in a pejorative sense). Wolin recognizes the
problem. He tries to turn from a democratic critique of power ("Fugitive Democracy") to
a theory democratic power (Democracy Incorporated). But if that is the case, then the
question becomes: how should democracy govern? Guizot recognized this problem long
ago, and provided a solution which he called representative government.

2.3.1 Will and Authority

"The true law of man is not the work of man; he receives, but does not create it; even
when he submits to it, it is not his own--it is beyond and above him...We see, then, the
individual always in presence of a law,--one which he did not create, but which asserts its
claim over him, and never abandons him" (HORG, 51).

Guizot criticizes popular sovereignty for two reasons that are strikingly similar to
Maistre: it is based on faulty philosophic premises, and its theory is inherently
impracticable, forcing it to degenerate into anarchy or dictatorship.

Guizot’s primary philosophic interlocutor is Rousseau. Rousseau’s thought gave
voice to the rising importance of the individual in modern life. Following Hobbes and
Locke, Rousseau argued that no political regime was legitimate that was not based on the
consent of the individual. For the individual to authorize the regime was to become, in
effect, its author, making the political body the work of man. Guizot thinks this line of
reasoning profoundly mistaken, and not for the rather banal reason that there never was a
moment of a social contract. The basic question in Guizot’s mind is whether the moral
law is created by man or something that he receives. Guizot, like Maistre, opts for the
latter: “The true law of man is not the work of man; he receives, but does not create it;
even when he submits to it, it is not his own--it is beyond and above him...We see, then,
the individual always in presence of a law,--one which he did not create, but which
asserts its claim over him, and never abandons him” (HORG, 51). Guizot believes his
basic insight is supported by the entire history of moral thought, which universally claims
that mankind must submit to some higher law of reason, truth, or justice. Guizot
sometimes calls this the “natural law” and sometimes “divine law” (HORG, 51). Guizot
agrees with Maistre that the basic moral experience is always one of authority, not one of
moral creation (HORG, 291). Man is not the source of the transcendent but should
recognize and obey the transcendent.

Guizot rejects individualistic modernity because he thinks it is based on the exact
opposite claim, that the individual is the source of legitimacy and not authoritative moral
standards. Rousseau’s philosophic individualism has pernicious consequences according
to Guizot. The first is that it gives rise to a false notion of human identity. “The
fundamental principle of the philosophies we oppose is, that every man is his own
absolute master, that the only legitimate law for him is his individual will” (HORG, 287).
This false idea “imposes upon man an absolute and continuous isolation, does not allow
him to contract any obligations, or to bind himself by any law, and brings an element of
dissolution even into the bosom of the individual himself, who can no more bind himself to his own nature than to any other person” (*HORG*, 288). Guizot is criticizing what Arendt and Markell today call the sovereign model of identity and agency. For Guizot, a philosophy of individualism cannot establish stable personality or authority. The sovereign model of agency claims that we are what we will, but since our will is mutable we are always changing. It asserts that we exercise executive authority over our past, that we have the ability to renounce it, and that we can mold our future in any way we please. Philosophic individualism is at bottom a vision of imperial control. Guizot labels this aspiration with the religious categories of pride and hubris.

And this leads to Guizot’s practical criticism of philosophic individualism, which he sees as characteristic of all theories of popular sovereignty. If all authority is based on the consent of the individual will, two unhappy alternatives emerge, both of which derive from a discrepancy between the principle of popular sovereignty that all authority is based on individual consent and the factual problems of realizing that principle in a large regime. Since individuals in the collective sovereign mass cannot rule directly they are forced to delegate their authority. But they cannot delegate their sovereignty. This turns the government into a subordinate agent, while they retain sovereignty in their hands. But this creates a suspicion that all established governments betray them, inciting the people to regain their authority from their perfidious rulers. Democracy tends towards revolutionary immediacy. But because the people cannot rule directly they are forced to give themselves a new government, producing a vicious circle.¹¹⁶ Popular sovereignty is

¹¹⁶ Unlike Constant, Guizot associates the immediate rule of the people with early Germany and not with Athens. “No idea of representation was entertained at that period. Whoever was entitled to attend the assembly went thither, and went in person. No proxies were allowed...When we come to treat the
a theory that can never be put into practice because the people are “without form and without voice” (HORG, 290). The people always need an organ to concretize and activate their unity. Popular sovereignty must remain a destructive and critical force, it is only a “terrible but transient dictatorship, exercised by the multitude--a dictatorship that ceases, and that ought to cease as soon as the multitude has accomplished the work of destruction” (HORG, 64). It needs government to give it form and voice so that it can carry out its will--and this leads to the second danger. For the people to carry out their will they are forced to delegate their authority to a sovereign representative. Guizot thinks this desire is what led to the Convention and Napoleon, who were “certainly...not the consummation which the friends of liberty demanded of representation” (HORG, 290). Popular sovereignty cannot solve the alternative it places government in. Government must simultaneously represent the people and not have sovereign authority, or have sovereign authority and betray the people. In these criticisms there are deep echoes of both Maistre and Constant, which the concerns of contemporary democratic theory reverberate.

In Guizot’s mind these problems arise from a false understanding of the relation of the source of power and the agent of power, as well as between the government and the people. What is society without a government, Guizot asks. Nothing but a confused mass, he answers. It is government that gives society shape, form and stability. “These two facts--society and government--mutually imply one another; society without
government is no more possible than government without society. The very idea of society necessarily implies that of rule, of universal law, that is to say, of government” (HORG, 49). For Guizot, the government represents the transcendent moral norm to the people, and the people need the government as a way to identify themselves with the moral norm. In Guizot the government replaces the King. Just as the king represents the unity of the nation, so too does the government. And just as the king united a regime that was characterized by plurality, so too must society regain the plurality that the old regime and the revolution have stripped it of. This is the task of representative government.

2.3.2 Representative Government

“The principle of the sovereignty of the people, that is to say, the equal right of all individuals to exercise sovereignty, or merely the right of all individuals to concur in the exercise of sovereignty, is then radically false” (HORG, 61).

Guizot thinks himself the first to give the true theory of representative government. He claims that his great forbearer, Montesquieu, misunderstood it. Montesquieu classified regimes according to their spring, but what this amounted to according to Guizot was a mere reiteration of the classic division of regimes according to the number of rulers (HORG, 48). The true division of regimes is based on only one question: whether the source of authority is immanent or transcendent. (This is the same classification of regimes that is found in Maistre and that we will see in Tocqueville). For Guizot, all regimes that place final authority on earth, whether it be in the hands of one,
some, or all are regimes of immanent sovereignty. All regimes that place authority in some transcendent standard, some impersonal moral norm that can never be fully embodied, are transcendent models of sovereignty. Guizot associates the former with popular sovereignty and the latter with representative government. In Guizot’s lexicon popular sovereignty and representative government are antonyms, with the great difference being that “Representative government does not attribute sovereignty as inherently residing in any person” (*HORG*, 52). It is representative government, not popular sovereignty, that is the ultimate *telos*, the great outcome of the European historical process. I summarize how Guizot understands the differences between the two in the chart below.

**CHART 2**

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<tbody>
<tr>
<td>Immanent source of legitimation</td>
<td>Transcendent source</td>
</tr>
<tr>
<td>Government by numerical majority</td>
<td>By Capacity</td>
</tr>
<tr>
<td>Power in Multitude</td>
<td>In deliberative consensus/unity</td>
</tr>
<tr>
<td>Right by fact</td>
<td>Right by proof/test/legitimation</td>
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Since the first fact in political philosophy is not individual freedom but transcendent moral authority, the goal of representative government is to realize, as much as is humanly possible, the rule of the impersonal norm on earth. It does this by fostering a continual striving for and realization of what Guizot calls truth, reason, and justice. Guizot summarizes the zetetic quality of representative government as follows:

“...representative government rests upon the following series of ideas. All power which exists as a fact, must, in order to become a right, act according to reason, justice, and truth, the sole sources of right. No man, and no body of men, can know and perform fully all that is required by reason, justice, and truth; but they
have the faculty to discover it, and can be brought more and more to conform to it in their conduct. All the combinations of the political machine then ought to tend, on the other hand, to extract whatever of reason, justice, and truth, exists in society, in order to apply it to the practical requirements of government; and on the other hand, to promote the progress of society in reason, justice, and truth, and constantly to embody this progress of society in the actual structure of government” (HORG, 55).

The problem with popular sovereignty is that it can never unify the source of authority and the agent of power. Representative government, contrarily, strives to unite actual power and rightful power through the mechanisms of constant debate about truth, reason, and justice carried out by the three characteristics of representative government: separation of powers, publicity, and election.

Guizot appropriates the Montesquieuian notion that the unification of all authority at one point is tyranny. Power must be separated (HORG, 68). Guizot has a positive interpretation of the separation of powers, which includes not only the different organs of government but also the people as a pole of power. The goal of the separation of powers is to foster a continual debate about the impersonal norm by bringing a plurality of opinions about it into the heart of government. In this way the “ruling power...[is forced] to perpetuate its search for reason, truth and justice; that is, for the rule which should govern its action, in order that it may become legitimate” (HORG, 68). Each branch of government that proclaims, executes, or judges law must defend its interpretation before the others. Debate implies disagreement over the practical application and the nature of the impersonal norm. Conversely, Guizot interprets unity of the multiple branches of government as rational consensus: “When, after having deliberated and labored, they find a ground of agreement in a common idea, from whence can proceed one will, then alone will the true unity, which resides in reason, be evolved; then there will be a presumption
that the ruling power knows which alone confers rightful power...All the relations of the 
four great political powers which constitute, with us, the government (that is, the king, 
the two houses of parliament, and the electors) are intended to compel them to act in 
harmony, that is to say, to reduce themselves to unity” (HORG, 69). Through competition 
in the marketplace of ideas Guizot thinks a rational consensus will emerge, and that 
rational consensus can be said to approximate the transcendent standard that legitimizes 
authority. Only when a consensus has been reached is sovereignty present. Contrary to 
Maistre who thinks all rationality is corrosive, Guizot thinks rational consensus is 
achievable through competition.

The second characteristic of representative government is election, which serves 
two functions for Guizot. It prevents the government from becoming the permanent 
sovereign by constantly challenging its authority. Government must legitimize its 
decisions. Election is the “recognition” by the people that the government has acted well 
(HORG, 69). But more importantly, election assembles those most capable of discerning 
the moral norm and places them in positions of power. “The desire and tendency of 
society are in fact towards being governed by the best, by those who most thoroughly 
know and most heartily respond to the teaching of truth and justice; in this sense all good 
governments, and pre-eminently the representative form of government, have for their 
object to draw forth from the bosom of society that veritable and legitimate aristocracy, 
by which it has a right to be governed, and which has a right to govern it” (HORG, 57). 
Guizot’s idea that election should give rise to rule by the best corresponds in his mind to 
the natural inequality of individuals. “The principle of the sovereignty of the people, that 
is to say, the equal right of all individuals to exercise sovereignty, or merely the right of
all individuals to concur in the exercise of sovereignty, is then radically false; for under the pretext of maintaining legitimate equality, it violently introduces equality where none exists, and pays no regard to legitimate inequality” (*HORG*, 61). Certain men know truth, reason, and justice better than others (*HORG*, 61). And it is they that should rule. In believing this Guizot is no different from Plato or Aristotle; but he is different from Rousseau insofar as he thinks the best have a right to rule.

The final and “the most essential characteristic of a representative government” is publicity (*HORG*, 69). Publicity works in multiple directions. Government must defend itself before the public, and the public must communicate its interpretation of reason, truth, and justice to the government. Publicity is a hallmark of the Enlightenment’s opposition to the secrecy of the old regime. But Guizot does not defend transparency just so that the people can know what their government is doing. It is primarily so that there can be a public and open debate about the actions of government with the view of not just critiquing but discerning what reason, truth, and justice are. The marketplace of ideas means that all ideas are contested, subject to rational examination, and put to the test. The notions of “proof” and “test” play significant roles in Guizot’s lexicon, as a hypothesis is tested by the scientific experiment that ensues. That is because we do not know if we have discerned the common good unless our reasons are subject to rational criticism by others: “no individual is fully acquainted with and invariably consents to that reason, truth and justice, which can alone confer the right of sovereignty, and which ought to be the rule of sovereignty as actually exercised” (*HORG*, 55). Since we are all weak we must engage together in combative, zetetic quest for reason, truth, and justice: “every citizen may aid in the discovery of the true law. Thus does a representative government
impel the whole body of society--those who exercise power, and those who possess rights--to enter upon a common search after reason and justice; it invites the multitude to reduce itself to unity, and it brings forth unity from the midst of plurality” (HORG, 54). Representative government energizes all parts of society by continually creating and dissolving consensus, by putting all things up for debate through elections, a free press, and transparent government. Notice that for Guizot the freedom of speech is justified not in terms of rights but in terms of the need to search for the transcendent norm. This justification of rights of free speech in terms of either man’s fallibility or his quest for the truth is paradigmatic of Guizot’s thought.

Separation of powers, elections, and publicity present a plurality of means to achieve a rational consensus. For Rousseau, the general will is unified and therefore plurality must be repressed; for Guizot, it is only plurality which leads to the unity of the “general will.” Representative government does not impose an artificial unity onto society in the name of popular sovereignty, and also prevents anarchy and anomie by establishing a community built around unifying transcendent norms. For Guizot sovereignty is in the representer, not the represented.

“Pascal has said, ‘Plurality which does not reduce itself to unity, is confusion. Unity which is not the result of plurality, is tyranny.’ This is the happiest expression and the most exact definition of representative government. The plurality is society; the unity is truth, is the united force of the laws of justice and reason, which ought to govern society. If society remains in the condition of plurality, if isolated wills do not combine under the guidance of common rules, if they do not all equally recognize justice and reason, if they do not reduce themselves to unity, there is no society, there is only confusion...The aim of representative government is to oppose a barrier at once to tyranny and to confusion, and to bring plurality to unity by presenting itself for for its recognition and acceptance” (Rep. Gov., 52).
The three characteristics of representative government are the means to constitute the unity of truth that becomes the societal consensus, and the mechanism that ensures that unity is always challenged. It is a way that empowers government and safeguards against it. In Guizot’s mind it is his theory of representation that allows him to formulate a non-individualistic, bounded liberalism, one that harmoniously combines unity at the center and plurality in the fringes. It is this citation of Pascal that is emblematic of the task of all of French liberalism, one that is itself echoed in Montesquieu’s wonderful phrase about feudalism: “it produced rule with an inclination to anarchy, and anarchy with a tendency towards order and harmony” (EL XXX.1). If Rousseau's freedom is modeled after the ancient polis in the lexicon of absolute monarchy, Guizot’s liberalism is modeled on feudalism in the lexicon of Pascal.

And yet representative government gives rise to an understanding of political freedom that is paradoxically quite different and yet strikingly similar to what is found in Rousseau. Guizot appropriates almost in toto, without naming him, Rousseau’s distinction between natural and civil liberty. Natural liberty is arbitrary willing while rational liberty is making one’s will conform to a rational standard “The importance of

117 Guizot also see publicity in terms of unity and plurality: “every citizen may aid in the discovery of the true law. Thus does a representative government impel the whole body of society--those who exercise power, and those who possess rights--to enter upon a common search after reason and justice; it invites the multitude to reduce itself to unity, and it brings forth unity from the midst of plurality” (HORG, 54).

118 Wolin provocatively interprets that passage as follows: “At [Montesquieu’s] hands feudalism became a term to designate an alternative to the centralized state. It stood for the periphery against the center, for the diversity of local institutions and practices against the uniformizing tendencies of administrative rule, in sort, for political polytheism against political monotheism....Because ti was a conception that depicted and explained political society as a concatenation of differences--of moral beliefs, religious customs, local practices, class structures, economic systems, and geography--it could be said to pit political culture against political rationality, the centrifugal tendencies of the one against the centripetal impulses of the other” (Wolin, The Presence of the Past, 128, cited also by Nicholas Xenos in “Momentary Democracy” in Democracy and Vision, eds., Botwinick and Connolly (Princeton, 2001), 29.
this distinction between moral and natural liberty, between social freedom and individual independence, is immense...It is as a reasonable being, capable of recognizing truth, that man is sublime; therein resides the divinity of his nature: liberty is in him nothing but the power of obeying the truth which he recognizes, and making his actions conform thereto. On this ground, liberty is very respectable; but liberty is respectable on this ground alone..natural liberty--liberty to do nothing but what they please. This is caused by the imperfection of the moral development of the individual” (HORG, 135). Guizot makes natural liberty the liberty of early Europe and moral or rational liberty the object of late European history. Guizot simply inscribes Rousseau’s “mythical” history of man into actual European history. Guizot’s anti-Rousseau rhetoric masks other similarities. Both think freedom is only moralized when it obeys a rational standard and that that standard is made possible by man’s socialization. Once the “general will” or “truth, reason, and justice” has been discovered they should be obeyed. Notice how Guizot’s rhetoric comes quite close to the notion of forcing one to be free: “Society itself is the union of individuals in one common idea, feeling and interest. Society can exist only by the obedience of individuals to one common rule...The object of society is to discover this superior law, and to exact obedience to it alone” (HORG, 134). And government should find true law “and subject to this law all adverse individual wills” (HORG, 135). Both Guizot and Rousseau have something like an identification mechanism of freedom: to be free is to acknowledge and live according to the higher moral standard of the community. While in Rousseau one identifies with the “nation” or patrie, which is higher than the government, in Giuzot one identifies with the government insofar as it embodies the transcendent standard, and the transcendent standard insofar as the government does not.
But they diverge insofar as Guizot understands freedom as obedience to divine law. He describes freedom in terms of “perverse and loyal wills” and in terms of the struggle between light and darkness (HORG, 296).

Both theories of political freedom are also plagued by similar difficulties. There is a hesitation in both theories between whether the impersonal norm or some group personally is sovereign. Giuzot denies that any earthly agency is sovereign. But he also thinks that insofar as society has reached a rational consensus that embodies the common good then the agency that legislates that consensus is sovereign. When there is no consensus nobody is sovereign. For Rousseau the impersonal general will is sovereign, and the people should conform to it. But since the people are the ultimate interpreters of the general will they are personally sovereign, just as for Guizot the government is the ultimate interpreter (if push comes to shove) of consensus and thus itself sovereign.

But there are also significant differences between the two notions of political freedom. For Guizot political freedom is almost entirely stripped of democratic consent. Since he places such a high importance on social qualifications, which is how he discern those “capable” of finding truth, justice and reason, it makes sense that Guizot would place strict limits on the right to vote. In his theory it is very possible that a large part of the population would be excluded from any part in government. And this restricted franchise is part of what led to his downfall in 1848. The significant thing to notice is that in Rousseau everyone is by the very fact of their participation in the regime a member of the sovereign, even though a property qualification could be established for participation in the government. In Guizot if one cannot vote then one is excluded from the sovereign.
In that case one is forced to obey laws to which one has never given one’s consent. What Rousseau would call tyranny Guizot thinks perfectly compatible with liberty.

Guizot fully endorses the type of political freedom that Constant thinks is characteristic of commercial modernity: public discourse. For Guizot the citizen’s primary involvement in public affairs is rational debate through newspapers, pamphlets and books. The whole goal of the citizen’s participation is to discern moral truths and their application to political phenomena. Guizot had an academic’s mind. He turns all of society into one big university that searches together for the truth. Just as a university is a turning towards unity, so too society is made one by the unity of truth. It is easy to point out however that on most matters universities hardly come to any rational consensus, much less entire societies. Society could come to a consensus on the idea that there should be freedom of speech, but there will be much disagreement on when those freedoms can be restricted (state secrets, indecent material, inciting violence, etc.). This is why Schmitt derisively calls Guizot’s system one of eternal conversation without a decision. Schmitt is right that sovereignty means that someone must ultimately make a final decision. In Rousseau that power is placed in the people. Guizot, in placing the power nowhere on earth, masks the fact that that power is ultimately placed in the government. There is then a strong statist streak to Guizot that is not found in Rousseau. That is why some people call Guizot’s thought a liberalism of government.

While both Constant and Guizot are liberals they differ substantially. For Constant there is an aspect of human life that is never subject to sovereign control and that is necessarily private. Notice how for Constant the transition to modern civilization is the rise of individuality, and for Guizot it is the rise of representative government. Those
are two different narratives of modernity. Guizot looks at the problem of democratic government from the standpoint of authority, worried that modern society will disintegrate if not united by rational norms; Constant, suspicious of all claims to know the truth and to legislate for society, looks at the problem of democracy from an overabundance of moral legislation that overly restricts the individual’s private sphere, which is a space for self-development. Guizot would probably think Constant’s praise of the romantic search for individuality in love, art, and religion nothing but expressivist anomie. But while they look at the problem of post-revolutionary society from different perspectives they come up with a list of liberal rights that are in fact quite congruent: freedom of the press and assembly, free and contested elections, representative and transparent government, religious freedoms, separation of Church and state. It is, nevertheless, a significant fact that both Constant and Tocqueville opposed the Guizot administration as overly elitist and restrictive. Both were more democratic than Guizot.

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Guizot, unlike Constant, departs in two significant ways from the original commitments of liberal individualism. Popular sovereignty after Rousseau is based on the moral equality of all by nature; all legitimate authority is artificial because there is no legitimate authority by nature. Guizot rejects this idea. He argues that there is a natural inequality of individuals. Of course liberal theorists from Rousseau to Tocqueville all recognize that some individuals are naturally more gifted than others. But they do not attach any moral significance to this difference. Natural superiors have no moral right to
rule. Guizot, on the other hand, thinks that they do. Not only is there authority by nature but the gifted and excellent have a right to and should rule others.\textsuperscript{119} By denying natural equality Guizot attempts to deny the moral foundation upon which a dangerous popular sovereignty is erected.

But he goes even further. Guizot also rejects popular sovereignty by arguing that the trinity of concepts that he reiterates are the only source of legitimate rule: truth, justice, and reason. It is this trinity alone that Guizot calls sovereign. Guizot counters a voluntaristic individualism by returning to the idea that man is born into a complex relation of authorities which he cannot reject and to which he ultimately owes obedience. The idea that man is born into a system of obedience is the polar opposite of what Rousseau claimed in the Emile was his first principle, the moral bedrock, of his political philosophy.

It is of the utmost interpretive importance for a correct understanding of Guizot’s thought that one comprehend what he means by this trinity of concepts. Based on many statements, especially from the crucial lecture 10 of part 2 of the History of the Origins of Representative Government, it is clear that Guizot intends the combination of these three concepts to denote divine law.\textsuperscript{120} Ultimately, then, Guizot (like Maistre) attempts to replace popular sovereignty with divine sovereignty. Sovereignty is necessarily and always transcendent; it is never a product of the human will. Man can only approximate it, but never fully embody it. To do this would be godlike, and man is no messiah.

\textsuperscript{119} Guizot, \textit{HORG}, pgs. 61-2, Manent (1996).

\textsuperscript{120} Guizot, \textit{HORG}, pages 295-7. See the explicit statement in \textit{On Sovereignty} (which was not published until 1985 by Pierre Rosanvallon annexed to the \textit{Histoire de la Civilization en Europe}), 321.
But Guizot’s attempt to subject the human will to transcendent divine sovereignty presents numerous difficulties. First, the divine law is variously interpreted. This is abundantly clear to Guizot, a Protestant, living in what was at the time a ninety-seven percent Catholic country. But even more significantly, it was the contending interpretations of the divine law and its earthly role that caused the wars of religion and divided authorities within each state. It was this conflict that led to the formation of the modern idea of the sovereign nation state, with a sovereignty independent of the claims of the Church in Rome, the Holy Roman Empire, and of the conflict of warring religions. Guizot’s idea of representation, because it argues that the divine law is not fully known by man, is not a solution to, but an institutionalization of, the problem of conflicting authorities. This institutionalization of the quest for the divine law is a very different approach than the one taken by Constant, who privatizes that quest and removes it from the public sphere. The institutionalization of the quest for divine law, to be peaceful, presupposes the success of modern political philosophy, a central aim of which was to tame religious authorities and subordinate them to the nation state. Guizot’s thought thus presupposes the success of the modern philosophy which he purports to reject.

That Guizot left these thorny problems that stand at the center of his political thought ambiguous is perhaps no surprise. He was a public man and most of his significant political writings were books derived from lectures and political occasionals. The History of the Origins of Representative Government was written in the remarkable time of under a year. He never finished his treatise On Sovereignty. He also lived in an age, we must remember, when freedom of the press was endangered and censorship common. As a leader of the liberal opposition, he had no incentive to draw attention to
the fact that his political thought tended to espouse religious ideals at odds with the Catholic majority. But, like Maistre, Guizot’s solution to the theological-political problem that confronted Hobbes and Rousseau is to reject the notion that religion is subordinate to the political regime and in the service of human freedom. But Guizot remains a staunch liberal because, unlike Maistre, he places great emphasis on human fallibility. For Maistre this meant obey existing authorities. For Guizot this means challenge existing authorities. Unlike Constant, Guizot derives liberal freedoms not from the moral freedom and equality of the all individuals, which he denies, but from the fallibility of humanity, or from man’s inability to completely embody the divine. His is a strange liberalism of institutionalized skepticism grounded in the certainty of God’s existence. Guizot is then not a liberal in a traditional sense, but that he is a liberal shows the diversity and multi-facetedness of the tradition.

2.4 Enter Tocqueville

Post-revolutionary French liberalism rethinks the relation of the source of power’s authority and the agent of power in light of the Revolutionary experience and counter-revolutionary thought. In so doing Guizot, and to a lesser extent Constant, departed from Rousseau’s notion that liberty is autonomy or participation in the collective sovereign. This notion of liberty armed public power at the expense of individual rights. Their task was to secure the protection of individual rights against public power. They both do so by means of representative government, which, they believed, would solve the schizophrenia of popular sovereignty at the heart of the French Revolution: either power was dispersed
into the formless mass, mute or inarticulate, or it was unified in government to carry out their unified will, sometimes without their consent.

It is clear from Tocqueville’s notes on Guizot that he understood Guizot’s analysis of the French Revolution remarkably well. In a letter to Beaumont, at the time he was listening to Guizot, he wrote: “There are two great disadvantages to be avoided in the organization of a people: either all social power is united at one point or it is dispersed among the regions. Each of these has its advantages and disadvantages. When everything is joined in a single bundle, once the bundle is broken, everything falls apart and a people disappears. When power is disseminated, action is evidently circumscribed, but resistance is everywhere. I don’t know if a balance between these two extremes can be found” (cited in Siedentop intro to Guizot, xxxii).

With that problem in mind Tocqueville went to America to find the balance between sovereignty and liberty. But while he adopted Guizot and Constant’s worry that popular sovereignty tends toward the dual evils of individualism and despotism, he rejects their institutional solutions, which protect freedom by dividing power along an English model that combines hereditary authority with an elected representative government:

“It is not that I believe that in order to preserve freedom one can mix several principles in a manner that really opposes them one to another. The government called mixed has always seemed to me to be a chimera. There is, to tell the truth, no mixed government...because in each society one discovers in the end one principle of action that dominates all the others...When a society really comes to
have a mixed government, that is to say equally divided between contrary principles, it enters into revolution or it is dissolved. I think, therefore, that one must always place somewhere one social power superior to all the others, but I believe freedom to be in peril when that power finds no obstacle before it than can restrain its advance and give it time to moderate itself” (DA I.ii.7 M 241).

It is Tocqueville’s task in Democracy in America to outline the new dangers and new solutions to the dilemma of post-revolutionary French liberalism.

The next chapter investigates Tocqueville’s appropriation and reformulation of how sovereignty becomes despotic, posing new challenges that were not central to either Constant or Guizot. The fourth chapter explores Tocqueville’s philosophy of freedom.
CHAPTER 3:

POPULAR SOVEREIGNTY AND THE NEW DESPOTISM

Popular sovereignty as a radically new foundation of political legitimacy opens up new vistas for the achievement of human freedom. Yet popular sovereignty also opened new avenues to despotism. By basing legitimacy on the consent of free and equal individuals, popular sovereignty is a radical critique, delegitimization, and eventual destruction of the social, juridical, and theological world that restrained sovereign power in the Old Regime. The democratic movement strengthens sovereign power at the same time that it weakens what restrains it. This was the problem that the different versions of representative government in the Restoration sought to resolve. The same problematic is at the very center of Tocqueville’s thought. In summarizing Democracy in America (1835, 1840) in the preface to the Old Regime and the Revolution (1856), Tocqueville highlights three truths: that democracy is the inevitable future of mankind, that “of all forms of society, the one where aristocracy does not and cannot exist is just the one which will have the most difficulty escaping absolute government for long”, and finally that “nowhere does despotism produce such pernicious effects as in just this kind of society” (OR Preface, K 87).121 These truths signal Tocqueville’s appropriation of the

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121 Citations to the works of Tocqueville are as follows. OR is Old Regime and the Revolution, trans. Alan Kanan (University of Chicago Press, 1998). In citing Democracy in America “M” refers to the Mansfield edition, (University of Chicago Press, 2000) and “LF” refers to Liberty Fund, translated by
problematic of his predecessors. Central themes of *Democracy in America*, such as the dual movement of democracy towards atomization and centralization and the tendency of democracy to degenerate into a Napoleonic dictatorship in the name of the people or into the uninhibited rule of the people, are classic tropes of Restoration liberalism’s analysis of the old regime and the French Revolution. But if Tocqueville took the *problématique* from his predecessors, he does not think their analysis of the “new society” fully captures the democratic dynamic, the new dangers, as well as the new opportunities. Tocqueville is quite appreciative of representative government as a modern necessity, but he rejects it as a fully adequate solution. Very much like Constant, Tocqueville insists that for the moderns the free regime combines both protection from sovereign power and thus a space of privacy and participation in public life, both liberalism and democracy. In this chapter I examine Tocqueville’s depiction of the dangers of the democratic movement by looking at several different takes on despotism in his thought, many of which render problematic the liberal solution of representative government as the proper means to ensure liberty in the democratic era. In the next chapter I expound Tocqueville’s version of liberal democratic freedom, which I argue is his response to the problem of French liberalism.

The despotic is a powerful label. It identifies one of the most hateful things in human life. It is evil and unjust. But it is a shifting, mobile concept denoting multiple and often different practices and ideas. The history of words is testimony to the variety of experiences that humanity has abhorred: despotism, tyranny, authoritarianism,

James Schleifer, edited by Eduardo Nolla (Liberty Fund, 2010). OC refers to the Pleiade edition of Tocqueville’s works.
totalitarianism, fascism, tyranny of the majority. Each of these tries to theorize a different political pathology. This crowded field of concepts, an homage to the ingenuity of human cruelty, each signal a seemingly new possibility that calls for a new theory and a novel response. Tocqueville himself has a multiplicity of despotisms. This is typical of his style. For him one social state gives rise to numerous possibilities. Democratic modernity has multiple trajectories. In what follows I try to stay true to that equivocality.

Tyranny is such a central component of Tocqueville’s thought that something like standard treatments have arisen. One standard is the developmental account, which traces the shifting locus of Tocqueville’s worries throughout his carrier. An exemplar of this tradition is James Schleifer’s classic *The Making of Tocqueville’s Democracy in America*, which catalogues Tocqueville’s “gallery of despotisms.” Schleifer carefully outlines the mutation of Tocqueville’s anxieties in the democratic age from his early concern in volume I about Bonapartism or a single tyrant who uses popular sovereignty to gain control of the regime and eliminate political life, the tyranny of the majority centered in a legislative body following the *Federalist*, then the omnipotence of the majority or Tocqueville’s famous idea that tyranny has been spiritualized, until his final and most novel contribution, that of soft despotism, which combines plebiscitary democracy and administrative regulation. Another emerging standard account is what one might call the “modern account.” This is developed by Roger Boesche’s *Theories of Tyranny from Plato to Tocqueville* and more extensively in Sheldon Wolin’s *Tocqueville*.

122 There are, however, a number of respected works on Tocqueville that have little to no extended treatment of despotism. These include Manent (1992), Lawler (1993), Mitchell (1995), and Welch (2001).

123 Schleifer ([1980] 2000), 237

124 Schleifer ([1980] 2000), Parts IV and V, especially pgs. 221-237
Between Two Worlds. The modern account emphasizes Tocqueville’s achievement in theorizing what is specifically modern about despotism, including a despotism with no locus of power, that is anonymous, and that creates the ideology of freedom within a reality of oppression. My treatment of despotism extends these themes.

But instead of taking the typical route my analysis of despotism below focuses on themes central to thinking about sovereignty, such as the relation of unity and plurality, the bounded and boundlessness. By focusing on these themes in sovereigntist thinking I hope to shed light on novel aspects of Tocqueville’s understanding of despotism in the democratic era.

One of these is a very old political theme of boundaries. In the ancient political imagination the despotic is the application of a set of norms from one sphere of life onto another where those norms are not appropriate, turning the polis into the household, for example. A despot treats the city as his personal property, claiming ownership of things of which he is not the rightful owner. The converse of despotism is the separation of spheres of life that should be kept distinct. To separate is to create a boundary between things, to establish a demarcation line between one realm and another. The notion of the boundary is also a principal component of the Judeo-Christian religious tradition, in


126 By focusing on popular sovereignty I draw our attention to under-appreciated elements of his thought including despotism as unity or the elimination of difference, and despotism as the effacement and transgression of boundaries. For instance, sovereignty is hardly to be found in Wolin’s extensive treatment, a rare element of Rahe’s (2009) large book on democratic despotism and completely absent from Lawler (1993) and Mitchell (1995). Exceptions exist in French scholarship. Lucien Jaume’s recent Les Sources Aristocratiques de la Liberté (Fayard 2010) places emphasis on authority as a central problem in Tocqueville, and Rosanvallon (2000) makes sovereignty a key component of his narrative of French liberalism.

127 I’ve only seen this discussed at any length in Mitchell (1995) 178-193
which the sacred is separated from the profane. The similarity of the metaphor in political and religious life reminds us of their original convergence in the idea of the holy city. The household is the realm of the personal gods, the maiores, the city the realm of the city’s gods and thus a holy or sacred space, continuous yet distinct from the household. The boundary or the threshold of the city and the household has both a political and a religious connotation, a commingling very much apparent when Romulus kills Remus for overstepping the walls of the city. The idea that despotism is the effacement of the distinction of different “value” spheres is also engrained in the liberal political imagination in which there is a strict demarcation of the public and the private, where the state plays a role and where it should exercise no power. The notion that the government has no right to regulate the activities of the bedroom or “an establishment of religion” is an abstraction given concreteness by the physical structure of the bedroom and the Church, by which we take a plot of land on which nothing was and by the very construction of a dwelling we bring a sphere and a boundary into existence that is not subject to a “foreign” power. The notion of separate values spheres as central to tyranny is appropriated by Pascal (Pensée 322): “Tyranny consists in the desire of universal power beyond it’s sphere....These expressions are tyrannical: I am beautiful, therefore fear me; I am strong, so love me.” The despotic is the misapplication of one sphere’s value to another. In politics this is unity when there should be plurality, and plurality when there should be unity.\textsuperscript{128} Through Pascal we see these themes in Guizot, and through both we see them in Tocqueville.

\textsuperscript{128} This is the basic insight that launches Michael Walzer’s \textit{Spheres of Justice} (Basic Books, 1984).
3.1 Popular Sovereignty and the New Society

“Sovereignty of the people and democracy are two perfectly correlative words; the one represents the theoretical idea, the other its practical realization” (LF 91 a).

Sovereignty is a polemical and exclusive concept. It affirms and legitimizes one view of the world and excludes and delegitimizes others. Monarchical sovereignty in the nation state was the legitimation of a feudal, hierarchical, and theologically permeated society that was a rejection of the *plenitudo potestatis* of the Pope. Popular sovereignty is a rejection of the monarchical world and the legitimation of a democratic one. In the old world popular sovereignty began its life as a polemical concept employed against the ancien régime. But the equality it affirms begins its career much earlier. The preface and opening four chapters of *Democracy in America* trace the emergence of social equality out of the bosom of the aristocratic world. It is a condensed version of Constant and Guizot’s historical project that is directed against the counter-revolutionaries: it shows the historical inevitability (and hence irreversibility) of the democratic age, and that this movement is a providential fact and hence compatible with Christianity and the divine will. After repeating the Restoration narrative of the history of Europe in miniature, Tocqueville shows how the complex of features of the new continent, its geography, the character of its early settlers formed what he calls the democratic social-state, his primary
analytic tool throughout *Democracy in America*.\(^{129}\) It is this social state which finally gives rise to what he calls “the dogma of the sovereignty of the people.”

Popular sovereignty is something akin to democratic ideology, a theory that legitimizes a pre-existing socially egalitarian and politically equal regime. Tocqueville’s first definition of what popular sovereignty entails again follows Guizot’s double classification of regimes according to whether political right is derived immanently from within society or from some transcendent source: “There are countries where a power, in a way external to the social body acts on it to follow a certain path. There are others where force is divided, being simultaneously inside and outside of society. Nothing of the sort is seen in the United States; there society acts by itself and on itself [*par elle-même et sur elle-même*]. Power exists only inside of it” (DA I.i.4, LF 96, OC II 62). Democratic popular sovereignty, a regime that is self-enclosed, self-grounding, and self-regulating, with no legitimate authority above or beyond it, is only made possible in Europe by the grand social revolution that brought down the remnants of the feudal social structure and gave birth to mass society.\(^ {130}\) In America it was produced by a combination of factors including geography, the necessity for everyone to farm the land and to participate in colonial government, and the culture of the early inhabitants. In the early stages of *Democracy in America* Tocqueville seems to provide what is by that time a conventional account of Western history. Popular sovereignty seems merely to be the theory that

\(^{129}\) For the best consideration of Tocqueville’s analysis of the genesis and meaning of social state, see Zuckert (1993). The democratic social state admits of various meanings in Tocqueville, from social equality to political equality. Schleifer has counted more than 10 definitions of democracy in Tocqueville.

\(^{130}\) Tocqueville and Carl Schmitt are in agreement on this: “To the conception of God in the seventeenth and eighteenth centuries belongs the idea of his transcendence vis-à-vis the world, just as to that period’s philosophy of state belongs the notion of the transcendence of the sovereign vis-à-vis the state. Everything in the nineteenth century was increasingly governed by conceptions of immanence...like the democratic thesis of the identity of the ruler and the ruled” (Schmitt, *PT*, 49).
justifies a society that has largely taken shape: “Sovereignty of the people and democracy are two perfectly correlative words; the one represents the theoretical idea, the other its practical realization” (LF 91 a). Popular sovereignty is the theory of legitimation given to the democratic social state.

But Tocqueville’s narrative, and his consequent development of what popular sovereignty entails, departs from his predecessors in significant ways.

Guizot’s narrative of western history made representative government the impulse of the ages. Remember that Guizot thinks popular sovereignty is radically false. The American regime in which “It is in humanity and not above or beyond that democratic man will place the arbiter of their beliefs” is the opposite of Guizot’s thought (LF 711 a 3, also 717). Tocqueville at first seems to concur with Guizot by calling popular sovereignty a “dogma” and not a truth. But this is not the case. For Tocqueville popular sovereignty is not a modern invention. “The principle of the sovereignty of the people, which is more or less always found at the base of nearly all human institutions, ordinarily remains there as if buried. It is obeyed there without being recognized” (DA I.i.4, LF 91; OC II, 60). The movement of history, from the transcendent to the immanent, is the slow uncovering of the permanent yet veiled source of legitimacy in all political institutions. History is a movement from obscurity to light, from “fiction” to truth (DA I.i.4, M 55). Both Guizot and Tocqueville think democracy is secularized Christianity, but for Tocqueville this means that “it was necessary for Jesus Christ to come to earth to make it understood that all members of the human species are naturally alike and equal” (DA II.i.3, M 413). The movement of history towards equality is the slow uncovering of a truth about mankind that Guizot’s political thought denies.
That movement from obscurity to light is also one of mankind becoming self-conscious of itself. It took the leveled, equal social state at the end of the Roman Empire and America to reveal this fact. One could be tempted to think that Tocqueville provides a natural or sociological explanation of religions and ideologies. That is, that popular sovereignty is just a way to justify the current state of the world rather than a transhistorical truth. Tocqueville recognizes that for democratic popular sovereignty to be the veritable source of legitimate power and thus of political right, and not simply the new historical dispensation, it has to be grounded in some truth. One must dig around in his writing and collate a few different passages in order for this to emerge clearly, as Tocqueville never wanted to fully endorse democratic popular sovereignty. But he does famously think equality is “more just” than aristocracy (DA II.iv.8). In a minor writing between the first and second Democracy Tocqueville gives unequivocal endorsement of the principle at the bottom of the sovereignty of the people, the idea that each man is equally given by nature sufficient lights to run his own affairs as he sees fit: “According to the modern notion, the democratic notion, and if I dare say the just notion of liberty, each man, being supposed to have received from nature the necessary lights to conduct his life, has from birth an equal and enduring (imprescriptible) right to live independently of those like him (ses semblables), in everything that relates only to himself, and to arrange his own destiny as he sees fit. From the moment when this notion of liberty has profoundly penetrated the spirit of a people, and has solidly established itself there, absolute and arbitrary power is no more than an arbitrary fact, a passing accident. Since everyone has an absolute right over himself, it results from that that the sovereign will can only emanate from the union of the wills of everyone.” (Pleide, III 36). He repeats
this idea at several points in *Democracy in America* as the maxim that undergirds American democracy (DA I.i.5; LF 108, OC I 70). Tocqueville is committed to the idea that the movement from aristocracy to democracy is one from injustice to justice, from force to right.  

Tocqueville’s reworking of Guizot’s narrative of the rise representative government brings history more in line with the core commitments of social contract liberalism that Guizot’s historical organicism was meant to displace. The historical genesis of American democracy confirms the truth of the abstract “apriori” premises of social contract liberalism that man is free and equal by nature or that there is no natural right to rule. Moreover, Guizot agreed with Maistre that man was not a “maker” of his regime, but that he receives them from history and society. The turn to the historical and the social was intended to curb if not radically deny human voluntarism. Tocqueville strikes a sensible middle way between the two positions. He describes the rise of American democracy as a product of the cunning of reason, of unintended consequences, of God, even of the soil that rejected aristocracy, *in fine*, of everything *but* conscious human intent. But like Constant, Tocqueville thinks the modern age is mankind coming into self-consciousness of itself. We have left the age of instinct and entered the age of art. Tocqueville says that in the democratic age despotism is its natural outcome, and freedom is the product of art, which is conscious human intent, the application of the human will to political and social life. *Democracy in America* is premised on the idea that we can direct democracy, that despotism is not inevitable and hence that there is a large role that human freedom can play.

131 DA II.iii.18, esp. comparing LF 1099 and 1105.
Tocqueville’s narrative of western history and his understanding of popular sovereignty also depart from Constant’s in important ways. Tocqueville does not once mention Constant in his working notes to Democracy in America, so this dialogue must be analytically reconstructed. Both Constant and Tocqueville think that the rise of the modern is equated with the destruction of an unjust inequality and the rise of a just and natural equality. But for Constant, equality is not the same as political democracy. His narrative of western history intended to show that political democracy is an ancient and anachronistic phenomenon and that modern political democracy is essentially representative government. Both Constant and Guizot base their politics on the anachronism of direct democracy and its difference from representative government. Tocqueville thinks this is a false dichotomy. He describes the early American colonies and the American township multiple times as Athens or as the direct rule of the people (M 40, 55). In fact America, so to say, is more Athenian than Athens: “What was called the people in the most democratic republics of antiquity scarcely resemble what we name the people. In Athens all citizens took part in public affairs; but there were only twenty thousand citizens out of more than three hundred fifty thousand inhabitants...Athens, with its universal suffrage, was therefore, after all, only an aristocratic republic...” (DA II.i.15, M 450-1). Modern democracy, as Tocqueville says in his chapter on the sovereignty of the people, inevitably results in universal suffrage, making Guizot’s regime of capacities itself an anachronism. In America the people govern. But the critique of popular sovereignty in the Restoration was that the people as the source of power cannot govern,

132 “The perfectibility of the human species is nothing other than the tendency towards equality” Sur la perfectabilité de l’espèce humain, in Écrits Politiques (714).
and they are forced to delegate their agency to representatives who govern in their names. If one traces Tocqueville’s careful use of the phrases “generative principle” and “first cause” one will find that he applies the concept first to the Puritans, then to the democratic social state, then to popular sovereignty, and finally to public opinion” which is the dominant power. The generative principle of the laws....” (M 40, 45, 54, 117).133

After discussing the state and Federal government, in which all politics is necessarily representative, Tocqueville begins part two of volume one by claiming that “although the form of government is representative, it is evident that the opinions, the prejudices, the interests, and even the passions of the people can find no lasting obstacles that prevent them from taking effect in the daily direction of society” (DA I.ii.1, M 165). America belies both Constant’s historical narrative and his analysis of the democratic present.

Tocqueville sees this as both a danger and an opportunity. It was thought during and after the disappointments of the Revolution that popular sovereignty was a power that did not redound to the benefit of the people, that it was elusive and unavailable to them. America proves, according to Tocqueville, that this is not necessarily the case. But the advantage of modern democracy intensifies old dangers and gives rise to new ones. It is to an analysis of these that we now turn.

133 Pierre Manent (1982), chapter 1
3.2 From Plurality to Unity, or tyranny as the elimination of difference

“In the heart of a democracy organized as that of the United States, one encounters only a single power, a single element of force, and nothing outside of it” (DA II.ii.7, M 244).

The central argument of Guizot’s History of Civilization in Europe is that continental Europe emerged out of a plurality of traditions that throughout history were reduced to only two elements: a centralized, unitary state and a decomposed or atomistic society. The movement of history is from too much plurality to too much unity. Recall Guizot’s citation of Pascal that he called the perfect expression of representative government and which I have called the motto of French liberalism: “Pascal has said ‘Plurality which does not reduce itself to unity is confusion. Unity which is not the result of plurality, is tyranny.’”\(^\text{134}\) For Pascal, this formulation has theological intent. It expresses the relation of the Pope to the Church, and the members of the trinity to each other. There are two different errors. Monism, or the idea that one entity is everything (or that the Pope makes up the whole Church), and anarchy, or the idea that a multitude of objects do not have some shared, unitary identity (as if the Pope were just another member of the Church and not the unifying authority).\(^\text{135}\) Politically, it is the idea that the free regime

\(^{134}\) Guizot, HORG, 52. Pascal Pensées 501 (Brunschvicg 871), Livres de Poche 1108, see also Pensée 473.

\(^{135}\) For thoughtful considerations of the notion of similarity and separation, which is central to Tocqueville’s understanding of unity and plurality, see Mitchell (1995) 178-193, Wolin (2001) 352, and Manent (1982) chapter 5, and LF 413 s.
balances a unified, central state with a pluralistic and diverse society, a state that avoids the dual excesses of tyranny and anarchy. Tocqueville adopts and extends Guizot’s analysis by showing that democracy produces two modes of unity, one which entails the delegitimization of the state and which produces a form of individualistic “anarchy” (which I call cosmopolitan unity) and one which entails the divination of the state that entails the imposition of unity onto society in the name of national unity (which I called collectivist unity).

Tocqueville associates democracy with similarity: a single class with similar beliefs, similar habits, extending outwards towards a humanity that is becoming increasingly homogeneous. He contrasts democratic similarity with aristocratic differentiation: separation between classes with different values and cultures. These two different cultural modes give rise to two different tendencies: democratic similarity engenders unity while aristocratic difference produces plurality and particularity. This distinction can be best seen in Tocqueville’s two successive chapters *How the Appearance of Society in the United States is at the very same time agitated and monotonous* and *On Honor in the United States and in Democratic societies* (DA II.iii.17 and 18). Like Aristotle in the *Politics*, Tocqueville takes the inherent tendencies in aristocracy and democracy and idealizes them almost to the point of caricature in order to reveal their inner logic. The quotation, which gives a theory of culture as a function of extension and restriction, of large and small, is so significant that I cite it in its entirety.

“A nation takes up a separate position within humanity. Apart from certain general needs inherent in the human species, it has its own particular interests and needs...Within this same nation, a caste becomes established, which,

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136 Guizot, *History of Civilization in Europe*, lecture 14, esp. pg. 238-241
separating itself in turn from all the other classes, contracts particular needs, and the later, in turn, give rise to special opinions. The honor of this caste, bizarre mixture of the particular notions of the nation and of the still more particular motives of the caste, will diverge as far as you can imagine from the simple and general opinions of men. We have reached the extreme point; let us go back. Ranks mingle, privileges are abolished. Since the men who compose the nation have again become similar and equal, their interests and the their needs blend, and you see successively vanish all the singular notions that each caste called honor; honor now derives from the particular needs of the nation itself; it represents its individuality among peoples. If it were finally allowed to suppose that all races were blended and that all the peoples of the world had reached the point of having the same interests, the same needs, and of no longer being different from each other by any characteristic feature, you would cease entirely to attribute a conventional value to human actions; everyone would envisage them in the same light; the general needs of humanity, which conscience reveals to every man, would be the common measure. Then, you would no longer find in this world anything except the simple and general notions of good and evil...” (598-9).

There is nothing ever purely good or evil in Tocqueville eyes. There are always polyvalent tendencies that turn in multiple directions. Aristocratic difference can easily degenerate into oppression and injustice, but Tocqueville also thinks it has two great benefits. First, regimes of corporate social plurality can have multiple centers of power and thus multiple sites of resistance to authority. “In aristocratic nations, secondary bodies form natural associations that halt abuses of power. In countries where such associations do not exist, if particular persons cannot create artificially and temporarily something that resembles them, I no longer perceive a dike of any sort against tyranny” (DA I.ii.4, M 184). Second, aristocratic plurality nurtures individual independence and originality. “It is necessary to be different from your fellows in order to envisage the world in another way...It is necessary to feel strong and independent from them in order to dare to act in your own way and to follow alone your path. These two conditions are found only where conditions are very unequal, where men exist...[who] dare to show without fear what distinguishes them from the rest of men...The result is that originality
of mind and manners is much more common among aristocratic peoples than among others, above all among aristocratic peoples who enjoy great political liberty. The political state then allows the differences given birth by the social state to be shown” (DA III.iii.17, LF 1091). A culture of differentiation and separation is more likely than one of similarity to nurture prideful independence and individuality. And that is the paradox of aristocracy. It is based on injustice and yet it fosters both resistance to authority and human particularity, if not greatness. Democracy is oppositely paradoxical. It is based on justice and yet fosters too much similarity and unity such that it endangers individuality and erodes centers of resistance to power.\textsuperscript{137} Almost all aspects of democratic life are monistic: one can generalize because people are equal, the mass is motivated by single causes, history is driven by one social force, even the entire universe is similar insofar as it is one monistic being, or pantheism. In democratic times “the mind is obsessed by the idea of unity”, Tocqueville says, “looking for it in all directions, and, when it believes unity has been found, it embraces it and rests there...I have no difficulty concluding that such a system, although it destroys human individuality, or rather because it destroys it, will have secret charms for men who live in democracy” (DA II.i.7, LF 758).

Democratic similarity is pernicious in two different ways: the soft variety of cosmopolitan unity that dissolves community and the hard variety of national collectivism that imposes it.

Cosmopolitan unity is the notion that mankind forms one unified whole. “When conditions are very unequal, and inequalities are permanent, individuals become little by

\textsuperscript{137} “The most profound and vast geniuses of Rome and Greece were never able to arrive at the idea, so general but at the same time so simple, of the similarity of men and of the equal right to freedom that each bears from birth” (DA, 413).
little so dissimilar [dissemblables] that you would say that there are as many distinct
humanities as there are classes; you see only one of them at a time, and, losing sight of
the general bond that gathers all within the vast bosom of the human species, you
envisage only certain men and not man” (DA II.i.3, LF 731, OC II 523). Contrarily,
democratic nations think of mankind as “un seul tout.” The more democracy is prevalent
in the world, the more mankind in fact becomes similar: “In democratic centuries...the
inhabitants of different countries mingle together, see and hear each other, and borrow
from each other. So it is not only the members of the same nation who become similar;
nations themselves assimilate, and all together form in the eye of the beholder nothing
more than a vast democracy in which each citizen is a people. That brings to light for the
first time the figure of the human species” (DA, II.i.17, LF 838). As man is increasingly
self-conscious of being a member of humanity, the idea of the unity of the human race
exerts a stronger hold on the mind of each individual. In Tocqueville’s mind the reign of
democratic similarity is associated with the rise of human nature in its purity, shorn of the
artificial conventionality of exclusivist cultural heritages.\footnote{138} The \textit{raison d'être} of national
boundaries crumble in the wake of democracy’s delegitimization of particularity and
exclusivity, an atavism of aristocratic differentiation that must fall before the march of a
unified humanity. In the democratic era “conventional” bonds “of race, of class, or native
land slacken,” as “the great bond of humanity draws tighter” (\textit{Democracy}, II.4.8: 674).

\footnote{138}{“Democracy...brings about the idea of the unity of human nature” (DA II.1.7, LF 758).}
The nation state is artificial and contingent, only the unity of mankind is natural. The rise of democracy will be correlated with the decline of the moral status of the nation state. In Tocqueville’s eyes this is particularly lamentable. For Tocqueville emphasizes, as Hannah Arendt will in the 20th century, that man needs a specific and localized cultural and political context in order to become a “somebody.” “Man, such as god has created him (I do not know why), attaches himself proportionately less as the object of his love is more vast. His heart needs to particularize and to limit the object of his affections in order to seize it firmly and durably. There is only a very small number of great souls who are able to enflame themselves with the love of the entire human species. The only means that Providence has left man to make each of us work for the good of humanity, is the division of mankind into a number of parties and to make each of these fragments the object of his love. If every man filled in this way his duty (and within these limits duty is not above his natural forces correctly directed by morality and reason) the good of humanity will be produced” (Considérations sur la Révolution, OC III, 723). The extended yet weak cosmopolitan love of humanity fostered by democracy erodes the shared norms of particular cultural and political spaces. But it is only in those spaces that man is able to develop and moralize himself. Like much of modern contractualist thinking, Tocqueville emphasizes how political life is necessarily “artificial” and “conventional.” What is natural is underdeveloped and thin. The natural standards of right and wrong that Tocqueville thinks come into view in democratic times do not form the basis of culture. To be a “natural man”, which Tocqueville associates with the

139 This line of thought has been extended by “conservatives” in Europe such as Pierre Manent, La Raison des Nations, and Larry Siedentop Democracy in Europe, each of whom argue in some form against the European project that erases national boundaries. Both are inspired by Tocqueville.
movement away from the particularity of the nation-state and towards the unity of mankind, is not to be a man at all. In fact what is recreated at the hypothetical “end of history”, when democracy has run its course and destroyed all particular regimes to institute the reign of pure nature, is Rousseau’s peaceable state of nature in which man has few characteristics that separate him from animal life. Democracy actualizes the abstract, almost contentless being that the theory of popular sovereignty presupposes. But in so doing the cosmopolitan moral foundations of democratic regimes erode the conditions of their own particular existence, which depend on an exclusive public and cultural space. Tocqueville thinks man can “feel” for humanity only a transient, albeit sincere, sentiment of empathy or pity. The danger of democracy is that in feeling for man *qua* man, democrats cease to feel and act for particular men. Since there is relatively little one can do for “humanity,” one does not act all, forgetting that there is much one can do for one’s neighbor.¹⁴⁰ The fear that pervades Tocqueville’s discussion of the “loosening of the social bond” is that in becoming more “natural,” democratic society in the end actually perverts human nature by delegitimizing the political and cultural preconditions for human development.

The second pathology of unity that Tocqueville diagnoses is collectivist nationalism. It is quite the opposite from the withering away of the nation state as a particularistic atavism. In collectivist nationalism individual and social plurality are erased by their subordination to a unified national will. Tocqueville associates this

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¹⁴⁰ In the Geneva Manuscript Rousseau says: “Which shows what one should think about those supposed Cosmopolites who, justifying their love of fatherland by their love of mankind, boast of loving everyone so that they might have the right to love no one” (in *Social Contract and other political writings*, 158). In the Emile of the cosmopolitan philosophers her says: “Tel philosophe aime les Tartares pour être dispensé d’aimer ses voisins” (OC IV.249).
tendency in his time with a diverse array of movements: the Physiocrats in the Old
Regime, the radical republicanism of the French Revolution, the socialism of 1848, and
the communism of Count Saint-Simon (1760-1825) and Charles Fourier (1772-1837).
What unites these movements is their desire to “complete the revolution.” Completing the
revolution is of course variously interpreted depending on what one thinks the primary
thrust of the Revolution was. In general, however, these movements focus on equality.
Their ambition is to abolish the last vestiges of privilege, difference, and inequality that
characterized the old regime and to direct all the efforts of society towards a single goal:
“Nothing proves better than these theories the kind of irresistible attraction in our time
and our country that little by little is leading the human spirit to destroy individual life in
order to make every society into a single being. In France, this tendency has produced
Fourierism and Saint-Simonianism...they all want to found little communities where
property and individual life are hardly found, if at all, and in which each citizen works
like a bee, following a single plan and a single goal, not for his own interests, but for
those of the hive” (Essay on Algeria, 89). The drive for similarity produces a paranoia
of difference. This paranoia extends to property, seen as the last remnant of aristocratic
inegalitarianism. In a famous speech predicting the Revolution of 1848 to the National
Assembly Tocqueville says “But now the right to property is the last remnant of a
destroyed aristocratic world, and it alone still stands, an isolated privilege in a leveled
society...it alone now has to face the direct and incessant impact of democratic opinions”

141 ---“Then a bizarre thing occurred. When each individual, exaggerating his worth and his independence,
tended towards individualism, the public spirit verged more and more, in an abstract and general way,
towards a sort of political pantheism that, removing from each individual even his own existence, menaced
to subsume him entirely in the communal life of the social body” (Discourse to the French Academy,
Pleide I: 1208).
The suppression of difference is an extreme mode of democratic similarity, made violent by its statist character.

Collectivist nationalism exploits a tension in the theory of popular sovereignty that distinguishes between the will of all and the general will. Tocqueville explains this in his discussion of the Physiocrats, a group of laissez-faire economists who wanted to bring about a fairer, more rational, and even more egalitarian society by rational use of the land. Tocqueville thinks they paved the way for Jacobin dictatorship and socialism. The physiocrats distinguish the will of the people from public utility, which is the true sovereign. Everything that blocks public utility is an obstacle to the achievement of the good society and deserves repression. Infused with the “democratic and revolutionary temperament”, the physiocrats not only “hate certain privileges, but diversity itself is odious to them: they adore equality even in servitude. Whatever hinders their plans is worthless. Contracts inspire little respect in them; private rights, no regard; or rather there are no longer are any private rights, strictly speaking, in their eyes, but only public utility” (OR, III.3, K 210, OC III 187). This disjunct between the impersonal norm and the personal ruler is a trope and an indetermination at the heart of sovereignty. The people always will the general will, but they do not always know it. Society errs. They must be corrected, and brought into conformity with the ideal city. But in Rousseau, as in Tocqueville, the consent of the people is a necessary component of a free regime. The collectivists adopt a different perspective. They agree that the people cannot always discern what is best for them. But, they argue, an enlightened elite can. The people should be brought to see their true interests. To do this requires an entire social revolution, replete with a vanguard that “educates” the people about their “true desires.”
And this was the role of the Physiocrats saw themselves playing: “They did not merely count on the royal administration to reform the society of their own day; they borrowed from it, in part, the idea of a future government which they wanted to found...The state, according to the physiocrats, was not only to rule the nation but to shape it in a certain way; it was for the state to form the citizen’s mind according to a particular model set out in advance; its duty was to fill the citizen’s head with certain ideas and to furnish his heart with certain feelings that it judged necessary. In reality, there were no limits to its rights, it transformed them; perhaps it concerned the state alone to make different people out of them. ‘The state makes men whatever it wants,’ says Bodeau. This phrase sums up all their theories” (OR, 3.3, K 212). The prioritization of the achievement of the impersonal norm without the will of the sovereign implies that (1) the will of the people need not be consulted because it is not their true will, (2) in order to enlighten them so that they will what they should they need to be transformed, (3) that transformation is unable to tolerate dissent and difference, and thus difference and plurality is suspect, (4) and since that reform does not arise spontaneously in regimes burdened by an aristocratic heritage, it needs to be completed by an enlightened, technocratic elite that transforms society with the power of the state.

Cosmopolitan unity and collectivist nationalism are two tendencies that can exist separately. They can also be conjoined. Democratic society is perfectly capable of combining the individualism characteristic of cosmopolitanism and the statism characteristic of nationalism. Some critics of individualistic democracy, such as Maistre and Guizot, have argued that it leads to anarchy; others that it leads to statism. Tocqueville thinks both are correct. There is a secret alliance between the individualism
that rends society and the statism that asphyxiates it. Both destroy the social plurality required to establish and maintain liberty, and the individuality or originality that is its product. Tocqueville wrote the American translator of *Democracy in America*, Henry Reeve, that “The great peril of democratic ages, you may be sure, is the destruction of the excessive weakening of the parts of the social body in the face of the whole. Everything that in our times raises up the idea of the individual is healthy....[Democracy] is what facilitates despotism, centralization, contempt for individual rights, the doctrine of necessity, all the institutions and all the doctrines which permit the social body to trample men underfoot and which makes the nation everything and the citizens nothing. That is one of my fundamental opinions to which many of my ideas lead. On this point I have reached an absolute conviction; and the principal object of my book has been to give this conviction to the reader.”¹⁴² Tocqueville placed the tendency to divinize the state and weaken the individual in almost all aspects of *Democracy in America*, including his analysis of why democrats raise such big monuments: “In democratic societies the imagination of men contracts when they consider themselves; it extends indefinitely when they think of the state” (DA ii.i.11, M 443). The aim of a Tocquevillian politics is the combat against both extremes: the reconstruction of the people and social plurality in opposition to a soft cosmopolitanism, and the rejection of the idea that the state is the locus of national unity, that it alone interprets the national will, and that it has a right to impose its vision onto society against the express will of the people.

3.3 The Boundless God, or tyranny as transgression

“The Americans rule the political world like God rules the universe” (DA I.i.4)

Democracy decouples the various elements of sovereignty from each other. I just argued that in democratic life plurality does not naturally check unity. In what follows I examine a different facet of how democratic society transforms sovereignty and in the process makes it more dangerous. In what I have been calling the traditional understanding of sovereignty the sovereign will is limited by God and the common good. Since sovereignty is transcendent it is limited by its very nature. This changes with the advent of democracy. The decline of transcendent sources of sovereign authority and the immanentization of sovereignty into society decouples the sovereign will from a transcendent good. De Jouvenel calls this the moral emancipation of sovereignty. No longer limited by transcendent norms, democracy opens up the possibility of unlimited or infinite freedom. The collapse of the transcendent is the deification of man. But man’s enthronement as the new God is entirely specious. Unlike God, man’s power is not equal to his justice. He is ignorant and fallible. Democratic theory tells him he is all powerful, democratic experience reveals his weakness. In theory his power would allow him to transgress all boundaries, but in practice democracy reinstates them, for Tocqueville thinks boundaries are a constituent element of human existence. Yet the boundaries created by democracy are not transcendent. There are oppressive.

Tocqueville’s distinction between aristocracy/democracy has multiple vectors. One aspect of the dichotomy is between aristocratic difference and democratic similarity
That perspective is particularly helpful when examining the theme of unity. When examining limitations and transgression one can emphasize another aspect of that dichotomy, which is even more central to Tocqueville’s thinking: aristocratic immobility or fixity and democratic movement. “In aristocratic peoples, families remain in the same state for centuries, and often in the same place...In addition, aristocratic institutions have the effect of binding each man tightly to several of his fellow citizens...As in aristocratic societies all citizens are placed at a fixed point, some above the others, it results that each of them always perceives higher than himself a man whose protection is necessary to him, and below he finds another whom he can call upon for cooperation. Men who live in aristocratic centuries are therefore almost always bound to something that exists outside of them. It is true that in these same centuries the general notion of semblable is obscure...” (DA II.ii.2, Mansifeld 483). The aristocratic social state is characterized by limitations on all sides: one is limited in one’s occupation and bound by hierarchical relations to a class that is higher and lower than oneself. Land in the Middle Ages is rented in perpetuity, religions are fixed and stable, and authority is ancient. This social situation suggests that man lives “within impassible limits” (DA II.i.8, LF 760). The immobile society seems a permanent fixture in an immobile universe. But, in a paradoxical way, even though one is bounded and limited there is a deep sense of the “beyond” and the transcendent in aristocratic life. For Tocqueville, these two ideas go hand in hand. When one lives in a hierarchical society one always sees someone higher than oneself: The peasant sees the bourgeois, the bourgeois the aristocrat, the aristocrat the king, and the king, God. All of society is one great chain of being leading
upwards, taking the individual outside of himself. Aristocratic times combine both boundedness and transcendence.  

The democratic social state inculcates the two opposite tendencies: boundlessness and interiority or solipsism. Democratic limitlessness is initiated by the collapse of feudal society and transcendent sources of authority. In democracy “castes disappear...classes come closer together....common practices, customs, and laws vary because men are mixed tumultuously together...new facts arise, new truths come to light, old opinions disappear and others take their place” (DA II.i.8, LF 761). With the breakdown of feudal fixity mankind is set into motion. The movement of all things empowers man to think he is able to do all things. Even the Puritans exhibited the willfulness that the democratic movement unleashes: “In their hands, political principles, laws, and human institutions seem to be malleable things that can be shaped and combined at will. The barriers that imprisoned society where they were born fall before them; old opinions that for centuries ruled the world vanish; an almost limitless course and a field without horizons open” (DA I.i.2, LF 70). Democracy liberates man not only from the old society and old opinions but even from nature itself: “Fortunes, ideas, and laws there vary constantly. One would say that unmoving nature itself is moving, so much is it transformed daily by the hand of man” (DA II.iii.16, LF 1089). Not only does man transform nature, he “subdues it” (DA II.i.17, M 461). Not hindered by traditional authorities, nature, or even the past democracy gives man an infinite freedom in which he is the source of all authority, with  


144 “In the Middle Ages it was believed that all opinions had to follow from authority” (DA II.i.1, LF 709 u).
nothing beyond him. Democracy is a self-enclosed totality. But the same social state that
gives man this infinite freedom collapses all things transcendent and encloses man within
himself. Since everyone is equal and similar, it is hard for democratic man to perceive
why he needs his fellows. His newfound sense of independence, which Tocqueville
praises, can degenerate into solipsistic individualism. Empowerment leads to isolation:
democracy “breaks the chain and sets each link apart....[it] make[s] each man forget his
ancestors, but it hides his descendants from him and separates him from his
contemporaries; it constantly leads him back toward himself alone and threatens finally to
enclose him entirely within the solitude of his own heart” (DA II.i.2, LF 884). Just as
democracy makes the moral and political world a self-enclosed totality, so too democratic
man becomes self-enclosed.

The infinite freedom made possible by democratic life has even more far reaching
consequences. Tocqueville does not think that the erosion of the divine as a source of
moral authority implies the effacement of any notion of God. Quite the opposite. As an
autonomous being man supposedly creates all the moral laws that he obeys, without
recourse to some transcendent sponsor. Democracy is not the death of God but his
displacement from the heavens to the earth. And in his chapter on popular sovereignty in
America Tocqueville says exactly that: “The people rule the American political world as
God rules the universe. They are the cause and the end of all things; everything arises
from them and everything is absorbed into them” (DA I.i.4, LF 97).145 The transcendent
was maintained in Rousseau, where the general will was to the erring people what the
transcendence of God was to the world of man. While Rousseau, and Guizot after him,

145 For Schmitt’s citation of Tocqueville, see PT, 49.
try to maintain the separation and distinction between the will of the people and something transcendent, to which the will should conform, radical democracy effaces the boundary. What the people will, is law. Popular sovereignty secularizes a nominalist theology: the will of the people delimits what is good and establishes what is right. It is the creator of its own nomos. This decoupling of the sovereign will from a transcendent good is something new in the history of sovereigntist thinking, which always connected sovereignty to some form of objective morality or impersonal norm. Democracy, by enthroning the people as the new God, decouples will from justice, making the people think that vox populi vox dei. Voluntarism is a problem that arises in fact from the theory of sovereignty itself. The sovereign is the body that by its very nature is external to the law because it either makes law, or sets the conditions and parameters of what counts as law. The question naturally arises as to what standards the sovereign itself is to use in establishing law, and what constrains it within the realm of morality or justice. The traditional theory of sovereignty, even in its most absolutist tendency in Bodin and including Rousseau, agrees that the sovereign authority is in fact bound by, if it is not entirely concurrent with, some notion of justice or higher law. The sovereign is only sovereign insofar as it embodies that higher law. Tocqueville’s portrait of democracy is meant to show that the tendency of democracy is to deny the legitimacy of that distinction. While recognizing that this is the tendency of democratic modernity, Tocqueville himself of course denies the secularized nominalist premise that man’s will

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146 Sieyès: “In whatever manner a nation expresses its wishes, it is enough that it wishes; all forms are good but its will is always the supreme law” (cited in Schmitt, PT, 48).
is the source of political and moral right. But, like Guizot, he is deeply worried that this is the tendency of democratic life.

Tocqueville therefore criticizes infinite freedom from two different directions.

Tocqueville’s first criticism of infinite freedom is that it obfuscates the underlying social dynamics of democratic life. The infinite freedom made possible by the seeming collapse of all boundaries fosters a false ideology about the nature of democratic society. The constant mobility that characterizes democratic life inculcates a view that society is open and that within it there are no barriers that oppose ambition. This is the cliché that in democracy one can be whatever one wants. Tocqueville does not deny that democracy inaugurates unprecedented social flexibility. But democrats tend to exaggerate how mobile society actually is. Democratic life does not abolish all boundaries but reestablishes them in different locations. This is especially true in commercial life. “Not only are they impotent by themselves, but at each step they find immense obstacles that they had not at first perceived. They have destroyed the annoying privileges of some of those like them; they come up against the competition of all. The barrier has changed form rather than place” (DA II.ii.13, M 513). The disjunct between democratic aspirations, between the story we tell ourselves about the extent of our freedom, and democratic reality, our actual limitations, causes frustration and anxiety. This dynamic can be seen in intellectual life, where democracy does not prompt people to think whatever they want. Rather, “the majority draws a formidable circle around thought. Inside those limits the writer is free; but unhappiness awaits him if he dares to leave them” (DA I.ii.7, M 244). Indeed, there “is no freedom of mind in America” (DA I.ii.7, M 245). Rather than being a laboratory of intellectual novelties, Tocqueville fears that
democratic life will ultimately become stagnant and sclerotic. “I do not claim that men who live in democratic societies are naturally immobile; I think, on the contrary, that an eternal motion reigns in the heart of such a society and that no one knows repose in it; but I believe that men in it are agitated within certain limits that they scarcely ever exceed....Two things are astonishing about the United States: the great mobility of most human actions and the singular fixity of certain principles. Men move constantly, the human mind seems almost immobile” (DA II.ii.21, M 610-11). There is a disjunct between the democratic narrative of infinite freedom and the democratic reality of limitation, sclerosis, and mental servitude.

The second criticism is that infinite freedom involves a misunderstanding of human nature because (a) the vast majority if not all men are incapable of being fully autonomous, and (b) infinite freedom causes mankind to be anxious, restless, and miserable. Democracy encourages man to think he is far more autonomous than he actually is. The openness of democratic society incites him to think that he is “called to great destinies” (DA II.ii.13 M 513). But the “inflexible law of his nature [which] constrains him” tells a different story (DA II.i.2, M 408). Though democratic man dreams of infinite autonomy, Tocqueville argues that no man has the capacity to legislate all things for himself. Even Newton adopted beliefs about the world dogmatically. It is this “salutary servitude that permits him to make good use of his freedom” because individual independence “cannot be boundless” (DA II.i.2, M 408). The democratic promise that man is a true self-legislator is only true in a restricted sense. There is much that is beyond the circle of human autonomy that man cannot control, and the recognition of these limitations is necessary for a proper understanding of human needs: “I am so sure that
everything in this world has its limits, and to not see the limit of something seems to me to be the most certain sign of the weakness of the human mind” (DA II.i.8, LF 761 d). It is also necessary for a proper understanding of human happiness. Boundless freedom makes man miserable and he shuns it: “When authority no longer exists in religious matters, any more than in political matters, men are soon frightened by the sight of this limitless independence. This perpetual agitation of all things disturbs and exhausts him. Since everything shifts in the intellectual world...and, no longer able to capture his ancient beliefs, he gives himself a master. For me, I doubt that man can ever bear complete religious independence and full political liberty at the same time; and I am led to think that, if he does not have faith, he must serve, and, if he is free, he must believe” (DA II.i.5, LF 745). Man must believe because he must have limitations. Without them his mind is in restless and constant motion. It is now a common observation that Tocqueville depicts democratic man as Pascal depicts human misery without God. And this makes sense. The rise of popular sovereignty, which deifies man, goes hand in hand with the collapse of the transcendent in democratic life. But the über-worldliness that accompanies the collapse of the transcendent does not lead to exalted autonomy but crass materialism and an unhappy quest for fugitive perfection: “The inhabitant of the United States attaches himself to the goods of this world as if he were assured of not dying, and he rushes so precipitously to grasp those that pass within his reach that one would say he fears at each instant he will cease to live before he has enjoyed them. He grasps them all but without clutching them...” (DA II.ii.13, M 512). This feverish mundane activity is unsustainable, since the soul too has its needs. Occasionally man will show an “exalted spiritualism” that attempts to reconnect him to the divine. At first exhilarated, man is
soon frightened by the prospect of the radical contingency that democratic life suggests: “man comes from nothing, traverses time, and is going to disappear forever into the bosom of God. One sees him only for a moment wandering, lost between the limits of two abysses” (DA II.i.17, M 462). The infinite freedom of the democratic social state, unchecked, is an incubator of human misery.

It is well known that Tocqueville appreciates the religious nature of American life. It is perhaps no accident that Tocqueville theorizes religion and boundaries together. For the notion of boundaries is linked to that of transgression. And to transgress a boundary is to act tyrannically. This idea has deep religious roots. A boundary separates the sacred from the profane. To transgress is to overstep or disregard the sacred. Tyranny is the collapse of boundaries, between the sacred and the profane and between the public and the private. If one traces Tocqueville’s use of the word sacred, he unfailingly attaches it either to God, individuals, or liberty. He never affixes it, as Rousseau does, to the state. The sacred is the boundary the state should not cross. It is a limit. And Tocqueville gives himself the task of reaffirming boundaries in age that denies them. He does that in part to show the illusions of democratic ideology, that we are in fact less free than we suppose. But he also fears, like Guizot, that the collapse of the

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147 The place of religion in Tocqueville is a big debate. Much of it has turned on whether Tocqueville is a pure religious functionalist or whether he thinks Christianity true, and also whether or not he thinks religion will be able to withstand the force of democracy or be corrupted by it. For a functionalist take see Marvin Zetterbaum, (1967), 120-4 and for a response Catherine Zuckert “Not by Preaching: Tocqueville on the Role of Religion in American democracy” Review of Politics Vol. 43: 2 (April, 1981), 259-280. Those who take Tocqueville’s use of religion most seriously, especially for his anthropology, are Lawler (1993) and Mitchell (1995); Manent (1998) argues that religion will not be able to withstand the onslaught of democratic life.


149 “Freedom is in truth a sacred thing” (Cited in Lively, 1962, 8).
transcendent will lead to arbitrary willfulness and from there to violence. This is understandable after the experience of the Revolution, which was largely thought of as atheistic. Robespierre and Napoleon suggested that the despotism that emerges from democracy is almost always militantly dangerous. It’s not surprising, then, that postrevolutionary liberals feared that with mass atheism all hell will break loose, that, absent god, mankind will immediately revert to the Terror. But atheism is not the same as madness. The past is not always the surest guide of the future. Tocqueville thinks for the most part that democracy creates a rather tame demos. The collapse of the transcendent does not produce bacchic mob rule. Rather, it will more likely foster a self-obsessed, materialistic, and aimless human type. A classic Tocquevillian example of the difference between aristocracy and democracy is that democrats will commit small delinquencies rather than great crimes. The paradox of democratic tyranny is that it is omnipresent but usually not violent. It might regulate your domestic affairs, but it will rarely confiscate your house. Moreover, Tocqueville was perfectly aware that religion was unable to overcome racial hatred in America. Slavery existed within the heart of a deeply religious nation, the same nation that exterminated the Indians. Rather than the transcendent being a check on democracy, in this case it either sanctioned or stood helpless before the paradigmatic cases of American tyranny. While Tocqueville interprets religion in terms of a boundary that restrains democratic willfulness and keeps society moral, theory is different from practice. Sometimes practice should conform to theory, and sometimes theory stands helpless and weak before practice.
3.4 The Reversal of Liberalism or the Spiritualization of Power

“Kings often make one obey...the majority makes one believe” (DA II.i.5 M 423)

The French tradition under study in this dissertation wants to combine both liberalism and republicanism, both freedom from politics and freedom for politics. Tocqueville is the high point of what could be considered a second generation of French liberalism that includes Constant, Guizot, and the Doctrinaires. Instead of elaborating a theory of popular sovereignty as a performative act of resistance against monarchical absolutism, second generation liberalism attempts to terminate the Revolution and consolidate a liberal society from the ashes of the old regime. In the early stages of this process England was the model. But according to Tocqueville both England and post-revolutionary France are regimes of transition. Tocqueville’s journey to America represents an abandonment of the English model of freedom since it is only in America where one can see popular sovereignty reaching “its final consequences” (I.i.4 M 53). This would have struck Tocqueville’s contemporaries as a surprising and shocking statement. Isn’t popular sovereignty impossible; aren’t its final consequences tyrannical? The duality of Tocqueville’s thought is that he both rejects and affirms this claim. America has combined democracy and freedom. But it has also revealed a new type of tyranny, a specifically democratic form of tyranny that exists within a society of established liberal institutions. If America convinced Tocqueville that democracy and freedom were compatible, it also taught him that liberalism was vulnerable to a new form of social or spiritual power that jeopardized the achievement of the liberal freedoms of privacy and security praised by Constant, Montesquieu, and even Tocqueville himself.
Broadly speaking, Tocqueville has three models of despotism: one person tyrannizing over all of society, a majority tyrannizing a minority, and all tyrannizing over all. The first two models are “hard” varieties and can have a number of different expressions: authoritarian democracy headed by a Napoleonic figure, the majority of whites tyrannizing over a minority of blacks, or the poor tyrannizing over the wealthy. Tocqueville certainly thinks all these models are possible in the democratic era. But after his experience in the United States he did not think these were the only modes of despotism in democratic times. There is another “soft” mode of despotism: tyranny over thought, and administrative despotism. This section examines tyranny over thought, or what Tocqueville somewhat misleadingly calls the omnipotence of the majority (Administrative despotism is explored in the final section of this chapter).

Tyranny over thought challenges a number of liberal assumptions about the nature of power and the achievement of freedom. Like all liberals, Tocqueville wants to establish legal and institutional barriers to the direct rule of the people. Stability, wisdom, and justice all require that rule be conducted through formalized institutions limited by constitutions. Filtering the popular will through law moralizes and educates it. As importantly, institutional limitations on power restrict its exercise to public uses, forbidding its entry into the private sphere except in rare circumstances. Tocqueville affirms and wants to retain these hard won gains. Indeed he cites the Federalist more than any other single book. But in America Tocqueville found that democracy bypasses the formal institutions of political life. Public opinion, which allows the people to direct their institutions, is also what allows them to bypass them. This direct activity of social power on the individual vitiates the paramount liberal distinction between state and society, or
the public and the private. Not only does the social power bypass institutions but it “colonizes” the individual, providing him with a host of ready made opinions. Since those opinions are not filtered through law, the generalizing mechanism that elevates and rationalizes, they are more likely to be arbitrary.\footnote{Moral authority...is principally called religion in aristocratic centuries. It will perhaps be named \textit{majority} in democratic centuries, or rather \textit{common opinion} (DA II.i.2, LF 720 p). Yet the difference is that “religion is law, the omnipotence of the majority is arbitrariness” (LF 721 r).} The liberal aspiration to give man a space of freedom to enact his personal life plan, and to be ruled only by laws and not by any arbitrary will, is reversed by the emergent power of mass society. I call this the liberal reversal.

The insufficiency of what might be broadly called liberal institutionalism to secure individual freedom is embedded in the structure and movement of the first volume of \textit{Democracy in America}. The book begins with the emergence of popular sovereignty and its direct rule in the early colonies (DA I.i.1-4), with their “absolute democratic and republican theories...as in Athens” (DA I.i.2, M 32, 33). But the Puritan colonies, far from being Tocqueville’s ideal, only “anticipate from very far the spirit of freedom” (DA I.i.2, M 39). Insisting on moral order and good mores, their “bizarre and tyrannical” penal laws “constantly \textit{penetrate into the domain of the conscience}, and there is almost no sin that does not fall subject to the censure of the magistrate” (DA I.i.2).\footnote{One should remember that it is of the Puritan colonies that Tocqueville comments that “such lapses doubtless bring shame to the human mind; they attest to the inferiority of our nature, which, incapable of firmly grasping the true and the just, is most often reduced to choosing between two excesses” (DA I.i.39). This is a harsh rebuke indeed for a colony that was supposedly instituting God’s laws.} The proto-freedom of the Puritans reproduces the tyrannical popular sovereignty of the ancients that the \textit{Federalist}, Constant, and Tocqueville seek to avoid. In the next four chapters of \textit{Democracy} (DA I.i.5-8), Tocqueville outlines how popular sovereignty becomes the
animating principle of all levels of American political life\textsuperscript{152}, and how judicious institutional arrangements soften and protect the people from it, while still leaving a large amount of direct exercise of popular control to the people in the township. But the chapter that immediately follows his discussion of the State and Federal Governments (I.i.8) is entitled \textit{How one can say strictly that in the United States the people govern} (I.i.9). In the United States it is “really the people who direct, and although the form of government is representative, it is evident that the opinions, the prejudices, the interests, and even the passions of the people can find no lasting obstacles that prevent them from taking effect in the daily direction of society” (DA I.ii.1, M. 165). The rule of the people in America is direct and immediate \textit{despite} the fact that institutions channel public power. And that is because the people as a whole give rise to a new power that is different from the exercise of the coercive power of government. Tocqueville thinks this new power opens new vistas for democratic freedom (I.ii.2-6) but it is also a new form of cultural or spiritualized despotism (I.ii.7-8). Like almost everything in Tocqueville, the new power is equivocal. Since this power is not restrained by formal political institutions, Tocqueville ends the first volume of \textit{Democracy in America} with a discussion of a variety of cultural ways to combat this new form of despotism (I.ii.9). To summarize the movement of volume 1, then, is to see that \textit{Democracy in America} has a parallel structure. The direct rule of popular sovereignty leads to legislative tyranny and is countered by liberal institutionalism (volume 1, part 1); the indirect cultural effects of popular sovereignty led to the rule of the people but also to new and unprecedented form

\textsuperscript{152} “The American revolution broke out. The dogma of the sovereignty of the people came out from the township and took hold of government; all classes committed themselves to its cause; they did not combat and they triumphed in its name; it became the law of laws” (DA I.i.4, M 54).
of tyranny, and is combated by cultural mechanisms such as mores, religion, practical enlightenment, commerce, etc. (volume 1, part 2).\textsuperscript{153}

There are two reasons why Tocqueville thinks liberal institutionalism cannot effectively block popular sovereignty. The first reason is that the majority is in control of all the institutions of democratic life. In a powerful passage about the isolation and powerlessness of a person who seeks justice but whom the majority has rejected, Tocqueville remarks: “When a man suffers injustice in the United States, who do you want him to address? Public opinion? That is what forms the majority; the legislative body? it represents the majority and obeys it blindly the executive power? it is named by the majority and serves as its passive instrument; the public forces? the public forces are nothing other than the majority in arms; the jury? the jury is the majority vested with rights to pronounce decrees...Therefore, however iniquitous and unreasonable is the measure that strikes you, you must submit to it” (DA I.ii.7, M 241). Such a description rings true for a black man seeking justice in the time of segregation or for Japanese internment. Again, it would be wrong to claim that Tocqueville thinks that institutions and rights are useless. They are some of the most important bulwarks against tyranny.

Faulting the Swiss constitution for faulty design, Tocqueville says: “I do not exaggerate the influence that legal mechanisms may have on the destiny of peoples. I know that the great events in this world are chiefly explained by deeper and more general causes; but one cannot deny that institutions have their own virtues and that they do contribute to the

\textsuperscript{153} In a note to himself about the progression of his ideas, Tocqueville writes: “Sovereignty of the people. Democracy, no counter balance. Tyranny of the majority....government of the majority; public opinion” (LF, Lxxxi).
prosperity or the poverty of societies” (Report on Democracy in Switzerland, 363).

Institutions are clearly important for him, but they must be buttressed and supported by a liberal political culture. The crafting of institutions alone does not foster liberty.

The second way that modern despotism bypasses institutions is because power itself has become “intellectual” or “spiritualized.” The nature of modern power is evinced by the plight of the slave, the most revelatory and striking example of a tyranny that exists alongside liberal institutions if the public wills, or at least tolerates it. This is aptly illustrated by the American painter George Bingham’s The Verdict of the People which adorns the cover of many versions of Democracy in America. In the painting the free white populace surrounds a county clerk who announces the election results. Enshadowed and ostracized in the foreground, a lonely black man sits in the dust. His presence lends ambiguity to the people’s verdict. It is both the election of the local officials and the exclusion and repression of a race. Slavery reveals the deeply embedded monocultural and exclusionist nature of American democracy. American democracy in its early stages partly functioned so well because it was homogeneous rather than multicultural, for the most part a white, Protestant country. In his letters in the 1850s to his American friends Tocqueville feared (yes, even he) that the influx of Irish Catholics and Germans with no tradition of freedom would pollute American democracy. America was a deeply

154 Yet he also claims “There is no country where law can foresee everything and where institutions will take the place of reason and mores” (DA I.i.8, M 115). And in a letter “But how difficult it is to establish liberty solidly among people who have lost the practice of it, and even the correct notion of it. What greater impotence than that of institutions, when ideas and mores do not nourish them” in Tocqueville, Selected Letters on Politics and Society, ed., Boesche (University of California Press, 1986), 365.
democratic nation for those it accepted, but it was harshly tyrannical for those it rejected.\footnote{This “dark” side of Tocqueville is explored by Jennifer Pitts (2006).}

In fact, Tocqueville had the American slave in mind when thinking of the omnipotence of the majority, as the juxtaposition of these two passages suggests:

On the omnipotence of the majority, he says: “Princes had, so to speak, made violence material; democratic republics in our day have rendered it just as intellectual as the human will that it wants to constrain. Under the absolute government of one alone, despotism struck the body crudely, so as to reach the soul; and the soul, escaping from those blows, rose gloriously above it; but in democratic republics tyranny does not proceed in this way; it leaves the body and goes straight for the soul” (DA I.i.7, 244).

About American Slavery he says: “The ancients knew only irons and death to maintain servitude; Americans of the South of the Union have found more intellectual guarantees for the longevity of their power. They have, if I can express myself so, spiritualized despotism and violence. In antiquity one sought to prevent the slave from breaking his irons; in our day, one has undertaken to remove his desire for it” (DA I.i.10, M 347).

Modern slavery is to modern despotism as ancient slavery is to ancient despotism.

What distinguishes modern slavery is that it is “intellectual” or “spiritualized.” The nomenclature of the “omnipotence of the majority” or “tyranny of the majority” doesn’t quite capture what Tocqueville has in mind. Rather than a legislative tyranny after a Madisonian model (a model Tocqueville also has in his “panoply of despotisms”), Tocqueville argues that democratic society has altered the nature of power from a localized agent that exercises physical violence against an individual to an amorphous,
anonymous social force.\textsuperscript{156} This new force is best seen in the mental life of Americans: “when one comes to examine what the exercise of thought is in the United States, then one perceives very clearly to what point the power of the majority surpasses all the power that we know in Europe. Thought is an *invisible* and almost *intangible* power that makes sport of all tyrannies” (DA I.ii.7, M 243). In searching for names to describe this new tyranny Tocqueville calls it variously a “spiritualized despotism”, a “moral empire,” and “intellectual” since it goes “straight for the soul” and “acts on the will” (DA I.ii.7, M 243, 244).

Given that Tocqueville thinks the traditional categories of despotism are no longer applicable, it is difficult to discern exactly what “spiritualized despotism” consists in. It can be illustrated from three different perspectives: the social dissenter, the genius, and the common man. Each reveals a different facet of spiritualized despotism.

In the case of the the dissenter, Tocqueville’s mind lingers on tropes of ostracism and leprosy: “The master no longer says to it: you shall think as I do or you shall die; he says: you are free to not think as I do; your life, your goods, everything remains to you but from this day on, you are a stranger among us. You shall keep your privileges in the city, but they will become useless to you; for if you crave the vote of your fellow citizens, they will not grant it to you, and if you demand only their esteem, they will still pretend to refuse it to you. You shall remain among men, but you shall loose your rights to humanity. When you approach those like you, they shall flee you as being impure...” (DA

\textsuperscript{156} This is most noticeably picked up by Wolin ([2001] 2003), to whom my account is indebted, but is for the most part absent from Boesche (1996), who most often identifies tyranny in Tocqueville with some sort of state apparatus.
Ostracism is as paradigmatic for despotism was also a central feature of Constant’s political imagination. The “impurity” of the ostracized individual, which I interpret to be a reference to leper colonies, indicates that the excluded member is seen as diseased and foul (recall, for instance, American depictions of the Japanese in WWII as grotesque) revealing the embedded danger of democratic insularity. Modern ostracism differs from ancient ostracism in a crucial way. The expulsion from the ancient city stripped the citizen of all political rights, damning him to a life of vagrancy upon the parched earth, a homeless wanderer. Modern ostracism is purely moral. There is no physical removal, no force employed. But a scarlet letter is affixed to the one’s name, one is black-listed, removed from community while dwelling within it. Tocqueville does not think the dissenter will be able to stand up alone against mass opinion. We hold our opinions firmly, he thinks, to the extent that there are others who hold the same opinion. Dissent requires communal support. Alone, Tocqueville thinks eventually the critic will conform to mass opinion. Internal ostracism and the spirit of conformity are tyrannical in Tocqueville’s eyes. It fosters what he derisively calls the spirit of a “valet”, a “yes-man” without internal conviction (M 246). Even if the dissenter does not conform, Tocqueville thinks the pressure of majoritarian thinking is so immense that it forces dissenters to become hypocritical and inauthentic, thinking one thing in private and saying something else in public. To a foreign voyager, a man such as Tocqueville, “They willingly deliver to you truths that are useless to you, and when they descend into the public square, they

157 Tropes of leprosy and ostracism are extreme varieties of the isolation and weakness of individuals that has always been the hallmark of despotism. The notion of the outcast as impure anticipates but is surely not the same thing of the totalitarian movements stigmatization of the other as diseased, sickly, and in need of elimination. The difference is that totalitarian governments use hard power to eliminate the dissenter, whereas the soft power of democratic life forces them to conform.
hold to another language” (DA I.ii.7, M 247). Spiritualized despotism fosters social conformity, inauthenticity, and hypocrisy. It suppresses dissent, the very antidote to the disease.

The place of the genius in democratic life reveals a second facet of spiritualized despotism. For Tocqueville the paradigmatic genius is Pascal, whose life is symbolic of the other worldly and spiritual as opposed to the mundane and materialistic (DA II.ii.9, M 505). The genius is the thinker who is unconventional, whose mind operates in novel, striking, and provocative speculative categories. He is motivated by the pure love of truth and is uninterested in the material or practical consequences of his thoughts. This is exactly the opposite tendency of democratic times in which the commercialization of democratic life insists on the practical benefit of all activities. Thought is instrumentalized on behalf of democratic progress, understood as the production of creature comforts. America, Tocqueville says, invents the steamboat but does not produce theoretical scientists. Democratic life, in its unenlightened or degenerate form, represents a restriction of man’s mental life. After praising Pascal’s “extraordinary efforts”, Tocqueville wonders whether “the future will prove...those passions, so rare and fruitful, are born and developed as easily in the midst of democratic societies as within aristocracies. As for me, I avow that I have trouble believing it” (DA II.i.10, M 436). The eclipse of the genius is indicative of the restricted intellectual horizons of democratic life, induced by the colonization of all forms of mental life by the commercial ethos. The boisterous activity fomented by commercial life is partially its own antidote, but even an active commercial regime, in Tocqueville’s mind, is liable to an eventual restriction of its mental horizons, especially in the realms of speculative and spiritual thought. It is
tempting to think of the diminishment of mental life as a dangerous byproduct of commercial life and not under the rubric of despotism. But Tocqueville associates that diminishment with China, the 19th century model of an intellectually lethargic despotism (DA II.i.10, M 438). China is characterized by its “immobility of minds” (ibid). It is a tyranny of received custom. Tocqueville associates spiritualized despotism with cultural and mental enervation, and especially with the eclipse of thought that could be a gadfly to well worn democratic dogmas. Degenerate democracy is the despotism of intellectual stultification.¹⁵⁸

The final revelatory personality of spiritualized despotism is the common man. As opposed to the dissenter who becomes hypocritical and inauthentic, or the culture that lacks speculative genius and challengingly novel ways of thinking, the common man’s mental life is infiltrated and taken over by mass opinion. This is made possible by mass society, which emerges with the decline of aristocratic social plurality. Tocqueville thinks aristocratic social plurality fostered individual independence and original ways of thinking precisely because it gave flamboyance and uniqueness a cultural-institutional home. The mental freedom of the old regime was most apparent, unsurprisingly, in the upper classes of society. Then “there was much more freedom than in our day...It was freedom that, in the very era when centralization worked more and more to equalize, to bend, and to tarnish all characters, preserved their native originality, their color and their shape for a great many individuals, nourished self respect and other passions” (OR, II.11, pg. 179). Tocqueville even suggests that the members of the lower classes were more

¹⁵⁸ For an exploration of dissent as crucial to citizenship see Dana Villa (2001).
mentally independent than in democratic times. Tocqueville thinks one needs a stable group identity in order to structure and orient one’s sense of oneself. In aristocracy one could always look to “the superior reason of one man or one class” (DA II.ii.2, M 409), making aristocrats “little disposed to recognize the infallibility of the mass” (DA II.ii.2). Classless democracy sets the individual adrift without significant group belongings that help him channel and structure his sense of person and purpose, making him confused and aimless: “The lines that divide authority from tyranny, liberty from license, right from fact, seem in their eyes muddled and confused and no one knows precisely what he is, or what he can do, or what he should do” (DA II.iv.5, LF 1019). Tocqueville believes that all individuals at all times need dogmatic beliefs and are incapable of forming all their opinions themselves. But what is different about mass society is that there is only one source of authoritative belief: the mass itself. “The public therefore has a singular power among democratic peoples, the very idea of which aristocratic nations could not conceive. It does not persuade [one] of its beliefs, it imposes them and makes them penetrate souls by a sort of immense pressure of the minds of all on the intellect of each. In the United States, the majority takes charge of furnishing individuals with a host of read-made opinions and it thus relieves them of the obligation to form their own” (DA

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159 “In aristocracies the power that curbs the imagination of man is one and the prejudices of all types that are born and maintained within an aristocracy take certain paths and prevent the imagination from proceeding in that direction, but they do [not (ed.)] attack intellectual liberty in its principle and in an absolute way; in democracies constituted in the manner that I spoke about above, the majority hangs in a way over the human mind, it curbs in a permanent and general way all its springs of action and by means of bending men to its will ends by taking away from each one of them the habit and the taste to think for themselves. So it could happen, if you were not careful, that democracy, under the dominion of certain laws, would harm the liberty of thought that the democratic social state favors, and after escaping from the interests of class and the traditions of family the human mind would chain itself to the will of the greatest number” (LF 722 r).
II.i.2, M 409). Spiritualized despotism removes a meaningful sense of agency from the subject because the objects of the agent’s will are predetermined by mass opinion.

The infiltration of the inner life of the individual is the point at which the traditional categories of despotism break down. “Classic” despotism assumes some active agent that works arbitrarily beyond the laws. This does not occur in democratic life. Tocqueville is not describing a “re-education” process for the dissenter, à la Winston Smith in Nineteen Eighty Four. Nor is there any Riefenstahl-esque propaganda from a central ministry. All these models, associated with 20th century totalitarianism, imply a locus of power that seeks to control the populace. Tocqueville describes the soft power that mass opinion exerts on the individual as something essentially different. That power impels the individual to adopt opinions and beliefs and habits that are predetermined. Though formally free the individual is not inner directed and genuinely autonomous.

The operation of spiritualized despotism calls into question a number of liberal assumptions made by Constant and Guizot about the nature of power, how it is restrained, and how individual liberty is protected. One such assumption is the distinction between the public and the private. The public is subject to state regulation and thus coercion while the private, however it may be conceived, is immune from public control. The private is often associated with the realm of the conscience, with love and romantic sentiment, and the exploration of man’s religious sentiments. Yet the case of religion reveals how this liberal distinction of public and private is undermined by the operation of popular sovereignty. In America religion, rather than a personal affair of the conscience, becomes a public dogma, contorted and colonized by mass opinion: “The Americans, having accepted the principal dogmas of the Christian religion without
examination” and “it is a religion that is believed without discussion” (DA II.i.1, M 406). In addition, democracy blurs the distinction between the private and public. In democracies “public life is incessantly mixed with private life...the sovereign is approachable from all sides and...there is only a question of raising one’s voice to reach its ear” (DA I.ii.vi, 246). The constant activity and omnipresence of soft power in public opinion vitiates Constant’s attempt to affirm and establish strict barriers between the people and themselves, to create spaces of privacy and anonymity in which the individual is free to act as he pleases. In democracy power infiltrates the private life of the individual by exercising influence over his thoughts. Man is not free where the law is silent. This is even more clear today, with the internet, when the private is continuously made public. Modern power is not the degeneration or corruption of liberalism. It preserves it in all its essential elements. The continuing existence of liberal institutions creates the illusion of freedom, privacy, and self-determination.

To adduce one final example, the free press is a prominent liberal mechanism to ensure freedom. Publicity, or what one might summarize as a regime of transparency and debate, is a standard trope of liberalism from the oppositional forces of the Old Regime to Guizot. Public opinion was considered a rational and critical force that restrained and rationalized public power. Constant goes so far as to say that “In the large-scale polities of modern times, freedom of the press, being the sole means of publicity, is by that very fact, whatever the type of government, the unique safeguard of our rights” (Constant, PP, 160)

Of Constant, Keith Baker says: “The Terror thus revealed the tyranny inherent in any notion of political voluntarism, a tyranny that could be prevented only by establishing an absolute distinction between state and civil society, a sacred boundary respecting that part of human existence that must be beyond the reach of any political power. Where the revolutionaries dreamed of a social order that would be the transparent expression of human will, Constant insisted upon the essential obscurity and impermeability of civil society in relationship to the state” (Critical Dictionary of the French Revolution, 858).
VII.3, 110). Tocqueville says substantially the same thing (DA I.ii.3). But, perhaps to a point that Tocqueville himself didn’t realize, newspapers, magazines and literary reviews become the vehicle of the infiltration of mass opinion into the household. Also, there is no guarantee that the press will be a critical, rationalizing force in the public sphere. Publicity is equivocal, far from being always and necessarily a check on public power, it can become an extension of the mass that oppresses. These worries are even more pronounced with the technological advances that deliver mass opinion to the household, eliminating any sphere that is free from public infiltration.

3.5 Republican Reversal, or The Illusions of Autonomy

“They combine centralization and the sovereignty of the people. That gives them some respite. They console themselves for being in tutelage by thinking that they themselves have chosen their schoolmasters” (DA II.iv.6, M 664).

This section turns from how democracy endangers liberal freedom to how it problematizes republican freedom. For Rousseau republican freedom or autonomy is rational patriotism. The achievement of rational patriotism requires two things. First, for a people to be free they must identify with and authorize the underlying norms of the regime, or the general will. The general will is what unifies a people. It is also what makes that unity rational and transcendent, standing above the people’s transient wishes. Second, the general will must actually rule. The people must have effective power, and this meant for Rousseau that the sovereign should actively show itself to present it’s
interpretation of the general will and to prevent its usurpation by the government. Post Revolutionary liberals worried that this rational patriotism was purely abstract, lacking concrete substance and reality. In this they echoed a criticism of counter-revolutionary thought. Tocqueville too echoes this fear, showing that in democratic times the locus of the people’s unity is an abstraction. But again, like all things in Tocqueville, that change is equivocal and can redound to freedom or to oppression. Tocqueville also worries that the people will not be unified by rational transcendent norms, but by a debased, unenlightened consensus. Democracy will not inculcate the rational freedom of which Rousseau dreamt but will degenerate into an illusory freedom in the guise of plebiscitary democracy. But Tocqueville is also dissatisfied with Rousseau’s solution, which is to have the sovereign continually show itself. Rather, Tocqueville prepares the way for a view of political freedom that is non-sovereign (which I explore in the following chapter).

The emergence of the modern nation state required a monumental cultural shift in the locus of identity. It necessitated the dissolution of the traditional, corporative and hierarchical old regime and its reconstruction on the basis of free and equal individuals. But out of the varying interests that compose a vast modern regime, especially one with a feudal heritage but also one divided by numerous commercial interests, democratic theory needed to theorize how a people could become unified absent a monarch. The answer was to replace a body with a body, the corpus mysticum of the King with the corpus mysticum of the people, the natural body of the monarch with the “collective body” of the people. This substitutes the subnational identities of the old regime, which required unity in the supervening person of the monarch, with a new national civic
identity. The sovereign, that “moral person” (SC III.1, 85), is an ‘imagined community’ in which the idea of the unified people is embodied in the identity of every citizen.\textsuperscript{161} Everyone, so to say, becomes a king. But if everyone is a king, what unites them? The problem confronting a society of heterogeneous elements is analogous to the metaphysical problem of material composition. How is it that the statue of Hermes exists independently of its material components, since one can melt the bronze and eliminate Hermes? It must be that the construction of Hermes brings something new into existence that gives meaning and coherence to its constituent parts. In order achieve unity it is necessary to distinguish between an aggregation of individuals with different tastes, interests and life plans (the material components of Hermes) and a community as a transcendent norm that exists above their clashing perspectives (Hermes himself). In the French idiom what unites us is the Nation, in America we are united by the Declaration and the Constitution. In both cases there is some transcendent source of unity.\textsuperscript{162}

Tocqueville’s Democracy in America emerges out of and is a sustained reflection on these issues. I look first at the question of a people’s unity and whether it is rational and second on how to make their unified will operative.

Tocqueville describes two cataclysmic transformations in identity, one from the old regime to the democratic era (old regime to post revolutionary France), and another

\textsuperscript{161} Our language of community still encodes the remnants of the idea of a “body politic”: to incorporate is to bring someone into a group, and then that person becomes a member, literally a physical part of. See R. Derathé “La Théorie organiciste de la société chez Rousseau et chez ses prédécesseurs” in Dérathé (1970).

\textsuperscript{162} For Rousseau as the first theorist of the nation state see Alfred Cobban (1964), esp. chapter 4, where he says “the theory of the general will is closely bound up with the modern idea of nationality” (108). See also article 3 of the Déclaration des Droits de l’homme et du citoyen: “Le principe de toute souveraineté réside essentiellement dans la nation.”

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from early America to the late stages of democracy (Puritan beginnings to hypothetical
democratic despotism). The effect of both tectonic shifts is the same: the movement away
from a concrete and tangible locus of identity towards one that is generalized and
abstract, severing individuals from tradition and local communities and attaching them to
“the nation” and “the people.” Like almost everything in Tocqueville, these
developments are equivocal, portending both opportunity and danger.

For Tocqueville, the aristocratic social state fosters stable local communities and
subnational group identities. A striking difference between the aristocratic social state
and the democratic social state is the social immobility of the former and the fluidity and
movement of the latter. Aristocratic identities are largely fixed since they partake of the
“repose in which all things are held” (DA II.i.16, M 453). Because “In aristocratic
societies all citizens are placed at a fixed post” (DA, II.i.2, M 483), families and
generations do not move place or drastically change occupations. One born in Limoges
stays in Limoges; the father is a parliamentary judge, so becomes the son. This
immobility is also a function of the source of the aristocracy’s power and wealth: the
land. To live in Tocqueville and have the name Tocqueville is a powerful source of
identification and attachment. The aristocrat mixes his identity with the land, and sees it
as a precious and permanent inheritance. This immobility gives him an appreciation of
“fixed rules” and the “tradition” left by his “ancestors” that he inherits as a trust to be
preserved (DA, II.i.13, M 446). It also effects his view of time. In aristocracies, “[A]ll
generations [are] so to speak contemporaries. A man almost always knows his ancestors
and respects them; he believes he already perceives his great-grandsons and he loves
them” (DA, II.i.2, M 483). This immobility, as Tocqueville likes to call it, has an
enormous impact on the individual’s self-conception and sense of their place in the world. It lends itself to the formation of stable local identities that emphasize tight bonds between families and groups, a sense of belonging and place, and strong traditions that link the individual with the distant past and that permit him to envision the future.

Contrarily, the mobility characteristic of the democratic social state changes our sense of time, place, community and identity. Democracy erodes stable identities forged by a sense of rootedness in place. It destroys traditions that link past and future. Democrats, for instance, have little attachment to place and family: “[T]o flee the paternal hearth and the fields where one’s ancestors rest; to abandon the living and the dead to run after fortune – there is nothing that merits more praise in [the Americans’] eyes” (DA, I.ii.9, M 272). As opposed to 99 year leases in feudal times, democratic man favors short leases because he does not want to be bound by his own past commitments, but to be able to move, reinvent himself, and make his fortune. The land is not a source of identity but something to subject and transform for profit. The constant movement of democratic life fosters a different relationship to the past and the future. It loosens bonds between ancestors and progeny, dissolving the temporally extended family. As each individual seeks to reinvent himself, “The fabric of time is torn at every moment and the trace of generations is effaced. You easily forget those who have preceded you, and you have no idea of those who will follow” (DA, II.ii.2, M 483). In democracy, everyone is changing profession or moving into the wilderness. Identities shift accordingly. “In democratic centuries, what is most in motion and the motion of all things is the heart of man” (DA II.iii.6, M 555). In democracy the present is all consuming, the past is non-existent, “tradition is only information” (DA II.i.1, M 403), the extended family is
deconstructed, and there is a loss of a sense of place and belonging. Democracy thus
deconstructs the fabric of communities and traditions. In the place of the community it
becomes a grouping of individuals who have only tenuous ties to each other, fostering
what Tocqueville calls individualism, the “reflective and peaceable sentiment that
disposes each to citizen to isolate himself from the mass of those like him and to
withdraw to one side with his family and his friends, so that after having created a little
society for his own use, he willingly abandons the society at large to itself” (DA II.i.2, M
482). The movement of democracy in America is a constant dismembering and uprooting
of the “organic” community.

But corrosive individualism is only one mode of democracy. Democracy in fact
exhibits a double movement towards both individualism and abstract nationalism.
Democracy does not destroy all group identities, but, like the French Revolution, it
displaces but also reconstructs the locus of identity from local, subnational groups and
communities to general and more abstract ones.163 Take the different ways that
Tocqueville describes early (colonial and associational) American community and the
hypothetical privatized despotism that looms at the end of democratic history. The former
is saturated with a tactile lexicon of “touching” and “seeing.”164 By partaking in the
activities of citizenship one’s identity as a somebody in someplace in made concrete,
tangible and self-conscious. Vibrant political life makes the communal “we” present and
visible. Yet the evanescence of the activities of citizenship and the dissolution of
intermediary bodies that accompanies the eventual privatization and individualism

164 See DA II.i.4, M 486. This is also characteristic of feudal society in the Old Regime: OR, 163,
2.10
characteristic of the late stages of democratic life entails a shift in self-identification. Since the local community is no longer active and hence less tangible, the locus of identity moves towards generalized abstractions like “the nation”, “the idea of the people”, and “democracy”: “As conditions are equalized in a people, individuals appear smaller and society seems greater, or rather each citizen, having become like all the others, is lost in the crowd, and one no longer perceives [anything] but the vast and magnificent image of the people itself” (DA II.iv.2, M 641). All of democratic life exhibits the movement form the particular and concrete to the general and abstract. “In politics, moreover, as in philosophy and religion, the intellect of democratic peoples receives simple and general ideas with delight. Complicated systems repel it, and it is pleased to imagine a great nation in which all of the citizens resemble a single model and are directed by a single power” (DA II.iv.2, M 640). Tocqueville thinks patriotism elevates the mind and heart and that it is entirely appropriate if it is rational (DA I.ii.6, M 225-7).

But his worry is that the sole beneficiary of the new identity will be the state: “In democratic peoples individuals are very weak; but the state which represents all and holds all in its hands, is very strong. Nowhere do citizens appear smaller than in a democratic nation. Nowhere else does the nation itself seem greater, nor does the mind more readily make a vast picture of it. In democratic societies the imagination of men

\[\text{\footnotesize{165 This movement, in Tocqueville’s mind, is one of the most striking features of the way the philosophes thought about politics in the absence of political freedom in the old regime (OR, III.1-2). It is characteristic of the way that democrats see the word, which Tocqueville describes in the chapter Why the Americans show more aptitude and taste for general ideas than their English fathers. “As precedents have little dominion; as there are no longer privileges attached to certain goods, nor rights inherent in common bodies or certain men, the mind is obliged to go back to general verities drawn from human nature” (DA II.i.21, M 476).}}\]
contracts when they think of the state” (DA II.i.12, M 443). And this makes some sense: how are we to think about the nation without the state, for isn’t the state the only visible representation of our commonality: “It is therefore never effortless for [democratic men] to tear themselves away from their particular affairs to occupy themselves with common affairs; their natural inclination is to abandon the care of the latter to the sole visible and permanent representative of collective interests, which is the state” (DA II.iv.3, M 643). This is exactly the point of Guizot. Communities need a concrete locus of identity, something tangible, otherwise they are just a fragmented mass. So we replace the king with the modern state: “This immense social power that the physiocrats imagined was not only greater than any of the powers which they could see around them, it differed from them in its origin and character too. It did not derive directly from God; it was not at all attached to tradition; it was impersonal: it was no longer called the king, but the state; it was not the inheritance of a family; it was the product and the representative of everyone, and must make the rights of each bend before the will of all” (OR III.3, K 212). What democracy accomplishes as a destructive force against the old regime is turned against itself, destroying all intermediaries between the individual and the state such that “between these two extremes there is nothing” (DA I.ii.12, M 444). There are many different levels of human community: the family, the tribe, the association, the city, the state. The highest level of generality should encompass and shape but not abrogate the lower forms of civic life. But that is what democracy does. It deconstructs the family and depoliticizes the city. Maistre is right to claim that democracy fosters abstract and general loci of unity, but he is wrong to think that this is necessarily anarchic. Democracy shifts,
rather than destroys, the locus of unity. In the eyes of the French Revolutionaries this shift was necessary to secure republican freedom; in the eyes of Tocqueville it endangers it: “In our day there are many people...who think they have guaranteed the freedom of individuals well enough when they deliver it to the national power” (DA II.iv.6, M 664).

The second aspect of the democratic transfiguration of identity that renders republican autonomy problematic is that democracy also transforms the locus of unity from a transcendent, rational ideal to an immanent, dogmatic consensus. Tocqueville thought one of the most radical and controversial chapters of his book would be the long chapter Why great revolutions will become rare (DA II.iii.21). It was common in the post revolutionary era to believe that democracy was either anarchic or inherently revolutionary. We saw above that Tocqueville thinks this is one facet of it. But there is another one: “This is what is not discovered at first: the passions that turn citizens away from one another in a democracy make themselves manifest. But one does not perceive at first glance the hidden force that holds them back and keeps them together. Dare I say it in the midst of the ruins that surround me? What I dread most for the generations to come are not revolutions...People believe that the new societies are going to change face daily, and I am afraid that in the end they will be too unchangeably fixed in the same institutions, the same prejudices, the same mores, so that the human race will stop and limit itself; that the mind will fold and refold itself around itself eternally without producing new ideas...while constantly moving human nature will no longer advance” (DA II.iii.21, 617). In the midst of the “universal movement” democracy fosters fixed and unshakeable dogmas.
The question is the nature of those dogmas. There are two versions of democracy’s shared dogmas in Tocqueville. Tocqueville associates one with intellectual stagnation, oriental despotism, and a return to immobility. He connects these themes to ideas of “darkness” and “barbarism” which form a coherent conceptual knot with his idea that democracy might recreate Roman despotism, which was succeeded by a dark age of barbarism and intellectual stagnation. In his conclusion to the chapter that explores why Americans apply themselves more to practice than to theory Tocqueville warns that “one must therefore not reassure oneself by thinking that the barbarians are still far from us; if there are people who allow the light to be torn from their hands, there are others who stifle it themselves under their feet” (DA, II.i.10, M 439). Barbarism in his lexicon is the antonym of “enlightenment”, “civilization”, and “light.” In a moment of near Nietzschean revulsion, when discussing how the democratic age might stifle beautiful aspirations for theoretical science, literature, and art, Tocqueville says: “When I come to imagine a democratic society of this [degenerate] kind I immediately believe I feel myself in one of those low, dark, stifling places where enlightenment, brought from outside, soon fades and is extinguished. It seems to me that a sudden weight is crushing me, and I drag myself in the midst of this darkness that surrounds me to find the way out that that would bring me back to the air and broad daylight” (DA II.i.9, M 430). That

166 “The imagination goes to sleep in the midst of this silence and this universal immobility, and the very idea of movement no longer offers itself to the human mind” (DA II.iii.21, M 614).

167 For his use of the antonyms barbarism and enlightenment, see DA I.ii.9, M 289. See also DA II.i.10, M 438-9, and DA II.ii.5, M 490, where he says “A people among whom particular persons lost the power of doing great things in isolation, without acquiring the ability to produce them in common, would soon return to barbarism.” Finally, he concludes Democracy in America by warning, associating freedom and enlightenment: “Nations of our day cannot have it that conditions within them are not equal, but it depends on them whether equality leads them to servitude or freedom, enlightenment or barbarism, to prosperity or misery” (DA II.iv.8, M 676). For Enlightenment see also DA II.iv.3, M 648.
barbarism might succeed democracy and the age of enlightenment turns Guizot’s progressive understanding of western history on its head. The cyclicality of Europe’s return to its barbaric origins challenges the linearity of optimistic philosophic history.

Let us call the debased and barbaric form of unity democratic “unanimity” and the enlightened and elevated form “the common good.” The common good is distinguished from democratic unanimity by its transcendent and rational qualities. It is a high standard that Tocqueville associates with such concepts as enlightenment, rationality, true interests, and interests bien-entendus. He calls on his contemporaries to “instruct democracy” and substitute its “true interests for blind instincts” (DA Introduction, 7). He suggests that democratic morality attempts a reconciliation of self-interest and the common good, a morality he praises as appropriate for the democratic era in language reminiscent of Rousseau’s Social Contract: “they have discovered one of the points where particular interest happens to meet the general interest and to be confounded with it...and one finally believes one perceives that man, in serving those like him, serves himself, and that his particular interest is to do good.”

In the introduction Tocqueville imagines an ideal democracy in which “all, regarding law as their work, would love and submit to without trouble; in which the authority of government is respected as necessary, not divine, and the love one would bear for a head of state would not be a passion, but a reasoned and tranquil sentiment.” (DA introduction, 9). This identification is most prominent in his discussion of American patriotism. He notes that American patriotism is the product of the citizen’s understanding of how his country is essential to his well being. It is born of “enlightenment” (DA I.ii,6, M 225). Americans see their nation “as

168 Compare the similar ideas of the Social Contract in I.6 and II.7.
[their] own work” (DA I.ii.6, M 226). As in Rousseau, where the people form one collective body such that if one citizen is attacked the whole body is injured, so in America if the country is verbally attacked, the individual is injured (DA I.ii.6, M 227). Tocqueville contrasts this with the anomie in France after the Revolution where each citizen “saw [his country] nowhere” and therefore “withdrew into a narrow and unenlightened selfishness. These men escape prejudices without recognizing the empire of reason; they [do not] have...the reflective patriotism of the republic” (DA I.ii.6, M 226). Embedded within Democracy in America is a softened version of Rousseau’s rational patriotism.

But, as is characteristic of Tocqueville’s thought, democracy has many modes and orders. While it is capable of enlightened republican autonomy, its degenerate mode fosters an illusion of autonomy and a reality of despotism, one sovereign by right and another by fact. The barbarism characteristic of the democratic age is not the tyrannical vandalism of the Germanic hordes. It is an intellectual barbarism of entrenched and unquestioned ideas, common dogmas and slogans, around which the people are unified. These slogans encourage the pursuit of material self-interest at the expense of political freedom, encourage the subject as consumer rather than subject as citizen. Materialism threatens to extinguish the human concern with higher things, which Tocqueville thinks a hallmark of free regimes. The less the people enact their freedom, the less they can see their own servitude. It is a vicious circle that descends into a new cave. Democratic man lives his life under an illusion of autonomy in the guise of plebiscitary democracy. “Each citizen, while he is hindered and reduced to impotence, can still fancy that in obeying he submits only to himself and that it is to one of his wills that he sacrifices all the others”
(DA II.iv.6, M 664). And “They console themselves for being in tutelage by thinking that they themselves have chosen their schoolmasters. Each individual allows himself to be attached because he sees that it is not a man or a class but the people themselves that hold the end of the chain” (DA II.iv.6, M 664). It is very easy to mistake a debased form of democratic unanimity for rational patriotism. Like Constant, Tocqueville thinks the veneer of democratic legitimacy rather than its substance is a pretext and facade. In his study of the rise of absolute government in France, Tocqueville is quick to point out “vain appearances of liberty” in which “we...see in miniature how the most absolute government could be combined with some of the most extreme democratic forms, to such an extent that the charade of an apparent freedom was to oppression” (AR II.3.130). The plebiscitary character of democratic despotism is one of those charades. And it is a hard mistake to cure. The citizen who lives under the illusion of freedom is not likely to question it.

The first problem of popular sovereignty is the construction and maintenance of a unified people around a transcendent and rational common good. Tocqueville shows how democracy renders both the unity and the rationality problematic. We now turn to a brief exploration of the second problem: making that people’s will effective.

There are two routes to popular rule: one is that the people actually rule directly, and the other is that the people establish and affirm the basic norms by which they live and that structure the processes of political life, while participating only from time to time, directly in local life and indirectly through their representatives in national life. The
latter is the route preferred by the Federalist, Constant, and Guizot.\textsuperscript{169} In their minds it is compatible with republican liberty. But Constant and Tocqueville realize that large representative regimes puts the republican project at a difficult impasse. If the people are given direct political power they become a tyrannical, unenlightened mob, and yet if they do not exercise power they become apathetic, privatized, and eventually slavish.

For both Tocqueville and Rousseau this problem inherent in popular sovereignty is a window into the eventual demise of the regime and the appearance of statist despotism. Recall how Rousseau thinks about this problem. For a sovereign to remain powerful it must act. But the sovereign is not and should not always be active. But the less the sovereign is active, the stronger the particular will is. The stronger the particular will, the more the government needs to become active to take care of common affairs. The more the government acts, the harder it is for the sovereign to be active and the more privatization and apathy will ensue. Eventually a regime produces two sovereigns, “one by right and the other in fact” (SC III.1, 86).

The movement of the Social Contract, which is the same as the movement of Guizot’s History of Civilization in Europe, is very similar to that of Democracy in America. In all three books public life is eroded by the negative confluence of privatization from the bottom and the rise of the centralized, administrative state from the top. But unlike Guizot, for Tocqueville “The most powerful means, and perhaps the only one that remains to us, of interesting men in the fate of their native country is to make them participate in its government. In our day, the spirit of the city seems to me

\textsuperscript{169} According to Rousseau “if the Sovereign wants to govern, or the magistrate to give laws, or the subjects refuse to obey, disorder replaces rule, fore and will no longer act in concert” (SC III.1, 83).
inseparable from the exercise of political rights” (DA I.ii.6, 226). And yet “In a nation where equality of conditions reigns, each citizen, on the contrary, has only a small part in political power and often takes no part in it” (DA II.iii.26, M 634). In democracy each individual is weak, and the less they combine with each other the more they are privatized, setting “each link apart” and confining each man “within the solitude of his own heart” (DA II.ii.2, M/483). This rise of individualisme is directly related to the slow concentration of power in the hands of an administrative state: “Thus the vices to which despotism gives birth are precisely those that equality favors. These two things complement and aid each other in a fatal manner” (DA.II.2.iv; M/485). It is not that the state is inherently evil. It is forced to intervene because the citizens in smaller forms of organization, be it in cities or states, are incapable of or unwilling to manage their common affairs in their atomized state. Thus while the transformative power of equality dissolves the public world, popular sovereignty becomes increasingly hidden and passive as the citizens erect a large central state to administer the public space they have abandoned. Finally, at the end of the “historical” process, the rise of the benevolent Leviathan returns democrats to equality, but not the free and manly equality that accompanies liberty, but the corrupt equality of plebiscitary democracy.

But Tocqueville takes it one step farther. That corrupt state of equality in administrative despotism exhibits surprising features that turn out to be reversed, degraded forms of the means to achieve republican liberty in Rousseau’s thought. This reversal emerges by examining the place of rationality, impersonality, and generality in
the administrative state. All three terms are integral components of republican freedom. Yet in Tocqueville’s new despotism they become means of democratic oppression (DA II.iv.6, M 664). For Rousseau the rational general will is the source of transcendent unity and of a people’s freedom. The rational is opposed to the arbitrary. In Tocqueville the state does not act arbitrarily, but it does employ uniform standards and regulations that direct the smallest aspects of individual existence, restricting the sphere of his free will and enervating his ambition: “In China, where equality of conditions is very great and very old, a man passes from one public office to another only after submitting to a competition. That test is encountered at each step in his career, and the idea of it is so well introduced into mores that I remember having read a Chinese novel in which the hero after many vicissitudes finally touches the heart of his mistress by passing an examination. Great ambitions breathe uneasily in such an atmosphere” (DA II.iv.19, DA 602). For Rousseau, generality was the precondition of autonomy, the force that moralized the individual’s arbitrary will. In Tocqueville generality becomes the hallmark of administrative rationality. Rules are applied generally and uniformly to all: “Thus, after taking each individual by turns in its powerful hands and kneading him as it likes, the sovereign extends its arms over society as a whole; it covers its surface with a network of small, complicated, painstaking, uniform rules through which the most original minds and the most vigorous souls cannot clear a way to surpass the crowd” (DA

170 “If you attentively examine all the tyrannies known in history, you see that they have all consisted of a more or less unlimited power entrusted to one or several men and which they used violently against a few. It was by its violence rather than by its generality that this tyranny made itself conspicuous” (DA II. iv.6, LF 1249e).
II.iv.6, M 663). Finally, for Rousseau man is made free by obedience to the general will because the general will is the will of all and hence in obeying it man does not obey the caprices of any other man, but only himself. Rule becomes impersonal. This impersonality is commandeered in Tocqueville by the centralized, administrative state. In obeying the state man in fact obeys no one, but this does not make him free. It subjects him to an impersonal bureaucracy. “It did not derive directly from God; it was not at all attached to tradition; it was impersonal: it was no longer called the king, but the state; it was not the inheritance of a family; it was the product and the representative of everyone, and must make the rights of each bend before the will of all” (OR III.3, Kahan, 212).

Administrative despotism is the reversal of republican freedom. The sovereign becomes a phantom public, always honored but never seen. Above it rises a benevolent Leviathan, that modern monarch. Democratic modernity destroys the tangible locus of unity, places it in the nation, and then recreates its tangibility by identifying the nation with the state.

Perhaps in the end Maistre is right. There is no unity without a king, and our king is the state. Democracy recreates what it destroys, what it flees, what it abhors, but it tolerates the new king because it doesn’t it call it king, but fatherland, country, government. Both Tocqueville and Rousseau think this is forestalled by the reconstruction of the demos, which I discuss in the next chapter. But first, a closer look at administrative despotism.

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171 See also: “After the idea of a lone central power, the one that presents itself most spontaneously to the minds of men in centuries of equality is the idea of uniform legislation. As each of them sees himself little different from his neighbors, he hardly understands why the rule that is applicable to one man should not be equally so to all others...In our day governments exhaust themselves to impose the same usages and the same laws on populations that do not yet resemble each other” (DA II.iv.2, M 641).
3.6 Iconographic Interlude

From incorporation to representation: The transformation of Modern Identity

**The Old Regime.** Hyacinth Rigaud, Portrait of Louis XIV (1701)

**The Revolution.** Antoine Jean Gros, “Allegory of the Republic” (1790s)
3.7 Popular Sovereignty and the New Despotism

“The old words despotism and tyranny are not suitable. The thing is new, therefore I must try to define it, since I cannot name it” (DA II.iv.6, M 662).

It is one of the more striking facts of human history that mankind has almost always given itself a king. Even our gods are kings, the earth their kingdom. But there are outliers to the norm. They appear for brief, resplendent moments. And then the rule of one returns. There is even a certain pattern to the outliers: out of a kingship comes a republic, and from a republic emerges a new kingship. Brutus the elder kills Tarquin, Brutus the younger kills Caesar, one to inaugurate, the other to forestal. À chacun son oeuvre.

Democratic modernity is the moment in world history when man attempts to break once and for all from the mode of governance that has dominated human history. Tocqueville stands between the two worlds. His task is to describe the transition from one
to the other. “I have not even claimed to judge whether the social revolution, whose advance seems to me irresistible, was advantageous or fatal to humanity” he claims, “I have accepted this revolution as an accomplished fact...I have sought the one in whom it has attained the most complete and peaceful development, in order to discern clearly its natural consequences, and to perceive, if possible, the means of rendering it profitable to humanity” (DA Introduction, M 13). To describe the democratic revolution Tocqueville wrote two books, one about America, one about France. They have the same structure. Both begin with an organic and relatively free society: early America and feudal France. That freedom emerges, so to say, out of nowhere, “from the German woods,” a product of history or the cunning of reason, providential, without human motivation and conscious intent. Each book then traces how that organic freedom is slowly usurped by a centralized state. The French did have a revolution, of course, but the thesis of The Old Regime is that that Revolution accomplished far less than people think and was a continuation rather than a complete break with central features of the old regime. While he never wrote a history of the Roman empire, by all indications Tocqueville thinks history played out there in the same way, from organic freedom to statist despotism. In fact he used Rome as his example of the movement of democracy in the first volume of Democracy in America. All of Tocqueville’s work contains the same cycle of history, beginning in organic freedom and ending in despotism, which eventually collapses and gives rise to a new organic freedom.

But democracy inaugurates something new in the world. “I said in the first part of this book that the new societies could well finally arrive at something similar to what we saw at the fall of the Roman empire. There is no longer any middle ground, I said,
between the government of all and the tyranny of the Caesars. Four years of new
meditations made me consider the same matter from another point of view and convinced
me that if men are enslaved, they will be so in an entirely new fashion and will exhibit a
spectacle for which the past has not prepared us.”

This novelty is made possible by the movement from aristocracy to democracy. As I argued above, Tocqueville cashes out the transition in a number of different ways: from the inegalitarian social state to the egalitarian social state, from immobility to movement, transcendence to immanence, and from plurality to unity. Before I turn to administrative despotism I first want to discuss another element of that transition: the relation between nature and art or will.

In democracy the basis of sovereignty shifts from God and tradition to the individual will. It is the will of the individual that creates the sovereign. Political legitimacy derives from consent, not from tradition or god. Society is a human artifact. The transition from aristocracy to democracy is then the transition from a regime in which society is assumed or a given to one in which society is a human construct. Tocqueville displays the implications of this transition in the most intimate of settings: the heart of family, changes in which are “tightly bound to the social and political revolution that is finally being accomplished before our eyes” (DA II.iii.8, M 559). The old regime is characterized by the rule of fathers over large extended families, passed on through inheritance to the eldest son. It is a regime in which individuals, so to say, only

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172 About Rome he says: “One sees that in the time of the greatest power of the Caesars, the different peoples who inhabited the Roman world still preserved diverse customs and mores: although subject to the same monarch, most of the provinces were administered separately; they were filled with powerful and active municipalities, and although all the government of the empire was concentrated in the hands of the emperor alone and he always remained the arbitrator of all things in case of need, the details of social life and of individual existence ordinarily escaped his control” (II.iv.6, M 661). For his idea of the Roman tyranny, see DA I.ii.9, M 301.
exist as members of communities and as playing certain defined roles. Contrarily, in
democracy as soon as the son is “master of himself”, he “seizes his independence”, his
“will becomes his rule, and he takes possession of his freedom” (DA II.iii.8, M 558). The
democratic family is bound only so long as the child wills it, it is transformed into a
contractual relationship: “Under democratic laws children are perfectly equal and
consequently independent; nothing forces them to come together, but nothing draws them
apart” (DA II.iii.8, M 562). In addition to the consenting will, Tocqueville suggests, the
family is also held together by the tender sentiments that come from the relaxation of
aristocratic family life. “What I have just said of filial love and fraternal tenderness ought
to be understood of all the passions that spontaneously have their source in nature itself”
(DA II.iii.8, M 562). The movement from monarchical sovereignty to popular
sovereignty is a movement from convention to nature and from the group and inherited
tradition to the individual and consent. “Democracy loosens social bonds, but it tightens
natural bonds. It brings relatives together at the same time that it separates citizens” (DA
II.iii.8, M 563). Democratic community is artificially constructed, but democracy tends in
an opposite direction: towards the reign of nature.

It might come as no surprise then that Tocqueville’s portrait of democratic life
embeds Rousseau’s hypothetical state of nature from which the theory of popular
sovereignty emerged. But Tocqueville is not a state of nature theorist. Rather than human
nature being revealed in a hypothetical state of nature that lacks convention, it is revealed
at the end of a transformative process wrought by democratic life. The democratic social
state, based on and driven by the passion for equality, continually dissolves artificial and
conventional differences between people. Democracy is the culture that erases culture:
“Democracy, which destroys or obscures almost all the old social conventions and prevents men from readily fastening onto new ones, makes most of the sentiments that arise from conventions disappear entirely” (DA II.3.viii; M/563). This movement away from convention and towards nature occurs in all areas of democratic life, from its poetry to relations among family members. When the transformational work of democracy is complete, Tocqueville gives a portrait of a world that is filled with beings who are completely semblables, a portrait reminiscent of Rousseau’s state of nature, saturated with the pity and compassion that characterize it. Being completely semblables, they will all be equal and free. “One can imagine an extreme point where liberty and equality touch and are dissolve into each other...And with none differing from those like him [ses semblables] no one is able to exercise a tyrannical power [over others]; men will be perfectly free because they are perfectly equal because they will be perfectly free. This is the ideal towards which democratic people tend” (DA II.2.i; M/479). Democratic life at its most extreme actualizes Rousseau’s state of nature. And it is precisely at this extreme point that the legitimacy of a regime founded on the equality and liberty of all by nature is made manifest. Democracy creates in reality the theory it presupposes.

But political life is the negation, or at least the sublation, of the state of nature. Democracy must then recreate artificially what it undoes, for the rule of nature is not the

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173 Their similarity allows them to easily imagine themselves as each other: “When ranks are almost equal in a people, all men having nearly the same manner of thinking and feeling, each of them can judge the sensations of all the others in a moment: he casts a rapid glance at himself; that is enough for him. There is therefore no misery he does not conceive without trouble and whose extent a secret instinct does not discover for him. It makes no difference whether it is a question of strangers or of enemies: imagination immediately puts him in their place. It mixes something personal with his pity and makes him suffer himself while the body of someone like him is torn apart” (DA II.3.i; OC, 680). Tocqueville takes the rather gruesome example of someone being torn apart from Rousseau’s vituperation against the philosopher who hears a violent tussle happening underneath his window, but closes his ears (SD, OC III, 156).
state of political life. It must continually reconstruct the community based on the individual will. Tocqueville’s description of the family is again instructive. He describes the American woman as submitting to marriage just as an individual in Rousseau submits to the social contract: “she freely places herself in the yoke on her own. She tolerates her new condition courageously because she has chosen it” (DA II.iii.10, M 566). American women marry based on “reason”, even “cold and austere reason” (566); “they impose it on themselves as the sole effort of their will” (566), and she bows to “austere duties” (566). Like marriage, democracy must reconstruct community based on contract, promise, a continual consent of the will to bind oneself to another. The movement of democracy is a continual deconstruction and reconstruction of social bonds.

Eventually the process of decomposition and reconstruction exhausts itself through time and accidents. The product of that final deconstruction is the dystopic regime that stands at the end of “democratic time.” That democratic state becomes the beneficiary of sovereignty (notice how at the end of DA Tocqueville only describes the state as sovereign, the people have lost it). What are the characteristics of this new sovereignty? Like the state of nature or Plato’s cave, Tocqueville’s is a hypothetical vision of a despotic future, a product of his “imagination”, that attempts to convey truths about the human condition (M, 663). This vision of the future is controlled by clusters of illustrative metaphors that give insight into Tocqueville’s imagination. Subjects are the child/pupil/sheep and the state is the parent/schoolmaster/shepherd. These metaphors are an inversion of the metaphors that kingship used to describe itself.

174 Roger Boesche has argued, and Sheldon Wolin has extended, the notion that Tocqueville’s democratic despotism is based on his experience of the prison in the United States, which was the ostensible reason for his visit, and, upon his return to France, the subject of a volume written with
The first difference the new metaphor cluster suggests is that the aim of democratic tyranny is on behalf of the tyrannized, as a father’s rule is on behalf of the child. The state very much wants individuals to prosper, as a father does a son. And in fact Tocqueville does not think the state is unsuccessful in this. The reason that democratic despotism is such a compelling vision is that the state is by and large successful at providing creature comforts. Tocqueville’s is not the portrait of an inept bureaucracy. And yet in democratic despotism the father is turned into a negative figure. It is in fact the reversed notion of the father as king. Tocqueville says: “when kings see into the hearts of the peoples who come before them, they are lenient, because they feel themselves strong; and they are careful with the love of their subjects because the love of subjects is the support of the throne. An exchange of sentiments is then established between prince and people, the mildness of which recalls to society the bosom of the family. While subjects murmur against the sovereign, they are still distressed to displease him, and the sovereign strikes his subjects with a light hand, as a father chastises his children. But when once the prestige of royalty has vanished in the midst of the tumult of revolutions; when kings, succeeding each other on the throne, by turns exposed to people the weakness of right and the hardness of fact, no one any longer sees in the sovereign the father of the state and everyone perceives a master there” (DA I.ii.9, M 299-300). The family is a dominant metaphor for the self-conception of the monarchy. Witness Filmer’s Patriarcha. In the Old Regime Tocqueville claims the French “had for the king simultaneously the tenderness that one has for a father and the respect that one owes only

Beaumont. I find this Foucault inspired of reading of Tocqueville very suggestive. But, as is Wolin’s wont (for which I do not fault him) it uses Tocqueville as a basis for theory rather than remaining faithful to Tocqueville’s own metaphors and signals.
to God” (OR II.11, 179). In democratic despotism the state inherits the role of the king and becomes the father, but it does not prepare its children for manhood. The movement from kingship to democracy is from fatherhood to paternalism. Paternalism prevents its children from growth but keeps them in “infancy.” The state of nature in Rousseau is the infancy of the human species. The recreation of the state of nature is the devolution of man.

It makes sense then that paternalism, according to Tocqueville, threatens to make man “fall below the level of humanity” (DA II.iv.6, M 665). To convey this idea Tocqueville employs the metaphor of the shepherd and the sheep. The sheep are the dehumanized masses and the shepherd the state. The shepherd who tends the flock is a famous Biblical metaphor. The Psalmist proclaims that “The Lord is my Shepard, I shall not want” and Jesus announces that “I am the good shepherd, I know my sheep and my sheep know me” (Psalm 23, John 10:14). Recall that the king is the vicar of Christ on earth, his body sacred as Jesus's body was sacred. In the metaphor for democratic despotism the state becomes the shepherd, taking over the role of Jesus. But unlike Jesus the state dehumanizes the flock as the notion of sheep, instead of a pastoral idyll, takes on a decidedly negative valence. Democracy recreates the kingship in the form of the state, but the state is a bastardized version of the king. Democracy terminates in the benevolent Leviathan, the modern “good shepherd”, l’état providence.\(^{175}\)

\(^{175}\) One could make a plausible reading of Tocqueville (and of Schmitt) that the single sovereign state is a secularized monotheism and that it was not possible in the old regime because it was essentially polytheistic, interpreting Catholicism as a quasi-polytheistic religion. See DA II.i.5 M 420 with Schmitt PT, 45-50.
The democratic Leviathan is a break in the cycle of regimes because it is not based on a monopoly of fear or violence but because it is doux, that famous word that was used to describe the transition from a world of war to one of commerce and peace by Montesquieu. Because democratic despotism is not opposed to but encourages and attempts to satisfy the creature comforts of man it has perfected despotism by basing it on the discovery of liberalism that men most fundamentally want security. But is it not strange that the dystopia of democratic despotism lies precisely in the fact that it produces liberal security, the definition of freedom according to Montesquieu? Key to understanding the dystopia of democratic despotism is the recognition that the state is not evil: it works for the good of the individual and it is successful. The dystopia lies in the fact that it denies political freedom and with that the development of higher humanity. The extent of our revulsion to democratic despotism is the measure of our attachment to political liberty.

Because the state satisfies needs (or as long as it does) it is resilient and protracted. Liberal statism is the “end of history.” Tocqueville does not suggest that there is a revolution that overthrows democratic despotism. He only says it should be prevented. There is no artificial reconstruction of organic freedom. Freedom emerges out

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176 “When a certain manner of thinking or feeling is the product of a particular state of humanity, and that state comes to change, nothing remains... There was nothing tighter than the knot that united vassal to lord in the feudal world. Now these two men no longer know each other. The fear, recognition, and love that formally bound them have disappeared. One does not find a trace of them. But it is not the same with sentiments natural to the human species” (DA II.iii.8, 562).

177 This is another reason why the story told by Rahe that Tocqueville is simply a continuation of Montesquieu cannot be right.

178 The ambiguity of satisfying man’s needs but also restricting higher natures and ushering in a new dark ages is very reminiscent of Fukuyama’s End of History and the Last Man, which gives voice to the same ambivalence as Tocqueville.
of darkness. It can be preserved by human art, but man cannot fabricate it: “The township is the sole association that is so much in nature that everywhere men are gathered, a township forms by itself...[But] Township freedom therefore eludes, so to speak, the effort of man. Thus it rarely happens that it is created; it is in a way born of itself. It develops almost secretly in a half-barbaric society. It is the continuous action of laws and mores, of circumstances and above all time that comes to consolidate it. Of all the nations of the continent of Europe, one can say that not a single one knows it” (DA I.i.5, M 57).

Democratic despotism establishes the reign of a new paradigm of the natural: “I think in the democratic centuries that are going to open up, individual independence and local liberties will always be the product of art. Centralization will be the natural government” (DA II.iv.3 M 645). Popular sovereignty realizes the hypothetical state of nature where man was submerged in nature, where man is subhuman, a “stupid and limited animal” as Rousseau calls him. The state of nature is administered by the benevolent Leviathan that has “tamed man’s pride.” At the end of democratic history the lions come to lie down with the lambs, Hobbes’s Leviathan united with Rousseau’s state of nature.

3.8 Coda

There is a large facet of modern despotism, or at least a part of it, that this chapter does not discuss: the despotism of industry. The advent of industrialization is a different though compatible narrative of the rise of the modern (in addition to narratives of rationalization, disenchantment, separation of value spheres, etc.) than democracy, one that reveals the limitations of democracy as the sole explanatory variable of modern life.
The rise of industry is the narrative of America emphasized by that other Frenchman in America, Michel Chevalier.¹⁷⁹

Tocqueville is aware of the problem. He doesn’t attempt to discuss industry in great detail, first because Chevalier had already done it, and also because it didn’t fit entirely within his narrative. But he does attempt to control it and bring it within his conceptual framework by bringing it under the rubric of immobility and mobility that characterizes the movement from aristocracy (immobility) to democracy (mobility) and then to democratic despotism (immobility): “This state of dependence and misery in which a part of the industrial population in our time finds itself is an exceptional fact and contrary to everything that surrounds it; but for this very reason there is none graver or that deserves to attract the particular attention of the legislator; for it is difficult, when the entire society is moving to hold one class immobile” (DA II.iii.7, M 557, see also M 530).¹⁸⁰ He also describes it in ways similar to democratic despotism in which man is “degraded” and becomes a “brute” (M 530, 531). What is distinctive about industry however is the alienation of the human personality: “When a worker has consumed a considerable portion of his existence in this manner, his thought is forever halted at the daily object of his labors; his body has contracted certain fixed habits from which he is no longer permitted to depart. In a word, he no longer belongs to himself, but to the profession he has chosen” (ibid). The despotism of industry is thus harsher and more damaging than that which arises from democracy. But, Tocqueville thinks it is a


¹⁸⁰ In his chapter on how an aristocracy can arise from industry he also says that “nothing in the political world that should preoccupy the legislator more than these two new axioms of industrial science” (DA II.ii.20, M 530).
“monster” within the social state (M 531). It is in this sense antidemocratic. Democracy and industrial aristocracy are antagonistic in Tocqueville’s mind, and he thinks (or hopes) that democracy will be more powerful.

It is not clear, however, that Tocqueville elaborates on the relation between democracy and industry in the most productive ways. It has long been a staple of Tocqueville scholarship, and the long Tocqueville-Marx debate, to fault him for this lacuna. I don’t wish to reopen that debate here.
CHAPTER 4:
TOCQUEVILLE’S PHILOSOPHY OF FREEDOM

“I believe...liberty is the first good” (YTC, CVH, 3, pp. 96-7).

Freedom is the particular obsession of modern philosophy. While it was a central concern of ancient political practice, Arendt is right that it was not the primary goal of ancient or medieval political thought. True, it was a concept developed by the Stoics and Augustine, but it was always subordinate to something higher such as virtue or God or justice. If it rejected those it was worthless. This all begins to change with modernity, where freedom emerges as a good for its own sake. Why that occurred is not my concern here. That’s a different narrative best told by others.

The background to the story I want to tell about modern freedom begins with two seemingly unrelated themes: One is the rise of modern natural science in early modernity that conceived of all things as matter in motion; the other is the ascendancy of the liberal notion of freedom as non-interference. These two strains of thought converge in the work of Thomas Hobbes. Contrary to popular belief there isn’t one iota of freedom in the entire Leviathan. Man is putatively free where the law is silent. But whether the law speaks or not is of no consequence, since Hobbes only thinks man is free because he can’t piece

together the intricate puzzle of causation that determines his actions. Hobbes materialist
metaphysics abolishes freedom from the world. While the individual does consent to the
social contract (remember that consenting with a knife to one’s throat is legitimate in
Hobbes’s curious world), he does not participate in any way in a res publica. The
Leviathan has a monopoly on the public world, and he would have a monopoly on
freedom too, if he himself weren’t determined. Instead of freedom then, which is almost
absurd to talk about in Hobbes’s world, what the Leviathan provides is security.

My story commences with Rousseau’s attempts to reintroduce freedom in the
world by denying that man is a completely determined machine and by affirming that
there is more to freedom than doing whatever one lists and more to political life than the
security of subjects. Rousseau begins by accepting the modern scientific notion of nature
as mechanistic and thus as random or arbitrary or determined. But in that arbitrary
development, providentially or otherwise, mankind emerged, capable of reason. It is his
reason that eventually enables him to overcome the realm of natural determinism and
self-legislate. This notion of freedom as autonomy grows out and is a continuation of the
enlightenment’s project to replace tradition, superstition, and corrupt institutions,
products of arbitrary randomness, with rational ones. The fact that the regime (not just the
state) is the product of human consent, and thus of the will, is a symbol of man’s freedom
over nature and history. Freedom itself is, as the mantra goes, obeying laws of one’s own
creation. Freedom is being a citoyen and not a sujet. It is, as I suggested in the first
chapter, a certain type of life with its accompanying activities and beliefs.

Rousseau’s philosophy of freedom gave inspiration to two different traditions of
political thought: the German idealistic tradition, especially Kant and Hegel, and the
French liberal tradition, including Constant and Tocqueville (and to a greater extant than he lets on, Guizot). In Germany, Kant and Hegel were inspired by Rousseau’s attempt to save freedom from the challenges posed by a mechanistic worldview in which the natural is the realm of the determined and the arbitrary. This realm must be overcome by man’s self-conscious seizure of his freedom by means of his self-legislating reason. The German tradition takes inspiration from Rousseau in very sophisticated ways. Kant, for instance, does wonders with Rousseau’s idea of generality. Hegel thought Rousseau’s criticism of modern life powerful and his depiction of the solution in the Social Contract as anticipating his own philosophy of right.182

While the specifics of the German story are better told by others, there are a few broad contours that distinguish the German from the French tradition that is the subject of this study. I signal them because they are of some importance for understanding the general profile of the French tradition and why it looked at freedom the way it did. There are of course many affinities between, say, Hegel and Guizot or Tocqueville.183 But the German thinkers are ultimately a different breed. Kant and Hegel are philosophers and were employed as professors at universities. They had little experience in practical political life, a life for the most part unavailable to them in the monarchical and feudal Germany of the late 18th and early 19th century, and a life they probably did not want to participate in anyway. Contrarily, the French liberals were primarily independently


183 Villa (2005)
wealthy aristocrats or brilliant young upstarts from Geneva who went to Paris to make a
name for themselves in the turbulent years and the aftermath of the French Revolution.
Constant, Guizot, Royer-Collard, and Tocqueville all conceived of themselves as public
men, primarily concerned with engaging the great problems of the day in thought and
practice. Alongside Kant and Hegel they might not seem to merit the lofty appellation of
philosophers. But they are certainly statesmen, and statesmen of a particularly admirable
sort. They all elevated their political activities with thought of the first order. But because
they wanted to be statesman they usually thought like statesman. One is hard pressed to
find extended discussions of the philosophy of freedom in their works. Rarely do they
speak of the meaning of free will as a mental event. There are hardly any long
disquisitions on the compatibility of natural determinism and freedom. Their concern was
not how to save human freedom from the grips of a deterministic natural science with a
“Copernican revolution” in philosophy. For the most part they assume that man has a free
will and that he is not primarily a material creature but has some rational governing
faculty. Instead of focusing on what Montesquieu calls philosophic freedom these
thinkers focus primarily on what free institutional arrangements and free forms of life are,
which they saw themselves as embodying and preserving. For the French liberals
freedom takes place in relation to the political.¹⁸⁴

Certain axioms of political thought came to dominate the French opposition to
absolute monarchy in the 18th century. Freedom requires the rule of law that is applied
equally to all, a career open to talents, publicity and freedom of thought, government

¹⁸⁴ In this context one could think of Arendt’s essay What is Freedom? and her idea that freedom
as the liberum arbitrium only appears in historical times when the political world is non existent, which is
by and large true of 18th and 19th century Germany.
accountable to the people, free elections for at least some part of the population, religious freedom and a free market. In addition to these liberal freedoms, guaranteed by constitutions and separation of powers, French liberalism (to a greater or lesser extent depending on the thinker) insists that modern freedom must also include a substantial political component. For liberals such as Montesquieu and Guizot this was fairly minimal. It included voting for a representative body and participating in debate in the public sphere through the “media.” More democratically oriented thinkers such as Rousseau, Constant, and Tocqueville insist on something more substantial: real participation in political life. Yet the demand for more robust participation runs afoul of the large modern representative regime. Moreover the participation of the demos in politics was theorized, especially in Rousseau, as a recourse to the sovereign moment in which the people affirm or reject the basic institutional structures of the regime and those in control of them. In order to maintain democratic rule, stability, wisdom, and permanence are sacrificed. Subsequent French liberals thought the return to the sovereign demos as engendering deeply tyrannical possibilities, either of dictatorship or mob rule that did not enliven political liberty but squashed it, along with liberal freedoms of privacy and security. Contrarily, they insisted on a normalized, constitutional, liberal political life. But to insist on these political values in a representative government that channels the popular will seems to suppresses democratic vibrancy, leaving little room for the forms of political freedom they cherish. Democratic theory seems backed into a theoretical cul-de-sac in which the appearance of the people is unstable and dangerous yet necessary, and the need for stable institutions which, in their mind, ultimately creates
a strong state that asphyxiates democratic vitality. Are we modern stuck with the 
unlovely alternatives of insurgent revolutions or privatized statism?

In what follows I will argue that Tocqueville’s philosophy of liberty is meant to 
solve this impasse in French liberalism (and by extension, democratic theory). He does so 
through the development of what I will call non-sovereign freedom, or the notion that a 
vibrant democracy that promotes political freedom and protects individual freedom need 
not have continual recourse to sovereign, constituent moments. Rather, Tocqueville 
extends the locus of political to a much broader and open public world that includes the 
associational life of civil society. Participation in civil society, especially in politicized 
groupings, is theorized both political freedom and as the locus of vibrant democratic 
energy. But it is not the coming together of a unified sovereign only to affirm or reject the 
basic structures of the regime. Only when those structures are in place can a vibrant 
democratic life begin. And like Arendt, (2) Tocqueville shifts the the focus of political 
freedom away from notions of power and rule and towards the activity of participation 
itself. While Tocqueville does have a broad and rich understanding of freedom that 
includes elements of the previous models of political liberty as I have sketched them 
(including the identification model, the representational model, and the developmental 
model), Tocqueville’s thought insists that if to be free were to mean that the individual 
has power or fully controls his life or regime, this would condemn freedom to non-
existence. Tocqueville rejects the sovereign model of freedom as an individual’s control 
over one’s life or a people’s complete control over the regime. Finally (3) Tocqueville, 
like Constant before him, sees individual and political freedom as complimentary rather 
than antagonistic. We gain a better sense of self, are able to think independently and
originally, and even to exhibit grandeur when we participate in public life with others. Liberal freedoms of security, privacy, and individuality are not only protected by public freedom, but public freedom nurtures them. Conversely, the participation in public life can be a powerful means to defend spaces of private freedom by resisting encroachment of the central state. And the conditions that foster such public freedom need not oppress the individual as in the ancient polis.

In some sense Tocqueville’s view of freedom combines the two halves of Rousseau’s project. Tocqueville conceives of his political and philosophic task as saving freedom by finding institutions and norms that combat individualism by generalizing and educating self-interest to foster the citoyen. But Tocqueville also wants to promote enlightened individualité by protecting the individual from psychological intrusions of both mass opinion and the state. It is a freedom that respects plurality and the claims of mental and emotional independence from homogenizing social norms, but which also recognizes the importance (and limitations) of human rationality discerning and realizing some transcendent good. Freedom for Tocqueville is both engaging a public world and keeping oneself distant from it, both taking part in a communal “we” while maintaining one’s unique “I.”

Since Tocqueville never engages in any extended discussion of freedom, I begin by tracing how Tocqueville chronicles freedom by looking at his descriptions of America and feudal France, the two sites of freedom in his corpus. I then turn to the foundation of democratic freedom, which Tocqueville basis on an anthropology or understanding of human nature, its abilities and its needs, that is based on his readings of Descartes and

185 Dana Villa (2008), chapter 4, has also spoken of non-sovereign freedom in Tocqueville.
Having established how Tocqueville describes freedom and the notion of human nature that undergirds it, I turn to defining what it is more precisely and how it is an attempt to solve the dilemma of popular sovereignty at the heart of the French tradition.

4.1 Freedom Described:

America and Feudal France

“The medieval rural parish became the New England township....They resembled each other, in a word, as much as the living could resemble the dead” (OR II.3, K 129).

It is not immediately clear what liberty is according to Tocqueville. True to his sociological proclivities, he does not engage in any extended theoretical explorations of the concept; nor does he, like Hegel, dispute definitions of any previous philosophers as inadequate or partial. He even employs the idea of freedom in more than a dozen different ways. He speaks of the love of freedom, the spirit of freedom, the habits of freedom, provincial freedom, municipal freedom, national freedom, freedom of the press, freedom as a way of life, free association of citizens, modern freedom, democratic freedom, aristocratic freedom, true freedom, American freedom, medieval freedom, disorderly and unhealthy freedom, and many others. There are also a host of related peripheral notions that have a conceptual affinity to liberty in Tocqueville’s thought,
including independence, originality, mastery of oneself, and even grandeur. How to make one’s way through this jungle?

This lack of system and of theoretical precision has led to some scholarly confusion. Few scholars have been able to give a definition of freedom in Tocqueville. Instead they attempt to describe all of its various meanings.\(^{186}\) This has led some to think Tocqueville’s freedom is theologically oriented grounded in restlessness, or that he combines some version of negative and positive freedom as described by Isaiah Berlin, or just a hodgepodge of different concepts.\(^{187}\) This confusion leads to the suspicion that Tocqueville lacks a coherent philosophy of liberty. In what follows I suggest an overall philosophy of freedom does emerge. I argue freedom for Tocqueville is in some way just a simple common sense notion that freedom is both having an independent sense of oneself (which he calls *individualité* and which is fostered by aristocracy), but it is also participating in a community, a “we” and that such participation isn’t episodic and rare but continuous and constitutive of one’s sense of self as a citizen in a free country (fostered by democracy). Freedom is participating in the public world, not simply in order to be or become something, to “realize one’s best self” or “expand one’s sense of self”, though these are important beneficial consequences of freedom, but they are not identical with freedom. Freedom is the act itself.\(^{188}\)

\(^{186}\) See for instance McLendon (2006), who in an article published in *AJPS* entitled “Jansenism, Tocqueville, and Freedom” does not once define it; notice the jungle of concepts in Boesche *The Strange Liberalism of Alexis de Tocqueville*, chapter 2, which include freedom as decentralization, interdependence and independence, self-mastery, and overcoming self interest. Lawler's book, in some ways pathbreaking, is also confused. Notice his numerous times he writes “liberty or individuality or grandeur” (passim). Freedom must mean very little if it means all good things.

\(^{187}\) George Armstrong Kelly (1992), 30.

\(^{188}\) In this sense I think by classifying Tocqueville’s view of freedom as “positive” according to the schema of Berlin misdescribes it because Berlin attaches positive freedom some concrete idea of the self
But to see how and why I arrived here it is necessary to begin where one always begins with Tocqueville: the contrast between aristocracy and democracy. For Tocqueville freedom is colored by the society out of which it arises; it is not simply a characteristic of the democratic age. “Freedom has manifested itself to men in different times and in different forms; it is not attached exclusively to one social state, and one encounters it elsewhere than in democracies. It therefore cannot form the distinctive characteristic of democratic centuries.” (DA, 480). Ever true to form, Tocqueville contrasts throughout his work two overarching notions of liberty: aristocratic freedom and democratic freedom.\footnote{189}

There are two forms of aristocratic freedom in the old regime. The first is a feudal participatory freedom that he associates with the New England Township: “They were traits which I had wrongly thought were unique to the New World. Neither community had any permanent form of representation, any municipal council properly speaking, and both were governed by officials who acted independently, under the direction of the whole community. Both occasionally had general assemblies where all the inhabitants, united in a single body, elected their magistrates and dealt with their principal affairs” (OR II.3, K 129). This is the freedom of collective participation in communal life that the rise of the monarchical state eventually asphyxiated. In the chapter entitled Of the kind of freedom that existed in the Old Regime, Tocqueville signals a second notion of freedom, which he calls “an unusual kind of freedom, one which is hard that the citizen should be, and from there to totalitarianism. Tocqueville is closer to to Hannah Arendt’s idea of freedom than to Berlin’s positive freedom.

\footnote{189}{“All [the English Colonies] from their beginning, seemed destined to offer the development of freedom, not the aristocratic freedom of their mother country, but the bourgeois and democratic freedom of which the history of the world had till not offered a complete model” (DA, 20, I.1.2).}
to understand today, and which must be carefully examined in order for us to understand the good and the harm which it has been able to do” (AR II.11, 171). This freedom is the “spirit of resistance in the depths of the soul of many individuals [that] kept for many personalities their consistency and their shape” (ibid.). It is a freedom of dissent to centralizing power that preserves a space for individuality and self-mastery. It is born of a “spirit of independence” that “inclined them to stiffen their necks against abuses of authority” (OR, II.11, 172). Tocqueville associates this freedom with “pride of heart”, “virility”, “natural confidence”, “habits of being respected”, “an independent mind”, and “greatness.” This is a freedom born of difference, of one group saying it is not like other groups, that it has a unique existence that it will defend. Participation in communal life and the spirit of resistance are the two types of freedoms outlined in the old regime. One creates a common political world and the other resists encroachments of that common world, the first creates political liberty, the second protects civil liberty (OR II.11, K 174).

While Tocqueville has many words of praise for aristocratic freedom under the old regime he repeatedly emphasizes its shortcomings, calling it “reduced”, “deformed”, “disorderly and unhealthy” (OR II.11, 179). It was a freedom that was “irregular and intermittent, always contracted within the limits of a class, always linked to the idea of exception and privilege, which allowed one to defy the law as much as arbitrary power, and almost never went so far as to furnish the most natural and necessary guarantees for all citizens” (OR II.11, 179). Since it was grounded in class privilege, aristocratic

190 See also DA I.ii.9, M 299. “I shall not speak of the prerogatives of the nobility, of the authority of sovereign courts, of the right of corporations, of the privileges of the province, which, while absorbing the blows of authority, maintained a spirit of resistance in the nation” (DA I.ii.10, 9 M 299).
freedom did not promote the “general freedom of citizens” (172), and “The general good was forgotten” (OR II.ii, 176). Tocquevillefaults aristocratic freedom multiple times for lacking a common political world. This is related to the other lacuna of aristocratic freedom: it did not respect “the empire of the law” (OR II.11, 179). Aristocratic freedom lacked moral force because it was not grounded in equality and generality. It was based on exception and privilege. It combatted arbitrariness but was itself arbitrary. What gave aristocratic freedom strength also limited it. Contrarily, the great advantage of democracy is that it gives rise to the possibility of a genuine public world ruled by general and equal laws, a freedom born of similarity.

Tocqueville’s contrast between aristocratic and democratic freedom in the Old Regime (1856) first appeared twenty years earlier in the most important statement on liberty in Tocqueville’s corpus. In a small piece entitled État Social et Politique de la France avant et depuis 1789, that he wrote for the Edinburgh Review at the request of John Stuart Mill, he wrote:

“Liberty can present itself to the human mind under two different forms. One can see in it the use of a common right or the enjoyment of a privilege. To want to be free in one’s actions or in some of one’s actions, not because all men have a general right to independence, but because one possesses oneself a particular right to remain independent, that is the manner in which liberty was understood in the Middle Ages, and how it has almost always been understood in aristocratic societies where conditions are very unequal, or where the human spirit, having contracted the habit of privileges, finishes by arranging under the number of privileges the use of all the goods of this world. This notion of liberty related only to the person who conceived it, or at the most to the class to which it belonged, is able to subsist in a nation where general liberty does not exist...This aristocratic notion of liberty produced in those places where it was received a very exalted sentiment of their individual value, a passionate taste for independence. Conceived by individuals, it often brought men to do the most extraordinary things; adapted by an entire nation, it has created the greatest people that ever were. The Romans thought that they alone among the human race were able to enjoy independence, and it was far less to nature than to Rome that they thought they had the right to be free. According to the modern notion, the democratic
notion, and if I dare say the correct notion of liberty, each man, being supposed to have received from nature the necessary lights to conduct his life, has from birth an equal and enduring (imprescriptible) right to live independently of those like him (ses semblables), in everything that relates only to himself, and to arrange his own destiny as he sees fit” (EP, Pleiade 35-36, my translation).

Aristocratic and democratic freedom open themselves up to broader dichotomies. Tocqueville contrasts the particular (aristocratic) to the general (democratic), and the conventional (aristocratic) to the natural (democratic). While the kinds of freedom that existed in aristocratic times (participatory freedom and dissent/resistance) can also exist in democratic times, what distinguishes democratic freedom is its moral foundation in natural political right. Tocqueville accepts that modern philosophy has revealed that aristocratic freedom was ultimately based on illegitimate force. In Democracy in America he says that “It is impossible to imagine anything more contrary to the nature and the secret instincts of the human heart than a subjection of this kind...Since human societies have existed, I do not believe one can cite the example of a single people that, left to itself and by its own efforts, has created an aristocracy at its heart: all the aristocracies of the Middle Ages were daughters of conquest...Force then imposed the inequality that, once entered into mores, maintained itself and passed naturally into the laws” (DA I.ii.10, M 383-4). While founded on force, aristocracy gained some legitimacy from tradition and long usage. One could submit to it without being degraded. “In superstitious or badly enlightened societies, absolute power often compromises souls, but it doesn’t degrade them, because absolute power is admitted as a legitimate fact. One suffers its rigors

191 “The most profound and vast geniuses of Rome and Greece were never able to arrive at the idea, so general but at the same time so simple, of the similarity of men and of the equal right to freedom that each bears from birth” (DA, 413).
without seeing them, one bears them without feeling them. It can never be the same in our days. The 18th century and the French Revolution did not prepare us to submit to despotism with morality and honor” (Pleide I, 1210, Address to the French Academy [1842]). Aristocratic freedom didn’t degrade souls because it was based on an illusion of legitimacy. Modern thought removes the veil. It replaces force with general laws, which opens up the possibility of non-servile obedience, a genuine reconciliation of freedom and authority: “It is with the idea of rights that men have defined what license and tyranny are. Enlightened by it, each could show himself independent without arrogance and submissive without baseness. The man who obeys violence bows and demeans himself; but when he submits to the right to command that he recognizes in someone like him, he raise himself in a way above the very one who commands him” (DA 227. I.2.6). Without rights “there is no society; for, what is a union of rational and intelligent beings among whom force is the sole bond” (ibid). Modernity replaces force with law, and in so doing gives rise to the possibility of moral obedience without servility precisely because it gives rise, for the first time, to a general and common world grounded in political right, a world in which democratic freedom can appear.

Tocqueville further associates freedom with independence and lack of freedom with dependence and immobility. Take for example Tocqueville’s discussion of the new industrial aristocracy. He describes the position of the worker as “a state of dependence and misery”, occupying a “place that is made for him and that he cannot leave. The one is in a continual, strict, and necessary dependence on the other, and he seems born to obey as the latter is to command” (DA, 531). And in aristocracies “each wealthy and powerful citizen in them forms as it were the head of a permanent and obligatory association that is
composed of all those he holds in dependence to him, whom he makes cooperate in the execution of his designs” (DA, 490). Freedom is the opposite of dependence, it is the ability to move, a movement that is a product of openness and choice. Democratic freedom is genuine self-direction, moving, broadly understood, where one wants.

But, paradoxically, Tocqueville also associates freedom with obedience and dependence. “So wrong it is to confound independence with liberty. No one is less independent than a citizen of a free state” (Old Regime Preface, ). And it is for this reason that the emergence of a genuine common world grounded in law and political right is so important. There is a difference between obeying a legitimate sovereign and an illegitimate one. To obey an illegitimate one willingly degrades oneself and becomes servile (OR 179). But to obey a legitimate one is to be manly. Tocqueville associates the different types of obedience with different and contrary states of “soul” (OR 173, 179). To be free is thus to possesses a certain esprit. That esprit is cultivated in an environment of political rights, public participation, and free institutions that are both the consequence and the guarantors of freedom. To be free is not to have rights but to have the esprit de liberté. Tocqueville associates a free soul with haughtiness, pride, manliness, and mental independence; he associates lack of freedom with the spirit of the courtier, the valet, and the lackey. Those high qualities are the exact ones that Tocqueville used to describe the aristocrat. The high points of democratic freedom can reproduce the aristocratic freedom that was the “daughter of conquest.” The distinction between aristocratic and democratic freedom is not to be understood as temporal but structural, as paradigmatic of the two forms of freedom in Tocqueville: participation in a common world, a product of similarity, and of the assertion of resistance to central authority and other forms of
arbitrary power, a product of difference. But Tocqueville labels them according to their regime type in order to signal that each social state more naturally produces one sort of freedom rather than the other. “Democratic government, which is founded on an idea so simple and natural, nevertheless always supposes the existence of a very civilized and very learned society. At first one would believe it be contemporaneous with the first stages of the world: looking at it closely, one easily discovers that it could only have come last” (DA, 199. I.2.5). Freedom seems to be both a given (let men be and they will be equal and free) and an achievement (a conscious production of human art that demands skill and character). Democracy recognizes its givenness, while neglecting its achievement; aristocracy recognizes it as an achievement while neglecting its givenness. Freedom is the combination of the two.

In sum, there are two important points to signal for Tocqueville’s understanding of democratic freedom: First, the modern and correct notion of freedom is that the individual’s life should be self-directed. Democracy gives rise to the possibility of genuine individual choice for everyone equally, the basis of which is in natural right. It is the freedom to choose one’s profession, spouse, dwelling, representatives, and to think, speak, and write freely “under the government of God and the laws alone” (OR III.3, 217). Democratic freedom is the ability to choose who one is and what one does. Second, democracy gives rise to a genuine common world, a true common good, or a public space that is general and non-exclusionary. It is in democracy that a true common good is possible. Freedom is participation in that public world.

Tocqueville’s Democracy in America is a description of a society that is built upon the new definition of freedom. It is based on the idea, one that Tocqueville only
hesitantly endorses, that each is endowed by nature with the necessary lights to run one’s own life. And it is a definition that corresponds perfectly with his description of the foundations of popular sovereignty. Both popular sovereignty and democratic freedom are based on the idea that “providence has given to each individual, whoever he may be, the degree of reason necessary for him to be able to direct himself in things that interest him exclusively. Such is the great maxim on which civil and political society in the United States rests” (DA I.ii.10, M 381). Tocqueville shows how the Americans apply this notion of freedom to every aspect of their lives.

As almost all concepts in Tocqueville have no unambiguously positive valence, so too independence has an equivocal value in Tocqueville’s lexicon. It is associated with freedom but also with isolation, withdrawal and eventually despotism. And this is because a lack of dependence is also a lack of society. We have remarked in the previous chapters how democracy makes the state of nature reappear, and this is why Tocqueville describes the Indian as living a life of independence. Tocqueville’s notion of liberty retrieves and describes in a sociological way the fundamental trope of early modern political thought. In America practice meets theory. Tocqueville shows what effects modern theories have on the society and soul of modern individuals. It it thus not surprising that he begins the second volume of Democracy in America with a discussion of Cartesianism, the notion that every person should run their lives based on their reason alone, itself a product of the democratic age of similarity that grounds the political legitimacy of modern freedom.
4.2 Infinite and Bounded Freedom:

Descartes versus Pascal

“Providence has not created the human race either entirely independent or perfectly slave. It traces, it is true, a fatal circle around each man that he cannot leave; but within its vast limits man is powerful and free: so too with peoples” (DA II.iv.8, M 676).

It makes no sense to speak about freedom abstracted from the subject of whom freedom is predicated. How is it possible to speak about the freedom of some contrived entity, without knowing the characteristics of that being and the type of world it inhabits? Similarly, what can it possibly mean for a crocodile or a rock or an amoeba to be free in the same way that a human is free? That would only make sense if they share some identical characteristic. Say, for instance, that insofar as both a crocodile and man are made of flesh and blood they are subject to the same forces that move the entire natural world. But since man has logos, perfectibility, guilt, or whatever it may be that separates him from that curious reptile and the rest of the natural world, freedom must be for him a different thing than it is for the crocodile. Freedom depends then on the nature of the being under question, it is relative and not absolute. To know what freedom is for man we must know man and the type of world he inhabits.

Democratic or modern freedom is grounded in the notion that each individual is a rational creature with sufficient lights to conduct his life as he sees fit, to choose his own destiny and enact it in the way he pleases. This is the core insight at the heart of
democratic freedom, but the democratic world changes and modifies man’s view of the world and of himself. Democratic man’s experience of the world is a product of the equal social state. And Tocqueville thinks that state produces systematic distortions that incite man to adopt overstated notions of his own freedom and independence. This chapter looks at two such exaggerations. The first is the spirit of Cartesianism (which Tocqueville also identifies with Luther, Bacon, Voltaire, and democratic man as a whole). The democratic social state exaggerates to the point of caricature the idea that man is a self-determining agent, fully in control of his beliefs and destiny. Let us call this view of man “Pathological Cartesianism” and, following contemporary literature, “the sovereign self.” Tocqueville wishes to offer a friendly corrective to this view rather than a wholesale rejection. That friendly corrective stresses human boundedness and man’s need for community. Tocqueville emphasizes man’s limitations by juxtaposing Cartesianism with a Pascalian anthropology, one that sees man not primarily as rationally autonomous but as anxious, dependent, weak, and burdened by an existential situation that opens him up to infinite freedom. But the Pascalian-democratic experience of infinite freedom is also a pathology in need of correction. What links the two pathologies is their treatment of the individual as a singularity before the infinite, what counters them both is a boundedness that comes from the individual’s reintegration into political and religious communities. If democratic similarity makes a new form of freedom possible, it also can destroy it; it is combatted with the aristocratic emphasis on social connectedness.

It was a staple of counter-revolutionary discourse that modern philosophy and Protestantism were a single movement with an individualistic, skeptical, and rationally

\[192\] For the use of this term see Patchen Markel, *Bound by Recognition*....
corrosive spirit that delegitimized all authority. This counter-revolutionary view is central to Tocqueville’s depiction of American attitudes. Not tricked by Descartes’s conservative “provisional morality”, the first specious commandment of which is to “obey the laws and the customs of my own country” (Discourse on Method [DM], 13), Tocqueville recognizes Descartes for the radical that he is.\textsuperscript{193} Tocqueville contends that “In the sixteenth century, the reformers submit to individual reason some of the dogmas of the ancient faith; but they continue to exclude all others from discussion. In the seventeenth Bacon, in the natural sciences, and Descartes, in philosophy properly so-called, abolish the received formulas, destroy the empire of traditions, and overturn the authority of the master” (DA II.i.1, M 404). The quintessential modern experiences of skepticism and subjectivity that Descartes personally exemplified in the Discourse erode all traditional authority. Skepticism displaces the locus of authority from what is received by the individual to what is given by the individual. What is known best is established by one’s own reason and experience, not by the authority of another person or institution.

Descartes “resolved to search for no knowledge other than what could be found within [himself]” (DM 5); the Americans seek the “reason for things by themselves and in themselves alone” and call upon the “individual effort of his own reason” (DA II.i.1, M 403). Like Descartes, alone in a stove heated room, the American “withdraws narrowly into himself and claims to judge the world from there” (M 404). Cartesianism isn’t simply a philosophy but a way of life, one that gives rise to a decidedly individualistic

\textsuperscript{193} Descartes of course is not too happy about obeying the laws of Catholic France. Moreover he is well aware of the “corruption of our morals” which has the consequence that “few people are willing to say everything they believe”, Descartes included (DM 13). Descartes provisional morality is thus not to promise anything that will curtail his own “freedom” (the only mention of freedom in the Discourse) (DM 14). That is to say, his provisional morality amounts to him not promising to do anything he doesn’t want to do.
and disconnected mode of envisioning one’s place in the world and one’s relations to others. The democratic social state, based on the equality and similarity of all individuals, encourages the experience of Cartesian subjectivity without the need of the master. Americans don’t draw knowledge from “books”, they have “no schools of their own”, and they “lack the time” (M 404). They practice Cartesianism by instinct; it is “vulgarized” Cartesianism, Cartesianism becomes ideology.\(^{194}\)

If the first moment of Cartesianism is corrosive skepticism of all authority, Tocqueville thinks the second is empowerment. Like Descartes, Americans place great stock in the ability of the human intelligence to explain the world. They think that “everything in the world is explicable and nothing exceeds the bounds of human intelligence” (M 404). This leads to the feeling that humanity is capable of great things. It encourages the individual to think he can define his life as he sees fit, to be completely self-determining, the very dogma that stands at the heart of popular sovereignty. “Each then undertakes to be self-sufficient and finds his glory in making for himself beliefs that are his own about all things” (M 406). The self-determination extends temporally in both directions, to his past by which he thinks he is not determined, and to his future that he thinks is his to make. The American envisions a world in which man is master of himself and of his universe, capable of rational plans and great achievements.

The sovereign self has a high opinion of his capacities for autonomy. This leads him to think he can define his life as he sees fit, do what he wants, be who he wants. This optimism takes a hard hit when confronted with the realities of democratic life:

\(^{194}\) The *philosophes* sought the idea world each “in his reason alone” (OR 197). They liked “general and abstract theories of government” (OR 197). They had “general ideas”, “systems”, and were ‘contemptuous of old wisdom” and “confident in their individual wisdom” (OR 197).
“When all the prerogatives of birth and fortune are destroyed, when all professions are open to all, and when one can reach the summit of each of them by oneself, an immense and easy course seems to open before all ambition of men, and they willingly fancy that they are called to great destinies. But that is an erroneous view corrected by experience everyday. The same equality that permits each citizen to conceive vast hopes renders all citizens individually weak. It limits their strength in all regards at the same time that it permits their desires to expand” (DA II.ii.13, M 512).

Democracy encourages the individual to think he is more autonomous than he actually is. Democratic expectations don’t match democratic reality. This constant disparity leads to frustration and disappointment; it is “tormenting” and “fatiguing” (512).

The prudent, careful Tocqueville is neither uniformly pessimistic nor optimistic about Cartesian subjectivity. While appreciating the empowering potential of Cartesianism, he also connects Cartesianism to the negative tendencies of individualism, doubt, and democratic weakness. Therefore the second chapter of the second volume of Democracy in America, entitled On the Principal Source of Beliefs Among Democratic Peoples, is an extended critique of democratic optimism and a trenchant criticism of the infinite freedom the sovereign self thinks itself capable of (II.i.2). The vector of the critique is that democratic Cartesianism exaggerates the capacities of the average individual. It encumbers him with tasks he cannot possibly complete. Man is finite, limited, and weak. If he tried to rebuild all his commitments, intellectual and otherwise, from the ground up, like Descartes, he would “exhaust himself” (407) and be unable to recognize “the limits of his mind” (408). Man cannot “will” all his “first foundations” but accepts them on authority (408). This is a requirement of the “inflexible law of his condition”, and is even true for “philosophers” (408). In a striking reversal of the
Cartesian lexicon, Tocqueville thinks democratic man will lack “certainty” and be plagued by doubt (408). Collectively, Cartesianism erodes the fabric of society which is built upon “certain ready-made beliefs” (407). Descartes does not deny that. Skepticism for Descartes is a purely negative tool, a stage on life’s way. It is discarded once it has done its work. But Tocqueville thinks democratic man just doesn’t have the tools to extricate himself from doubt and skepticism as Descartes can. The Cartesian American spirit distorts the human capacities for autonomy and mistakes the foundation of all regimes that rely on some measure of dogmatic beliefs. This hides his ontological or existential position from him, opening a gulf between democratic beliefs and democratic reality.

While Tocqueville accepts much of the counter-revolutionary narrative of the corrosive effects of an individualistic spirit he is, of course, not a counter-revolutionary. Tocqueville thinks that many ancient things the individualistic spirit brought down deserved to be. The aristocracy was an unjust regime. As importantly, while the sovereign self is an exaggeration of man’s potential for self-determination, and is thus misleading, it is an exaggeration of a truth that each is given by nature the necessary lights to run their lives as they see fit. The human experience of empowerment at the core of democratic life is to be affirmed. But the problem is that the modern revolution is uncontrollable. One cannot restrict the corrosive doubt of all authorities to a few select domains while cordonning off all others. “All ancient things are attacked” in order “to open the way to all new ones” (405). Therefore while Tocqueville affirms the democratic truth he also recognizes the force of the counter-revolutionary critique. He believes that “Some fixed ideas about God and human nature are indispensable to the daily practice of
their lives, and that practice keeps them from being able to acquire them...General ideas relative to God and human nature are therefore, among all ideas, the ones it is most fitting to shield from the habitual action of individual reason and for which there is most to gain and least to lose in recognizing authority” (DA II.i.5, M 417-8). In its uncontrolled modes American Cartesianism threatens to destroy all inherited beliefs, including the beneficial ones like America’s Christian heritage. By destroying all ancient things man is no longer constrained by his past, by the transcendent, by precedent. The modern revolutions of skepticism and subjectivity that destroy all ancient authorities open up a “limitless space” (406). And this is when we return to despotism. Tocqueville rejects the idea that pathological Cartesianism will lead to the demise of all authority. Since man is incapable of forming all his beliefs himself, the sovereign self reconstructs authority and places it in the mass. Paradoxically, the enlightenment motto of sapere aude, think for yourself, leads in the end to the enslavement of thought rather than its liberation.

American Cartesianism has, then, a healthy mode and a pathological mode. The healthy mode is that man should direct his life as he sees fit, but within a restricted sphere, and the pathological mode that man is master of all things. Tocqueville’s description of human finitude is indebted to Descartes’ great nemesis Pascal. Tocqueville reenacts their quarrel throughout Democracy in America.

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195 So worried is he that he thinks uncontrolled Cartesianism threatens “the greatness and happiness of the human species” (410).

196 “It is true that every man who receives an opinion on the word of another puts his mind in slavery; but it is a salutary slavery that permits him to make good use of his freedom...It is therefore always necessary, however it happens, that we encounter authority somewhere in the intellectual and moral world. Its place is variable but it necessarily has a place. Individual independence can be more or less great; it cannot be boundless. Thus the question is not that of knowing where an intellectual authority exists in democratic centuries, but only where it is deposited and what its extent will be” (DA II.i.2, M 408). Notice Tocqueville’s double use of the phrase “ready-made.” Once in a positive sense on page 407 and once in a negative sense on page 409.
Their disagreements centered on the implications and proper response to the explosion of the closed universe and the rise of modern natural science, to which both philosophers made major contributions. Both philosophers confronted the fact that some of man’s most basic assumptions about the world and his place in it were false. This cataclysmic rupture in man’s self understanding produced for Descartes both a negative project to purify man of all other forms of inherited traditional knowledge by radical doubt, and a positive project to rebuild the human sciences on a surer basis modeled after the method of the natural sciences. While Descartes is optimistic about the possibility of the new science giving a sounder basis for certain knowledge that can be put in the service of human life, after a precociously brilliant career in the sciences Pascal abandoned that optimism and turned to faith as the only genuine solution to the misery of the human situation. “It would be enough, without doubt, if reason were reasonable. Well it is reasonable enough to admit that it has not yet been able to find anything that is firm, but it doesn’t despair of achieving that one day. On the contrary, it is as ardent as ever in its search and assures itself to have in itself the necessary forces for this conquest” (Pensée 393, pg. 876). This faith imbues Descartes’ new beginning in philosophy, which was to be justified by its great scientific results. Pascal inaugurates a line of critique, later followed by Rousseau and the counter-enlightenment, that questions whether anything promised by the new science can achieve happiness in the way that Descartes thinks it can. Surely health and security are not the first goods for human beings. If it were, Pascal asks, why is it that man cannot sit in his house and be satisfied but must go out everyday chasing

197 Citing Pascal is somewhat of a tricky business. I cite here the Sellier edition, followed by the page number in the commonly available edition by Le Livre de Poche in La Pochothèque. Any edition worth its salt will have a table de concordance.
foxes and hares, why do kings need clowns, why are *les grands* miserable if they only have three lackeys, content if they have four, and miserable again if they see someone with five. Pascal affirms the Cartesian experience of skepticism and subjectivity, he even extends them by adding anxiety, paranoia, and restlessness. But he rejects the Cartesian solution in favor of one that can be summed up in one word: Jesus. For Pascal the limitlessness, unmooredness, and possible emptiness of the world without god and its reverberations in the running-like-a-chicken-with-its-head-cut-off quality of human life, is precisely what opens man to the existential terror that returns him to the divine. Rather than human empowerment born of his great rational capabilities, Pascal emphasizes man’s weakness, fallibility, vanity, and smallness.

Tocqueville folds these Pascalian experiences into democracy, showing how the psychological exposure to infinite freedom brought about by democracy produces feelings of smallness, aimlessness, and terror at the possibility of man’s weakness and radical contingency. There are two privileged sites of the Pascalian experience in Tocqueville’s thought. One emerges out of frenetic democracy, and another, in an eclectic blend of Pascal and Romanticism, out of man’s lonely immersion into the boundless immensity of nature. The Pascalian emotions provoked by these experiences are made possible by the collapse of the aristocratic world and the unmooring of individuals from traditional sources of meaning. Just as American Cartesianism produces a pathological sovereign self, so too the Pascalian experience is primarily a pathology in

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198 “When the man who lives in democratic centuries compares himself individually to all those who surround him, he feels with pride that he is the equal of each of them; but when he comes to view the sum of those like him and places himself at the side of this great body, he is immediately overwhelmed by his own insignificance and weakness” (DA II.i.2, M 409).
need of correction. But it is grounded in and revelatory of a truth about man’s existential condition according to Tocqueville, that we are spiritual and religious beings and a proper use of that spirituality requires the limitations and boundaries of traditional religious communities.

Much recent scholarship has focused, and rightly so, on democratic man’s inquiétude, which was first characterized by Pierre Nicole and Pascal as man’s experience without God, and then transposed to the commercial ethos by Montesquieu, Locke, and finally Tocqueville.¹⁹⁹ The experience of frenetic democratic capitalism reveals la misère de l’homme. In the midst of his well being he is “tormented” and “grasps [goods] without clutching them, and he soon allows them to escape from his hands so as to run after new enjoyments” (512). Democratic man cannot sit still, he is always active, plunging into different endeavors, pursuing “a complete felicity that always flees from him” (DA II.ii.13, M 512). This makes him “melancholic” (514). Democratic man’s immersion into the material runs in tandem with his Cartesianism skepticism. “In democratic centuries...beliefs are as much afloat as are the laws. Doubt then brings the imagination back to earth and confines them to the visible and real world” (DA II.ii.17, M 459). Democracy gives man a taste for the “tangible and the real” (433). In a reversal of Descartes’s cogito, instead of the existence of the thinking ego divorced from all corporality as the proof the individual's being, democratic man seeks confirmation of himself in the material.

And it is this plunging into capitalist materialism that returns man to the spiritual. By overly inserting himself into the agitated life of commerce, democratic man all of a

¹⁹⁹ Most prominently in the work of Lawler, Rahe, Mitchell, and McLendon
sudden feels the urge of his immaterial needs: “Man did not give himself the taste for the infinite and the love of what is immortal. These sublime instincts are not born of a caprice of his will: they have their immovable foundation in his nature; they exist despite his efforts. He can hinder or deform them, but not destroy them. The soul has needs that must be satisfied; and whatever care one takes to distract it from itself, it soon becomes bored, restive, and agitated among enjoyments of the senses” (510). Being bored, agitated, and restive are the archetypical Pascalian experiences that make of human misery a pathway to the divine. And Tocqueville thinks the experience of the divine is natural to man. It is Atheism that is unnatural. There is however an important difference between religion and Pascalian emotions. Those emotions make known the importance of man’s spiritual needs, but they do not help guide and structure them. That is the task of dogmatic religions which, as well shortly see, shield the individual from unbounded freedom rather than constantly opening himself up to them.

Man’s experience of the natural world is the other privileged site of the Pascalian experience. This can be best seen in Tocqueville’s autobiographical description of his own encounters with nature in a small opuscula entitled *Quinze Jours dans le Désert*, which was originally meant to accompany the publication of Democracy and America but wasn’t published until after Tocqueville’s death, in 1860, by his old friend Beaumont.

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200 Speaking of the retreat of the clergy from public life in America, he comments that “The short space of sixty years will never confine the whole imagination of man; the incomplete joys of this world will never suffice for his heart. Alone among all the beings, man shows a natural disgust for existence and an immense desire to exist: he scorns life and fears nothingness. These different instincts constantly drive his soul toward contemplation of another world, and it is religion that guides it there. Religion...is as natural to the human heart as hope itself. Only by a kind of aberration of the intellect and with the aid of a sort of moral violence exercised on their own nature do men stray from religious beliefs; an invincible inclination leads them back to them. Disbelief is an accident; faith alone is the permanent state of humanity” (DA I.i.9, M 284). Religion depends on “one of the constituent principles of human nature” (ibid., 284).

201 I have only seen this emphasized by Lawler (1993).
This document reveals Tocqueville’s ability to underscore philosophic motifs through biography and story. Following the French tradition of Montaigne, Descartes, and Rousseau of embedding a philosophic narrative within autobiography, Tocqueville uses his experience of the untouched natural world to convey truths about the human situation.

Just as he uses Pascal to describe aspects of the frenetic democratic experience, Tocqueville describes the solitude and immensity of nature as a space of religious terror, groundlessness, and chaos. Fearing that he lost Beaumont while the two briefly separated at dusk in the forest, he recalls that “My voice echoed for a long time amid the solitude that surrounded me. But I got no response. I cried out again and listened again. The same silence of death reigned in the forest. Worry seized me, and I ran along the stream to find the path that crossed its course farther down” (LF, 1332). The worry of losing his travel companion in the dark is analogous to the broader worry that man is alone in a world god has absconded from. “Thus everything is immobile in the woods, everything is silent beneath its leaves. You would say that the Creator has for one moment turned His face away and that the forces of nature are paralyzed. Not only in this case, moreover, did we notice the singular analogy that exists between the sight of the ocean and the appearance of a wild forest. In both spectacles, the idea of immensity assails you. The continuity of the same scenes, their monotony astonishes and hinders the imagination” (1339).202 The

202 This association of edenic nature and death was incorporated into Tocqueville’s description of the Caribbean and South America in Democracy 1: “When Europeans landed on the shores of the Antilles and later on the coasts of South America, they thought themselves transported into the fabled regions celebrated by poets. The sea sparkled with the fiery glow of the tropics. For the first time, the extraordinary transparency of the waters exposed the depth of the ocean bottom to the eyes of the navigator. Here and there small perfumed islands appeared, seeming to float like baskets of flowers on the calm surface of the Ocean. In these enchanted places, all that came into view seemed prepared for the needs of man or planned for his pleasures. Most of the trees were laden with nourishing fruits, and those least useful to man charmed his vision with the vividness and variety of their colors. In a forest of fragrant lemon trees, of wild figs, of myrtle oaks, of acacias and of oleanders, all intertwined by flowering creepers, a multitude of birds
immensity of the wilderness, like the sea, reveals “the ridiculous smallness of man” and
(employing the Pascalian lexicon) “the misery of his nature.”

Tocqueville, so to say, finds Pascal in the woods: “[There] everything around you falls into a silence so profound, an immobility so complete that your soul feels penetrated by a sort of religious terror. The traveler stops, he looks around. Pressed together, intertwined in their branches, the trees of the forest seem to form only a single whole, an immense and indestructible edifice, under whose vaults reigns an eternal darkness” (LF 1339).

Tocqueville’s is a religious experience that emerges out of the interplay of the inner world of the passions with nature. Like Pascal, Tocqueville privileges the knowledge of the coeur, in addition to raison. “Nous connaissons la vérité non seulement par la raison, mais encore par le coeur.” We know “first principles” because of the heart (Pensée 142). And the heart, terrorized by its smallness, opens itself up to the transcendent by means of religious terror.

Tocqueville’s mind operates through a number of dominant metaphors and themes which he uses to control and organize his thoughts on democracy and life more broadly. One can see the similarity and consistency of those themes by juxtaposing his description of his experience of the wilderness in Quinze Jours and those of democratic man in Democracy. He describes the wilderness as giving him a “religious terror”, the famous phrase he uses to signal his emotions at the approach of democracy; the mind immersed in nature is “immobile” which he associates with a state of death, the same idea

unknown in Europe flashed their wings of crimson and azure and mingled the chorus of their songs with the harmonies of a nature full of movement and life. Death was hidden under this brilliant cloak; but it was not noticed at all at that time. Moreover, in the air of these regions, there reigned I do not know what enervating influence, attaching man to the present and rendering him unmindful of the future” (LF, 38).

203 Correspondance avec Madame de Circourt, OC, XVIII, p. 52, cited in LF1337.
conveyed the immobility of despotism with its catatonic stagnation. Tocqueville’s experience of nature tracks his discussion of the experience of democratic man.

Both Cartesian and Pascalian experiences are revelatory of truths about the human condition but are not steady states of freedom. They are in fact false freedoms. Juxtapose, for instance, these two citations:

“The last century had an exaggerated and a rather puerile confidence in the power that man exercises over himself and in that of peoples over their own destiny. That was the error of the time...The fatigue of revolutions, the tedium of emotions, the failure of so many generous ideas and so many vast hopes, all this has now precipitated us in the opposite excess. After having believed ourselves capable of everything, today we believe ourselves capable of nothing, and we like to believe that from now on struggle and effort will be useless and that our blood, our muscles, and our nerves will always be stronger than our will and our virtue” (Selected Letters on Politics, letter to Gobineau, 303).

“When authority in the matter of religion no longer exists, nor in the matter of politics, men are soon frightened at the aspect of this limitless independence. This perpetual agitation of all things makes them restive and fatigues them. As everything is moving in the world of the intellect, they want at least that all be firm and stable in the material order; and as they are no longer able to recapture their former beliefs, they give themselves a master” (DA, 418). Thus “Individual independence can be greater or lesser; it cannot be limitless” (LF 717).

It is not that Tocqueville denies the value of both experiences. He just doesn’t think that man can plan and enact his life if he thinks he is more powerful than he actually is, leading him to divorce himself from community, or much weaker and contingent than he otherwise might be, leading him to strange religions and silly beliefs, and constant anxiety if not depression.\(^{204}\) The fact that Cartesianism and the modern spirit has brought down the “superstitions” and inherited misconceptions of man in his “state of infancy” does not lead ipso facto to human liberation. It leads instead to indeterminacy and

\(^{204}\) Tocqueville suggests that melancholy and depression will be high in democratic times (DA II.ii.14 M 514).
possibility, but also to anxiety, fear, and restlessness. Freedom is not the destruction of a false world, but the construction of the “right” one. And Tocqueville thinks America, for all its failings, is that “right” world because it combines the “spirit of religion” and “the spirit of freedom” (DA I.i.2, M 43). The spirit of freedom counters the corrosive effects of Cartesian subjectivity by reintegrating man into community and the spirit of religion bounds and contains democratic limitlessness. Both have the effect of affirming the importance of man’s connectedness to others which tempers the corrosive effects of his experience of democratic life and the divine as an isolated singularity. The spirit of freedom is necessary because by working together citizens regain their sense of empowerment and autonomy. It is by thinking that they are autonomous in the right ways that fosters citizens to actually be autonomous.

Tocqueville does not think isolating oneself from some form of community is good politics or good psychology. Engagement is the critical antidote to both the political pathologies of individualism born of the Cartesian spirit that dissolves society as well as the feelings of loneliness and isolation that democracy fosters: “Only freedom can bring citizens out of the isolation in which the very independence of their circumstances has led them to live, can daily force them to mingle, to join together through the need to communicate with one another...Only freedom can tear people from the worship of Mammon and the petty daily concerns of their personal affairs and teach them to always see and feel the nation above and beside them...” (OR Preface, K 88). Freedom combats the psychological pathologies incident to the self-definitional independence that comes with democratic openness by reintegrating man into community. But freedom is also that independence. It is not, as was emphasized in the previous chapter, the subsumption of
the individual into the collective and the loss of individual personality and uniqueness. It is not the anonymous citizenship of Sparta. Freedom is a middle term: it is participating and being a part of a communal “we” and keeping oneself apart from that “we” so as to retain a unique and independent “I.” It is then an affirmation of and limitation on Cartesian individualism.

The second constituent element that makes American freedom successful is the spirit of religion. The spirit of religion is necessary for freedom precisely because of the way that Tocqueville understands human nature, an understanding that we saw above was very much influenced by Pascal. Man is an anxious, needy, restless being. He needs help. The democratic social state does not naturally offer him the support he needs. That is because democracy encourages the experience of infinite possibilities that makes the individual more restless and worried.

Tocqueville does not believe this restlessness can be structured by an amorphous democratic morality. Tocqueville does think that democratic life gives rise to moral relationships between people by what one might call the objectification of the immanent. This abstract formulation is meant to convey the idea that, absent a transcendent sponsor of moral limitations upon human activity, there are still binding moral norms that are the logical or rational consequences of certain facts about humanity, such as the notion that each person is inherently a rational and free being. This idea is given a famous expression in the classic liberal notion of rights, where, for instance, it is immoral to murder even absent, or without depending on, the veracity of God’s prohibition against it. But Tocqueville is not really a rights theorist. In fact this has been a point on which he has been the subject of some criticism. While he does understand rights as limitations on
public power, his discussion of rights as “virtue introduced into the moral world” is idiosyncratic and theoretically underdeveloped (DA I.ii.6, M 227). Tocqueville does think there is a level of appeal above the sovereignty of the people that does not rely on a transcendent moral sponsor. It is the appeal from the sovereignty of the people to the sovereignty of the human race (DA I.ii.7, M 240). This is the “general law” that has been adopted by the “majority of men,” and which Tocqueville calls justice. Justice thus “forms the boundary of each person’s right” (DA I.ii.7, M 240). Tocqueville’s meaning is ambiguous. One interpretative strategy is to associate justice with man’s natural conscience that establishes the basic notions of right and wrong that Tocqueville links to the rise of democratic similarity. The content of the natural conscience is, in part, that men are free and equal by nature. The basic idea is that human nature, revealed by democracy, gives rise to general moral standards which thereby trace boundaries to public power and can structure elementary moral relations between people. This idea is very much akin to the stance taken by Lincoln in the Lincoln-Douglas debates: it is absurd to claim that popular sovereignty, which is based on the freedom and equality of all by nature, can entail the enslavement of another human being. There are thus moral

205 This does not mean that Tocqueville does not support rights. Quite to the contrary. He is deeply concerned, for instance, about their erosion: “Don’t you see that religions are growing weaker and that the divine notion of rights is disappearing? Don’t you find that mores are becoming corrupted and that, with them, the moral notion of rights is fading away?” (DA I.ii.6, LF 391).

206 Some scholarship has tried to make Tocqueville’s view of rights more “ancient,” attempting to reveal its connection to classic natural right. On this line of approach see L. Joseph Hebert Jr. (2010) and to a lesser extent Salkiever (1990). I think this view mistaken for several reasons. To adduce three, classic natural right is tied bound up with a teleologic view of man, a fairly elaborate and sophisticated “code” of virtue ethics, and a hierarchical psychology of reason and passion. Tocqueville’s thought exhibits none of these features in any systematic way. That he associates rights with virtue hardly makes him an Aristotelean.
norms implicit within popular sovereignty itself which limit infinite freedom. Man’s freedom is not infinite, he is always bound by a higher morality.

While these moral norms may be true and of great benefit to public life, Tocqueville thinks they ultimately do little to help anxiety ridden beings like ourselves navigate the modern world. It is very hard to counter one’s skepticism about moral standards or uneasiness in the face of an infinite universe that might lack a center with philosophic arguments, however ingenious they may be. Tocqueville sarcastically ridicules the physiocrats for wanting a regime that has “for religion only a philosophy, and for an aristocracy none but intellectuals” (OR III.3, K 213). Tocqueville just doesn’t think that philosophy or a loose democratic morality can achieve the benefits that religion can.

Religion is a better antidote to the symptoms of infinite freedom. Religion has always been one of the most widely studied and appreciated aspects of Tocqueville’s political thought. One locus of scholarly debate has been whether Tocqueville was a full religious functionalist, subordinating all religious questions to political life, or whether despite his skepticism, he advocated for religion beyond its political functionality. I think this is not Tocqueville’s own question. His question was whether religion would be completely consumed by the democratic movement or not. But the way he thinks about this, in my mind, has not been fully captured by commentary on the subject. His concern was whether structured and traditional forms of Christian religious life could be

207 As is widely known, Tocqueville was a religious skeptic and plagued by doubt his whole life. He was hardly a regular churchgoer. But he was very much attracted to religious themes. Given how much value he places on Christianity, especially in his kerfuffle with Gobineau, it would be foolhardy to claim that Tocqueville had no belief. His beliefs, whatever they ultimately were, were idiosyncratic and hardly doctrinaire. More importantly, it is very difficult to use his personal religious beliefs to make determinative judgements about the nuances of his political thought.
maintained as an antidote to democratic life, or whether they would be entirely subsumed into the democratic movement and finally displaced by idiosyncratic forms of democratic spiritualism.

Tocqueville has two different interpretations about the proper role of religious beliefs in democratic modernity that run at cross purposes with each other. Sometimes he suggests that certain religious questions should not be asked by most people, that they should be “spared” from thinking about them; and at other times that deep questions should be asked, but only within a structured religious framework, for to not ask them would be “cowardly” (Compare M 406 and 418). It is easily possible, and certainly would not be wrong, to interpret Tocqueville paternalistically by arguing that he thinks the average people should not trouble themselves about deep religious questions and just accept them on authority. But I think the main force of Tocqueville’s depiction of the proper role of religion in democratic societies is more nuanced and sophisticated. Tocqueville is concerned about whether man’s relation to the divine can be regularized, structured, and disciplined in democratic times. Tocqueville contrasts two sets of religious contexts. The first is the traditional Christian service, whether Catholic or

208 Contrast the account here with the one recently published by Ronald Beiner (2010), 252-4. I agree with Beiner on Tocqueville’s differences with Rousseau, but Beiner’s primary question was whether Tocqueville advocated the Protestant or Catholic religion for America which I don’t think is Tocqueville’s primary concern. It is true that Tocqueville wanted to reconcile Catholicism and democracy in France, as Beiner points out, and in this sense the account is surely directed at Catholic reactionaries in France. However, Beiner’s account is internally inconsistent insofar as he thinks (1) Catholicism is better for America than Protestantism but that (2) the American form of Catholicism is “Protestantized”, and that (3) he was more equivocal about Catholicism in private (255). If this is the case the categories make little sense. Second, Beiner argues that Tocqueville thinks that Americans should become more Catholic (253). Given that America was almost an entirely Protestant country at that point, this recommendation seems almost comical, and it is difficult to say how American protestantism could be more “Catholic” without being Catholic. The problem with Beiner’s account is that unorthodox democratic spiritualism is not taken as a contrast to Tocqueville’s primary concern, which is upholding, as he calls it, the “dogmas of the Christian faith” (406). It’s not about Protestant versus Catholic but Christianity versus mysticism.
Protestant, broadly conceived. The second are unorthodox forms of democratic worship, such as spontaneous gatherings in the western woods or forms of mysticism. What distinguishes the “orthodox” practice is that man’s religious impulse is filtered through what Tocqueville calls *forms*, a strange word which is the antonym of *direct* in Tocqueville’s lexicon. It is something like a shorthand for *formalité*, the idea that there are sanctioned rules and practices for religious worship. While those formalities can degenerate into obscurantism, Tocqueville insists that formalized worship encourages more sophisticated and durable forms of religious practice. Contrarily, democratic spirituality scorns formalities and wants an immediate, direct experience of the divine. Americans don’t care, for instance, about the “details of worship” (M 421). They think iconography hides rather than illuminates. True to his Cartesian subjectivity, democratic man thinks the direct spiritual experience more meaningful and true than one filtered through religious authorities. Tocqueville is perfectly happy if this religious impulse for immediacy remains within the broad confines of traditional Christian worship. He is not worried by the number of Protestant sects in America. Schism is not his concern (M 406). His concern is when the desire for immediacy and directness completely break loose from traditional religious contexts. This is when democracy gives rise to “bizarre sects...that open extraordinary roads to eternal happiness”, “religious follies”, and “mysticism” (DA II.ii.12, M 510-11). Tocqueville does not deny that man can have a direct and meaningful experience of the divine outside of a traditional service or that all meaningful spiritual practices are transmitted through hierarchy. That’s not the point. Tocqueville himself had an unstructured religious experience in the wilderness of Michigan. The central point is that these forms of worship are not durable and do not
establish stable religious contexts that more permanently structure man’s religiosity.

Remember that it is religion that “is the one [area] in which it is most difficult for each person, left to himself, to come to fix his ideas solely by the effort of his reason” (DA II.i.5, M 417). The solitary experience of the divine does not provide answers to “primordial questions” that are “very lasting” (418). They give rise to “confused and changing notions” (418). His concern, then, is that extreme democratic forms of religiosity cannot give rise to fixed and stable ideas but “delivers all [man’s] actions to change and condemns them to a sort of disorder and impotence” (DA 417). Since the unorthodox religious experience is much more fluid and indeterminate, it is more easily co-opted by democratic fads. Rather than acting as a regularized oppositional force to democratic life it is merely a caesura that has little lasting effect. Therefore when Tocqueville says that religion poses a “salutary yoke on the intellect” and stops the “free ascent of the mind in all directions” what he means is that a traditional religious context aids man in formulating his questions about the divine and in structuring and regularizing his religious practice (DA II.i.5 M 418). Tocqueville’s concern, as opposed to Maistre, is not that the world is going to become completely atheistic if man starts asking “forbidden” questions. Tocqueville thinks man is by nature a religious animal and will always exhibit spirituality. The question is whether spiritual practices will be bizarre, idiosyncratic, and sporadic with little lasting effect or whether democratic man’s spiritual life will be more sophisticated and effective, which occurs to the extent that it regularized and institutionalized in traditional and durable religious communities. For, as it is a staple of his thought, the individual gains confidence to the extent that he joins with others. Tocqueville’s central idea is that only the confines of some structured Christian
community, whether Protestant or Catholic, will be able to pose an effective counterweight to democratic pathologies.

Looking at the question this way reveals that Tocqueville has a quite different understanding of the place of religion in political life than Rousseau. Rousseau famously thinks that “There is not, nor can there be, any kind of fundamental law that is obligatory for the body of the people” (SC I.7, 52). This of course includes divine law. For Rousseau, religion must be reformed so as to be made compatible with popular sovereignty. However this is quite problematic in an age where Christianity has infused all things and which threatens the unity and integrity of sovereignty, and which, through its universalism, is capable either of fomenting religious violence or, in its more innocuous form as the religion of humanity, eroding the particularist exclusivity of the polity. Rousseau’s “civic profession of faith” is an attempt to solve the problem that Christianity poses to politics (SC IV.8, 150). It does so by associating the transcendent with the regime of popular sovereignty as much as possible and by promoting very basic theistic concepts. So far he and Tocqueville are basically in agreement. But then Rousseau advocates exiling if not killing atheists, immoralists, anarchists, and the religiously intolerant. Here is where they part ways. Religion, in Rousseau’s eyes, rather than being an otherworldly check on sovereign power, should be made compatible and subordinate to it.

Tocqueville thinks of religion in different terms. This in part reflects their different situations. Rousseau is very much concerned about the problem of the virulence of a militant and universalist Christianity. For Rousseau it is Christianity, and especially

209 There is much affinity between Tocqueville’s analysis of democratic similarity and Rousseau’s religion of humanity.
Roman Catholicism, that needed to be tamed whereas mundane popular sovereignty needed strengthening. The experience of the French Revolution provoked quite the opposite reaction. Popular sovereignty was what required taming, while Christianity came under attack. Contrary to Rousseau, Tocqueville attempts to tame popular sovereignty with religion. Religion scales back the objects of human ambition, and encircles the human will within the limits of an outer boundary which it dares not cross.\(^{210}\) Religion limits the nearly unbounded sovereignty opened up by Rousseau’s thought and the democratic age. Like Rousseau, Tocqueville agrees that citizens should believe the basic articles of the civic profession of faith about the immortality of the soul and providential deity: “Surely metempsychosis is not more reasonable than materialism; however, if a democracy absolutely had to make a choice between the two, I would not hesitate, and I would judge that its citizens risk brutalizing themselves less by thinking that their soul is going to pass into the body of a pig than in believing in nothing” (DA II.i.15, M 519-20). Tocqueville wants to protect the free thinker. He condemns the Puritans in very strong terms for legislating “into the deepest recesses of the human heart” which “bring shame to the human mind” (DA I.i.2, M, 39). While Tocqueville and Rousseau share the idea, like many political philosophers since Plato, that it is better if citizens are spiritualists than atheists, the dominant role of religion in Tocqueville is quite the opposite of Rousseau’s: religion is not the handmaiden of political life but a counterforce to it: “The greatest advantage of religions is to inspire wholly contrary instincts” to democracy (DA II.i.4, M/419). It is put in the service of human freedom not by being subordinate to political life but by being detached from it and checking it.

\(^{210}\) DA I.i.2, II.i.4, II.i.15 and 17.
The judicious combination of the spirit of religion and the spirit of politics forms the core of Tocqueville’s famous new science of politics. The fact that Tocqueville thinks political life is able to be understood and to be managed, to some extent, by a “science of politics” is testament to his indebtedness to Descartes and the modern project to control fortune through science, which has been filtered through Montesquieu and Rousseau. This “science of the legislator” is not only the prudential art of statesmanship but is grounded on cognizance of “first causes”, “general rules”, and “primary facts.” It is a blend of the Cartesian spirit filtered through an emerging sociology governed by prudential statesmanship. Its goal is to save human freedom. It does so by knowing what is best for man in different social circumstances. One can think about it as the science of balance or of the middle term. “The whole art of the legislator consists in discerning well and in advance these natural inclinations of human societies in order to know when one must aid the efforts of citizens and when it would rather be necessary to slow them down. For these obligations differ according to the times. Only the goal toward which the human race should always tend is unmoving: the means of getting it there vary constantly” (DA II.ii.15, M 518). Were Tocqueville born in aristocracy he would think of making them more mundane and materialistic to counter their natural penchants; born in a democratic time he would emphasize spiritualism and enlightenment. This reminds one of Pascal: “If he puffs himself up, I deflate him, he lowers himself, I raise him, and thus always contradict him, until he understands that he is an incomprehensible monster” (Pensée 163, pg. 898). Just as Tocqueville’s political science seeks the middle state, so

211 This sagacious double play characterizes much of the thought of Pascal. See for instance Pensée 204: “If we submit everything to reason, our religions won’t have anything mysterious and supernatural in them. If we shock the principles of reason, our religion would be absurd and ridiculous”
is human freedom a middle term, a kind of tertium quid, between complete autonomy and complete determinism. For Tocqueville, human freedom exists within a bounded circle, which is an affirmation of human finitude. He concludes Democracy in America by saying exactly that: “I am not unaware that several of my contemporaries have thought that peoples are never masters of themselves here below, and that they necessarily obey I do not know which insurmountable and unintelligent force born of previous events, the race, the soil, or the climate. Those are false and pusillanimous doctrines that never produce any but weak men and pusillanimous nations: Providence has not created the human race either entirely independent or perfectly slave. It traces, it is true, a fatal circle around each man that he cannot leave; but within the vast limits man is powerful and free; so too with peoples” (DA II.iv.8, M 676). Tocqueville’s is not an absolute but a bounded freedom. It is not the freedom of complete rational Cartesian self-definition; that produces the anxiety filled state of infinite freedom that Pascal describes by the the notion of la misère de l’homme. A certain amount of slavery makes freedom possible. For man to be free he cannot be free in all things. This means that for him to be free in what he can actually be free in, in what is in the circle, in what is achievable, he cannot be free in what is outside the circle, because he isn’t really free there in any case, and thinking that he is only frustrates him and makes him miserable. As we will now see, the same holds for politics: we need the creation of a stable political world, which closes off some political possibilities in order for a politically free world to appear. As Pascal says, “Il n’est pas bon d’être trop libre” (Pensée 90, pg. 866). Tocqueville agrees.

(Pensée 204, pg. 931), also Man is “incapables d’ignorer absolument et de savoir certainement” (P. 164, pg. 902). Man is in a middle position between beasts and angels.

For more on “circles” see Mansfield edition pages 63, 244, 419, 652, 666.
4.2.1 Overcoming Heteronomies: The Past and the Social as Determinism

Tocqueville’s qualified Cartesianism can be seen in a version of freedom that one can call limited self-determination, a middle ground between infinite freedom and complete determinism. It affirms that man is not entirely caused but is himself a cause, a beginning, and an agent. This view of freedom is bound up with the freedom to choose one’s occupation, spouse, religion, place of residence, in sum the freedom to run one’s life as one sees fit. Tocqueville noticed how this freedom is prone to caricatural exaggeration. As we just saw, democracy encourages man to think that the individual is a sovereign master over his self and destiny. This distorted worldview abuts against our identities, which are constituted by tradition, society, and our past choices. But Tocqueville also does not abandon the core insight at the heart of freedom as self-determination, which is that freedom means being an agent whose future can be shaped by choices and actions. The non-sovereign freedom I will discuss in the next section does not imply the complete loss of agency.

In addition to the mistake of Cartesian sovereignty, Tocqueville also thinks (paradoxically) that democracy fosters the opposite danger of seeing the individual as more embedded than he actually is. Remember from the second chapter that a thrust of both counter-revolutionary and post revolutionary liberal discourse was to see man as shaped by his tradition and society. This move was meant to counter the voluntaristic

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213 On liberty as being able to make a choice see Lively, 1962, 9.
philosophy that both camps thought led to some of worst excesses of the Revolution. Man is a being who is shaped, to whom everything is given. Counter-revolutionary thought connects, strangely, with the pathologies of democracy that see man as completely subsumed by larger forces.

Tocqueville himself is a product of the sociological and historical turns in political philosophy. But like Cartesianism which is a distorted exaggeration of what is at bottom a legitimate commitment to self-determination, Tocqueville sees his contemporaries as also exaggerating man’s embeddedness in the historical, the social, and natural worlds. In his chapter on democratic historians Tocqueville notices that “Most [democratic historians] attribute almost no influence to the individual over the destiny of the species or to citizens over the fate of the people. But, in reverse, they give great general causes to all the little particular facts” (DA II.i.20, M 469). And this is because each person seems “weak” and “one finds none who exert a very great or above all a very lasting power over the mass. At first sight, individuals seem absolutely powerless over it, and one would say that society advances all by itself--by the free and spontaneous concourse of all the men who compose it” (470). This makes them “tempted to believe that this movement is not voluntary and that, without knowing it, societies obey a superior, dominating force” (471). This “chains” individuals and peoples such that “man can do nothing either about himself or his surroundings” (472). Contrarily, aristocratic historians demonstrate the opposite vice by holding an “exaggerated idea of the influence that a man can exert” (ibid). Both positions are exaggerations. Tocqueville adopts a middle course. He is “very convinced” that “certain individuals” can “slow or hasten the natural course of the destiny of a people” (470). For Tocqueville a people has a
“natural course and destiny.” But that destiny is not entirely predetermined. Freedom is man’s ability to respond to a providential or accidental dispensation. We can no longer choose aristocracy over democracy. That has been chosen for us. But we can choose moderate or tyrannical democracy (676). Tocqueville’s entire project only makes sense because man is not entirely historically determined and because human societies have a choice. Tocqueville’s project is meant to “save human freedom” (471).

This middle course is characteristic of Tocqueville’s position vis-à-vis man’s embededness in history, sociology, and the natural world. Man is shaped by his social state, for example, but he can also shape it in turn. It is true that there are “certain laws that rule human societies” (492). But Tocqueville also thinks that “what are called necessary institutions are only institutions to which one is accustomed, and that in matters of social constitution the field of possibilities is much wider than people living within each society imagine” (S 76). Tocqueville’s juste milieu charts a middle course between the double pathologies of democratic societies. The Cartesian side distorts the extent to which man is a sovereign master of his environment and his future, and the historical and social side the extent to which he is unfree. Tocqueville’s middle course is characterized by the image of the fatal circle: “I am not unaware that several of my contemporaries have thought that peoples are never masters of themselves here below, and that they necessarily obey I do not know which insurmountable and unintelligent force born of previous events, the race, the soil, or the climate. Those are false and cowardly doctrines that can never produce any but weak and pusillanimous nations: Providence has not created the human race either entirely independent or perfectly slave. It traces, it is true, a fatal circle around each man that he cannot leave; but within its vast limits man is
powerful and free; so too with peoples” (676). The forces that shape man, tradition, the social, and nature are constitutive powers but not determinative forces.

The question then becomes: what is the proper posture to adopt vis-à-vis the forces that shape us? Are we to see nature, history, and the social as expressions of our unfreedom or as necessities to which we must reconcile ourselves, rather than a diminution of our freedom? Tocqueville wants to correct the distorted Cartesian view of freedom as complete sovereign self-determination that sees every realm that humans do not control as another expression of our unfreedom. It is mistaken to think that we are unfree because we cannot control the past, since the past is not within the circle of human power. To not be able to inhabit Mars is not a diminishment of my freedom. Human freedom takes place within a context of the possible. In order to have a freedom without constant frustration we must adopt the proper posture to the world. Since self-determination is an efficacy model of freedom we must know those things over which we can have an effect. Freedom must be controlling our destinies in the things that we can control. Freedom is not making man a causa sui, a little God. But it is encouraging him to rightly see himself as an agent in a free community. Tocqueville’s philosophy is meant to foster that proper orientation.

But that freedom isn’t a given. The key is to create political and moral structures that educate the citizen to self-determination so he can see the things that he is free in. Freedom as self-determination is an aspiration that itself must be fostered and regulated by practice, to which we now turn.
4.3 Individual Freedom

“When citizens are divided into castes and into classes, not only do they differ from one another, but they have neither the taste nor the desire to resemble each other; on the contrary, each one seeks more and more to keep intact his own opinions and habits intact and to remain himself. The spirit of individuality is very robust.” (DA II.iii.25, M 631 [modified])

Defense of individual freedoms is a hallmark of the French liberal tradition. Montesquieu defined freedom as the security of the citizen. In Book 12 of *Esprit des Lois* Montesquieu revealed his expansive understanding of what that freedom meant, including a regime of law that did not criminalize crimes of conscience or even homosexuality, and permitted free speech, just trials, and a free press. Liberty is being able to do what one wants as long as the laws do not forbid it. Montesquieu thought such freedom compatible with an enlightened monarchy in France or a commercial republic modeled after England. Constant was also a staunch defender of the very same freedoms, insisting on a realm of privacy, of the right to be free from politics as well as to participate in politics. But he conceived of those freedoms as a precondition to higher forms of human development. Freedom is not to do whatever one lists. Both individual and political freedom should be for a form of self-development. Tocqueville’s individual freedoms are a combination of individual freedom from state power and individual freedom as the achievement of an original personality, or what he calls *individualité*. 
There are two modes of individual freedom in Tocqueville, a traditional liberal mode of non-interference or non-intervention and an aristocratic mode of *individualité*.\^214

As a staunch liberal, Tocqueville is firmly committed to a wide range of individual freedoms including of privacy, conscience, religious belief, commerce, speech, and property. In one of the most censorious passages of *Democracy in America* he faults the Puritans for legislating into the domain of the conscience and for their harsh penal laws, which, he claims, bring shame to the human mind (M 39). Tocqueville strongly affirms the distinction between the public and the private. The private is a realm of non-intervention by the state. Sexual and religious customs are important components of democratic freedom, according to Tocqueville, but he always recognizes that these are matters of cultural practice and not matters that are to be subject to close state supervision. Religion is best when it is divorced from government. In fact, to protect these rights Tocqueville thought it necessary to have a strong central state. Remember that Tocqueville makes a distinction between governmental centralization and administrative centralization and that, “for my part, I cannot conceive that a nation can live or above all prosper without strong governmental centralization” (DA I.I.5, M 83). Tocqueville even suggests that “It would be easy to prove that national power is more

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\^214 Herbert (2010) recognizes that Tocqueville has a freedom which is a contrast term to *individualisme* but in his attempt to make Tocqueville ancient he calls it “virtue” (and tries to connect to happiness à la Aristotle), thereby missing its roots in human social plurality. Herbert makes Tocqueville an ancient by drawing inspiration from his discourse to the French academy where he supposedly emphasizes the difference between ancient and modern thought. But Herbert mistakes that that question was the question of the annual essay contest, and Tocqueville was announcing the winner. A cursory comparison of the work of Constant and Tocqueville will show that comparing ancient and modern political thought was not Tocqueville’s primary question. Tocqueville’s most significant comments on natural right are all on behalf of a modern and not ancient conception (Hebert, 2010, 8, 46, 191-6). Zetterbaum (1967) does not define what liberty is according to Tocqueville; Lively, 1962, 10 claims that freedom in Tocqueville is mostly “negative liberty” or freedom from restraint;
concentrated [in the United States] than it was in any of the old monarchies of Europe” (M 84). While he thinks the Founders might have gone too far in America, it is still the country were rights are best guaranteed. Tocqueville is not an anti-statist, he is against the combination of centralized government and centralized administration. Tocqueville thinks a central state is fully compatible with the freedom of the moderns.

But Tocqueville does not think freedom from intrusions of power is the most complete understanding of individual liberty in modernity. In addition to being committed to these “negative” freedoms, Tocqueville has a more nuanced understanding of individual freedom that he calls *individualité*. *Individualité* is the idea that individual freedom is the achievement of an independent personality. What is distinctive about *individualité* is that it is made possible first by a realm of non-interference and then secondly by participation in public life. Just as the aristocratic social state “naturally” produced strong personalities because of their upbringing in exclusive milieus, Tocqueville believes it is through involvement in democratic intermediary bodies that the individual develops himself. *Individualité* is an aristocratic freedom brought into the democratic age; it is the opposite or contrast term to democratic uniformity and homogeneity. Like Constant, Tocqueville strongly affirms that individual freedom is being let alone, but he does not want that to degenerate simply into the freedom for material well being but for a higher form of existence. Constant, however, has a more romantic conception of freedom than Tocqueville, for him the private exploration of religious sentiments and love are central components of individuality. Tocqueville in his public work always theorizes these realms of life in decidedly public ways.²¹⁵ But they

²¹⁵ On the combination of private and public freedom in Tocqueville see Schleifer, 196
converge on their demand that individual freedom be something noble or high. Everything is what it is. *Individualité* is not *grandeur*. But it aspires in that direction.

Tocqueville thus has one mode of individual freedom which affirms the public private distinction as a juridical matter, and a second mode that is achieved by a blurring of the two spheres. These two modes of individual freedom encourage a nuanced understanding of society and the individual’s relation to it. On the one hand the state is the guarantor of rights, on the other administrative centralization threatens them; civil society understood as the realm of associational plurality is the seedbed of individual freedom, but as an undifferentiated mass it is what threatens that freedom. It is by being a member of a small society that one combats the infiltration of all of society. Tocqueville, like Constant, sees individual freedom and political participation as complementary and mutually nourishing. This is a substantially different version of the nature and preconditions of individual freedom than we encounter in the romantic side of Rousseau, to whom I briefly return, before going into more depth about *individualité*.

4.3.1 Avoiding Rousseau’s Stark Choice

There are two different and mutually exclusive sites of freedom in Rousseau.\(^{216}\) One is political freedom as control over one’s life and actions, or a sense of autonomous ownership, and the other is an individual freedom of authenticity and sincerity, or a view

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\(^{216}\) As I mentioned in the first chapter some have argued that the two forms of freedom are compatible and that Emile is the archetype (see esp. Neuhouser, 2008). I think, rather, that they are competing regulative utopias that are meant as commentaries on each other.
of freedom as finding one’s true or core self. This duality of freedom tracks the duality of nature in Rousseau’s project. One side of Rousseau’s thought accepts the modern scientific notion of nature as mechanistic and determined, which is overcome with self-legislating reason. But in his *Reveries* a different portrait of nature emerges. Rather than the realm of determinism it is the site of the rediscovery of psychic unity, authenticity, autarchy, and happiness. Modern institutions have alienated man from nature, which in the *Reveries* is understood not as mechanistic arbitrariness but as purity and simplicity. The individual can get in touch with nature by living a solitary existence on the fringes and outskirts of society. By removing oneself from the corruption and competition of economic life that expands desires and needs, from the social world that makes one want to appear other than what one is, the solitary walker can regain a sense of wholeness in his time spent in quasi meditative trances, in his quest for romantic love, and in his botanic pursuits. One vision of freedom in Rousseau is retreat, another is engagement. The former is found by a turn into the self and away from community; the latter in a turn outwards and towards community; one anti-rational and the other rational; one private, the other public; one the escape from culture, and the other the transformation of it.\(^{217}\)

Rousseau’s two views of freedom that Tocqueville will try to combine are responses to the inherent and ineluctable problems of human sociality. In the *Second* 

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\(^{217}\) “He who in the civil order wants to preserve the primacy of the sentiments of nature does not know what wants. Always in contradiction with himself, always floating between his inclinations and his duties, he will never be either man or citizen. He will be good neither for himself nor for others. He will be one of those men of our days: A Frenchman, an Englishman, a bourgeois. He will be nothing” (Emile, 40). This view of nature was deeply influential on Romanticism, which extended Rousseau’s rehabilitation of nature when confronted with the perceived facticity, scientific rationalism, and industrialization of modern life. Romanticism prizes originality and genius over systematization and uniformity, authenticity and eccentric self-development as opposed to the tawdry commercial bourgeois ethos. On Rousseau’s influence on Romanticism see *Rousseau in Deutschland: Neue Beiträge zur Erforschung Seiner Rezeption* by Herbert Jaumann (Gruyter, 1994) and Isaiah Berlin, “the Counter Enlightenment” in *The Proper Study of Mankind*, 252.
Discourse Rousseau describes man as a being who observes, imagines, and imitates those around him. In society “Everyone began to observe others and wanted to be observed themselves” (OC, 169). By looking at each other and comparing ourselves we feel envy, an indication that we want to be like someone else or want others to see us in a certain way. Living with others necessarily creates a disjunct between who we are and who we want to be seen as; society opens a chasm between being and seeming. It is impossible to live with others and not experience alienation. Rousseau thinks this alienation is exacerbated by commercial modernity. In his First Discourse Rousseau complains that in modernity “a vile and deceitful uniformity reigns in our mores, and all minds seem to have been cast in the same mold” (OC III: 8; Hackett, 4). He further laments that “Common customs are followed, never one’s own lights. One no longer dares to seem what one really is; and in this perpetual constraint men who make up the herd we call society will, if placed in the same circumstances, do all the same things unless stronger motives deter them” (ibid). Rousseau bemoans the lack of sincerity and of genuineness in modern life, and wants individuals to be able to be and express who they really are. His romantic project in the Reveries is an attempt to theorize the conditions of that return to nature, which he thinks involves a retreat and disengagement from society. It is that disaffiliation that allows the individual to get in touch with his natural, inner self. And yet that authentic self that Rousseau finds while drifting listlessly on his boat is devoid of all content, it is nothing but the self feeling its own being, its own sentiment d’existence. It is not an expression of one’s uniqueness. This loss of any content to the individual is also found in the other half of Rousseau’s project, The Social Contract, which solves the problem of social dependence by denaturing the individual, by turning him into a
completely socialized being. Rousseau’s two solutions create an unlovely alternative: retreat into a contentless self by disengaging from society, or complete engagement to become something entirely different. Both solutions eliminate an independent sense of self, the *Reveries* by vacating the self of content and the *Social Contract* by subsuming the self into the community.

4.3.2 Tocqueville’s Solution: Between Individual and Society

Tocqueville describes modern life as promoting the same sort of uniformity and homogeneity that Rousseau decries in his *First Discourse*. He describes the French Revolution, in its extreme phases, as attempting to stamp out independent personalities by creating a homogenous nation with a single will.\(^{218}\) The elimination of difference and of independent personality is not just a French syndrome in his eyes, but the spirit of the age.\(^{219}\) It is coterminous with the democratic movement itself. An aesthetic affront to his aristocratic sensibilities and the seedbed of tyranny, this uniformity troubles and “saddens” Tocqueville (M 674). One of the central aims of his thought is thus to ensure that individuals have independence from both the state and homogenizing social norms. For this to occur the democratic age must reproduce the plurality and difference that

\(^{218}\) “Then a bizarre thing occurred. When each individual, exaggerating his worth and his independence, tended towards individualism, the public spirit verged more and more, in an abstract and general way, towards a sort of political pantheism that, removing from each individual even his own existence, menaced to subsume him entirely in the communal life of the social body” (Pleaide I: 1208).

\(^{219}\) “Nothing proves better than these theories the kind of irresistible attraction in our time and our country that little by little is leading the human spirit to destroy individual life in order to make every society into a single being. In France, this tendency has produced Fourierism and Saint-Simonianism” (*Essay on Algeria*, 89).
characterized the aristocratic era. *Individualité* is the product of that assertion of difference. It is what he calls *originalité*.

*Individualité* resists both the contentless authenticity that occurs in retreat from society and the collectivized self of total engagement. Tocqueville seeks a middle way, an eclectic blend in which individual freedom occurs by means of limited government and participation in a public world. And that public world is a pluralistic society, understood first and primarily not in terms of differences among individuals but in differences among groups as well as a variety of local political access points. Such was the characteristics of aristocratic society.

“When citizens are divided into castes and into classes, not only do they differ from each other, but also they have neither the taste or the desire to become alike; each man, on the contrary, seeks more and more to keep intact his own opinions and habits and to remain himself. The spirit of individuality is very robust. When a people has a democratic social state, that is to say that neither castes nor classes exist within it any longer and that all citizens there are more or less equal in enlightenment and in property, the human spirit heads in the opposite direction. Men are similar, and moreover they suffer in a way from not being similar. Far from wanting to preserve what can still make each one of them different, they ask only to lose that singularity in order to blend into the common mass, which alone in their eyes represents right and strength. The spirit of individuality is almost destroyed” (LF 1179).

The lexicon of difference and similarity allows Tocqueville to theorize aristocratic and democratic freedom in a flexible way, seeing them as contrasting pairs and ideal types. *Inidivudalité* as the product of difference is nourished in a group setting. Difference is sustained by, and emerges from, a number of people who are in fact similar to themselves, but different from others. Being part of a small society of those like one prepares one to be different from the coming mass society of the democratic era.
It is well known that Tocqueville theorizes associational life as a democratic reproduction of the aristocratic secondary bodies that checked royal, centralizing power. Less remarked upon, however, is the fact that the secondary bodies in aristocratic times allowed for the flourishing of what Tocqueville calls *originalité*.

In a note to himself he wrote:

Originality./ Perhaps to put with monotony./ It is necessary to be different from your fellows in order to envisage the world in another way [v: to think differently from them]. It is necessary to feel strong and independent from them in order to dare to act in your own way and to follow alone your own path [v: to show what you think]. These two conditions are found only where conditions are very unequal, and where men exist who are powerful enough by themselves to dare to show without fear what distinguishes them from the rest of men and sometimes to glory in it. The result is that originality of mind and manners [v: of ideas and of actions] is much more common among aristocratic peoples than among others, above all among aristocratic peoples who enjoy {great} {political} liberty. The political state then allows the differences given birth by the social state to be shown (LF 1091 d).

Tocqueville’s contribution is to see the reproduction of aristocratic secondary bodies in the form of a varied associational life, as well as federalism and localism, not merely as checks on central authority but as vehicles to reproduce that aristocratic pathos of difference and foster *individuaité*. In a working note to himself Tocqueville wrote: “Necessity of upholding human individuality... [To the side: Here idea of aristocratic persons.]” (LF 1188). In the penultimate chapter of volume two, in summarizing the “new remedies for new evils”, Tocqueville remarks:

“To fix for the social power extensive, but visible and immobile limits; to give to individuals certain rights and to guarantee to them the uncontested enjoyment of

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220 In Tocqueville’s lexicon *individuaité*, *originalité*, *indépndence* are all synonyms.
these rights; to preserve for the individual the little of independence, of strength and of originality that remain to him; to raise him up beside society and sustain him in the face of it: such seems to me to be the first goal of the legislator in the age we are entering.” (LF 1275).

Here, side by side, are the two modes of individual liberty. First secure the freedoms of liberalism by protecting the individual from power, then raise the individual in the face of society by means of political life. *Individualité* liberty is found neither in a retreat from society nor in a complete immersion in it.

In what, then, does *individualité* and *originalité* consist?

One source to deepen these notions is Tocqueville’s most personal book, his *Souvenirs*. The *Souvenirs*, written in the early 1850s, deploys a lexicon of sincerity and its contrast term of theatricality and imitation. The *Souvenirs* is a portrait gallery in which one can see the characters of others put on display. *Sincérité* is a quality that Tocqueville most admires in others and most laments that his contemporaries lack. “Two days before the February revolution I recall meeting Duvergier de Hauranne at a great ball given by the Turkish ambassador. I had a real esteem and affection for him; although he had almost every defect that party spirit can inspire, he also had at least a kind of disinterestedness and sincerity such as one finds when passions are true, and these are rare advantages in our day when one hardly finds a true passion except for a man’s self” (S 21).

Tocqueville thinks the opposite vice characteristic of Lamartine: “I have never...

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221 The *Souvenirs* is not a central book for most Tocqueville scholarship. For those who treat it at length see Shiner (1988).

222 Tocqueville praises his colleague Barrot in the same language: “His sincere concern for the public good led him to desire a change of Cabinet; but his ambition was intimately and closely intertwined with his integrity to an almost unbelievable extent, and his ambition made him ardently wish to remain at the head of the new cabinet” (S 197).
known a less sincere mind, or one that more completely despised truth. When I say that he despised it, I am wrong; he never honored it enough to be concerned with it in any way at all...being solely concerned with the particular effect he wanted to produce at that moment” (S 108). Sincérité is not a term of pure inwardness; it is contrasted with egoism and self-involvement. It concerns how one relates to others and not just to oneself. To be sincere is thus to be “true” or genuine in one’s relations with others. When Tocqueville himself wants to express that he really meant something he says he spoke “sincerely” (S 91 and 226). Sincerity also means having a disinterested concern for the public good. Thus a sincere, true passion is opposed to one that masks some egotistical interest, hidden behind “general theories” which Tocqueville thinks is “usual behavior” (S 110).

Sincerity is the opposite of hypocrisy and the spirit of the courtier, the trait that Tocqueville thinks the tyranny of the majority inculcates in Democracy in America.

Being sincere is opposed to being theatrical, or acting like someone else. A central theme of the Souvenirs is the notion of a “play” and the “stage”, notions Tocqueville associates with “imitation” (S 127). He describes the Revolution of 1848 as a “melodrama” and a “parody” put on by actors imitating theatrical performances of the Revolution in theaters and glorified histories of the Revolution written by Thiers and Lamartine (S 32, 123). The self-understanding of the French public was filtered through high culture. The provisional revolutionary government mandated that the new deputies wear the same “dress of members of the Convention, in particular the white waistcoat

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223 Tocqueville laments the vanity of “those great words ‘patriotism’ and ‘right’ with which their petty passions cloak themselves” (S 224).

224 Rousseau also contrasts egoism and truthfulness: “I’ve seen men that one calls true in the world...In all which does not touch their interest they speak of the most pure fidelity. But all of sudden if it touches some interest of their, they present things in the light that is most favorable to themselves” (OC I 1031).
with turned-down collar always worn by actors playing Robespierre” (S 100). Describing a tumultuous scene in the national assembly, Tocqueville remained nonplussed and wondered why something seemingly so important did not produce any effect on him. He figured it was because “there was absolutely no grandeur in this one, for there was no touch of truth about it. We French, Parisians especially, gladly mingle literary and theatrical reminiscences with our most serious demonstrations. This often creates the impression that our feelings are false whereas in fact they are only clumsily tricked out. In this case the quality of imitation was so obvious that the terrible originality of the facts remain hidden” (S 53). “The whole time”, Tocqueville continues, “I had the feeling that we had staged a play about the French Revolution, rather than that we were continuing it” (S 53). An actor is one who plays out the life of someone else for other people, who, in the acting, does not have an independent sense of personality. “The revolutionaries of 1848, being unwilling or unable to imitate the bloody follies of their predecessors, consoled themselves with imitations of their ridiculous ones. So they took it into their heads to give the people a series of grand allegorical festivals” (127). Tocqueville “could not take the actors very seriously; the whole thing seemed a vile tragedy played by a provincial troupe” in which “burlesque and tragedy jostle together” (S 53, 54). He describes the Revolution as one big farce in which there was nothing true or genuine, in which everything was a contrived and cheap imitation.

As opposed to the imitation of others, individualité is the ability to know and enact something genuine and original. It is achieved through a combination of worldly engagement and critical detachment. Instead of disengaged stoic contemplation of oneself, Tocqueville associates individualité with a variety of active projects and
achievements that mix the private and the public. One of those is the “sincere” person who engages in public undertakings with disinterested conviction, rather than, say, using the supposed disinterestedness of a “general theory” to mask his careerism or private greed. Rather than something that comes about naturally, individualité is a hard won accomplishment. Tocqueville, as I argued in the previous chapter, suggests that the public and private are conflated in democracy with the rise of soft power. The private is then not something that can be simply assumed, it does not arise spontaneously. It is something that is continually fought for, not just in the sense of protecting individual rights against the will of the majority, but of protecting individual originality and particularity itself. It is the task of the man who is to be free to reassert the boundaries of the common by a reassertion not only of the private but of psychic independence.

These boundaries are not achieved through pure interiority. Tocqueville does not reduce sincérité to expressivism, or the idea that one is being most oneself when one is able to express one’s core or “true” self. And this is because Tocqueville does think that a core or true self can be fully known. The genre of autobiography would be the perfect place to display an expressivist mentality. Tocqueville does begin his Souvenirs as an attempt to understand what really occurred during the Revolution, what role he played in the events, and thus in the end who he really is. Following in the footsteps of Montaigne and Rousseau, Tocqueville opens his Souvenirs with a meta-discussion of autobiography as the attempt to find and describe oneself without artifice. These “recollections are to be a mental relaxation for myself and not a work of literature. They are written for myself alone. These pages are to be a mirror, in which I can enjoy seeing my contemporaries and myself, not a painting for the public to view. My best friends are not to know about
them” (S 3). And, like Rousseau, Tocqueville recognizes that one cannot be oneself, tell the truth about oneself, when in public or thinking about the public. One must be, as the first word of the Souvenirs states, “éloigné” and in “solitude” (S 3). Integrity requires detachment.225

But if this is the first object of the autobiography, Tocqueville makes it quite clear throughout the rest of the work that it is unachievable. Tocqueville resists the notion that the self is fully knowable. Later in the narrative, he pauses to reflect in a manner similar to the opening of the book: “At this point I should very much like to discover the reasons that determined my conduct, and, having discovered them, to set them out here without evasion” (S 80). But, Tocqueville concludes, “the main difficulty is in the subject himself; one is too near oneself to see oneself clearly and easily loses sight of oneself among all the views, interests, ideas, tastes, and instincts that make one act. This tangle of little paths imperfectly known even by those who use them, prevents one from seeing clearly those main roads followed by the will, which led to its most important resolutions. Nevertheless I want to try to discover myself in the midst of this labyrinth” (S 81).226

While the object of the memoir is to create a mirror in which one can see oneself,

225 In a note to himself on this passage, Tocqueville writes: “All pictures of one’s friends which are painted in front of them, or pictures of oneself shown to everyone, are inaccurate. The only true pictures are those which are not intended to be shown” (S 3). “In a word, I want the expression of my recollections to be sincere, and it is therefore necessary that they be completely secret” (S 4, modified). In a variant Tocqueville calls this a “solitary pleasure” in which he sees the “true picture of human affairs, of seeing man in the reality of his virtues and vices, his nature, of understanding and judging” (S 4). Compare Michel de Montaigne, *Essais*, “Au Lecteur”; see Montaigne, Complete Essays, trans. M.A. Screech, Penguin Classics (1991) and in his Rousseau’s *Confessions*, Rousseau emphatically rejects that society made him present himself other than he is. He professes to describe himself in “toute la vérité de la nature”, claiming he has not added anything to please anyone. Rather, “je me suis montré tel que je fus”, warts and all, describing his “intérieur” with “sincérité” (OC I.4-5).

226 This notion of the labyrinth of the self picks up the same theme from the parallel passage from the opening pages of the memoir: “I lose the thread of my recollections amid the labyrinth of petty incidents, petty ideas, petty passions, personal viewpoints and contradictory projects in which the life of public men in that period was fritted away” (S 4).
Tocqueville finds it hard to know what exactly to paint. In the complex constellation of actions and unexpected events that made up the period he wishes to describe, knowing one’s own thoughts and role is difficult to ascertain. For Tocqueville we cannot know ourselves completely because the heart is shrouded in “darkness.” We only get rare glimpses of it: “Man is uncovered enough to perceive something of himself and veiled enough so that the rest is sunk in impenetrable darkness, into which he plunges constantly and in vain, in order to succeed in grasping himself” (DA II.i.17, M 462). For Tocqueville our inner lives are not completely discernable because the heart is a “tangle of little paths.” In one of his more puzzling quotations on liberty, Tocqueville even suggests he doesn’t know where liberty comes from: “I have often wondered where the source of this passion for political freedom is, which, in all times, has made men do the greatest things that humanity has accomplished, in what feelings it is rooted and nourishes itself....Do not ask me to analyze this sublime desire, it must be felt. In enters of itself into the great hearts that God has prepared to receive it; it fills them, it fires them” (OR III.4, K 217). There are elements of mankind that remains mysterious, veiled, and hidden.

*Individualité* then is not a question of pure interiority or discovering the true self. It is a trait that emerges from our participation in a public world. In his memories Tocqueville contends that the “great benefit, perhaps the greatest the world can give” is to have “confidence in myself” (S 232). And he achieved that through his participation in public life. This confidence is what democratic associational life is meant to foster. The value of public life is that it retrieves the individual from *individualisme* and reintegrates him into community. By placing the individual within multiple small societies (township,
city, associations) it makes him a node of intersection between a variety or public organizations, rather than an isolated singularity before a gigantic mass society. Moreover, Tocqueville conceives of *individuisme* or privatization as a sapping and withering away of higher human possibilities. Contrarily “sentiments and ideas renew themselves, the heart is enlarged, and the human mind developed only by the reciprocal action of men upon one another” (DA II.ii.5, 491). The movement from *individuisme* to *individualité* is a maturation process in which participation in public life endows the individual with confidence and sense of self. It has the moral and psychological effect, in miniature, of Rousseau’s transition from the state of nature (which rampant *individuisme* reproduces) to the state of society (which associations continually reconstruct).

In addition to a pluralistic society, *individualité* is produced by a regime that is *agité*. In his travel notebooks from his voyage to Ireland and England Tocqueville wrote: “In order to be free, one must know how to conceive a difficult enterprise and execute it, have the habit of acting by oneself; to live free, it is necessary to habituate oneself to an existence full of agitation and peril...this is the price of liberty” (Pleade I: 514). These are, he remarks, the qualities produced by a commercial society. The agitation characteristic of commercial life also characterizes the rest of American society: “This agitation, constantly reborn, that the government of democracy has introduced into the political world, passes afterwards into civil society. I do not know if, all in all, this is not the greatest advantage of democratic government” (DA I.ii.6 M 233). An agitated society

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227 The agitation of commercial society is a prominent theme of *Democracy in America*, see for instance LF 665, and for agitation in general, I.i.6, the last section entitled “Activity reigning in All parts of the Body Politic of the United States”
brings people into public affairs and gives them a sense of independence by which their “ideas [are] extended” and their “minds [are] seen to go outside their ordinary routine” (ibid). An agitated society is one that produces independence and manliness. And the manliness brings the discussion of individualité full circle. In the midst of his discussion of the omnipotence of the majority in the United States, where Tocqueville gives the opposite portrait of the courtier spirit that characterizes the omnipotence of the majority, is a man who shows “virile candor [and] manly independence of thought” which are the “salient features of great characters” (DA I.i.7 M 247). Tocqueville describes the contrast type to the omnipotence of the majority with the same adjectives that he uses to describe the aristocratic freedom of the old world: “pride of heart”, “virility”, “natural confidence”, “habits of being respected”, “an independent mind”, and “greatness” (OR, II.11).

4.4 Political Freedom

“That which, in all times, has so strongly attached certain men’s hearts to freedom, are its own attractions, its own peculiar charm, independent of its benefits; it is the pleasure of being able to speak, act, and breathe without constraint, under the government of God

228 “The jury teaches each man not to retreat from responsibility for his own actions; a manly disposition, without which there is no political virtue” (LF 448, also 1001, 1048-9, 1292). For explorations of manliness in Tocqueville see Feminist Interpretations of Tocqueville (Penn State, 2009).
and the laws alone. Whoever seeks for anything from freedom but itself is made for slavery” (OR III.4 K 217).

4.4.1 The Problem of Political Liberty

French liberalism did not emerge out of a democratic context. Of all the liberals under survey here only Tocqueville had experience of a stable democracy. French liberalism came alive under a monarchy, and matured in an age of transition. For most of its early life it was a philosophy of opposition, usually of reform, rarely of revolution. Popular sovereignty in its natural law modern beginnings in Pufendorf, Wolff, and Grotius, as well as its employment by monarchomachs, was used as a tool to legitimize and limit monarchy. In the eighteenth century, popular sovereignty, even its more classical republican idiom as the notion that the people were the legitimate source of authority and that the rulers ruled on their behalf, was a discourse of opposition and critique, not the philosophic foundation of a new form government. It was, moreover, also in the minority. The dominant mode of oppositional discourse in France in the eighteenth century was in the idiom of French parlamentary legalism, with its appeals to ancient traditional rights. Even Montesquieu, a known admirer of the ancient world, did not think the ancient republican model appropriate for the modern age. Political liberty in

229 Baker, 2001, 42.

230 “In its eighteenth-century manifestation, it was, above all, a language of opposition to an increasingly administrative state that simultaneously fed and was fed by the individualism of a modern commercial society, a state that stimulated commerce in order to increase its tax revenues while deploying the instruments of the credit market” (Baker, 2001, 35).
the modern era was compatible in the modern era with enlightened monarchy not
grounded in popular sovereignty.

This changed with Rousseau, where popular sovereignty became both an
oppositional discourse and a prescriptive philosophy of government. Political liberty
must entail that the people actually do rule. Enlightened and limited monarchy do not
suffice. But while Rousseau offered a prescriptive plan for popular sovereignty, it was to
remain in the opposition until the American and French Revolutions. In this incubatory
period on both sides of the pond various tensions inherent in popular sovereignty had to
be concretely worked out. Popular sovereignty is committed to the rule of the people, and
the rule of the people is political liberty, but what does “popular rule” actually entail?
What conditions satisfy political liberty? Must the people rule directly? Is a government
accountable to the people sufficient? Must suffrage be universal or restricted, must the
government actually enact the people’s will or should it be free from its mutability, and is
it even possible to remain true, in the words of the Federalist, to the republican principles
of popular rule while also ensuring other desired goods such as stability, strength, and
wisdom?

On both sides of the Atlantic the most obvious problem of political liberty in the
modern era was the problem of size. Montesquieu succinctly posed the issue with the
opening words of the crucial part two of the Esprit des Lois, chapter 9: “If a republic is
small, it is destroyed by a foreign force; if it is large, it is destroyed by an interior vice”
(EL 9.1). The Greek city-states protected themselves against Persia, but were subdued by
the successive empires of Athens, Sparta, Alexander, and Rome. All the great city states
of the late Middle Ages and Renaissance, the Italian cities of Florence and Lucca and
Sienna, and the Hanselstädte of Lübeck, Danzig, Hamburg and Brugge fell to into the hands of expanding empires and kingdoms. To remain free the regime must expand, which requires a strong central government, large armies, and a vast territory, which all seem to preclude the very sort of political liberty that expansion sought to ensure. Montesquieu suggests that a confederation of republics is the way to solve the law of size.  

Tocqueville agrees. In a short and seldom remarked upon passage in Democracy in America Tocqueville reflects on these issues at length. “In all times small nations have been cradles of political freedoms. It has happened that most of them have lost that freedom by becoming larger...” (DA I.i.8, M 150). But Tocqueville does not think the solution is to remain small: “if there were only small nations and no great ones, humanity would surely be freer and happier; but one cannot make it so that there are no great nations. This introduces a new element of national prosperity into the world, which is force” (M 152). For a regime to remain free it must be strong. For it to be strong it must be large, and if large it will be a monarchy or a representative regime that loses the participatory strength and energy of a republic. Political independence requires the large republic, and the large republic establishes conditions anathema to freedom. The

231 Plato’s Republic has very similar reflections. It begins with the city of Adeimantus, which is called by Socrates the healthy city and derisively by Glaucon the city of pigs. The small and largely pastoral “healthy” city grows into the feverish city, the kallipolis, because Glaucon yearns for a life that is more refined and human. In its need for raw materials to fuel its growth the feverish city becomes expansionistic, subjugating its pastoral neighbors. The transition from the healthy to the feverish city encodes a law of expansion inherent in things: all cities either expand or are conquered. The small pastoral city is an unattainable, idyllic ideal. Its existence is always tenuous, threatened, and unstable.

232 Schleifer, in his meticulous attention to detail, discusses this problem (chapter 15).

233 Tocqueville is in partial agreement with both sides of the debate: “the existence of a great republic will always be infinitely more exposed [to peril] than a small one,” that “It is permissible to say in a general manner that nothing is so contrary to the well-being and freedom of men as great empires”, nevertheless federalism can make it work (DA I.i.8, M 151).
harsh facts of political life seem to make unavailable the very political freedom that Tocqueville most cherishes and considers most necessary.

His experience of American federalism and localism opened his eyes to a possible solution. In America force and freedom were combined: “No one can appreciate more than I the advantages of a federal system. I see in it one of the most powerful combinations in favor of human prosperity and freedom” (DA I.i.8, M 161). Federalism, with its “fragmentation of sovereignty”, saves the possibility of republican participation in “little societies” from both the necessity of expansion and the danger of conquest (ibid., M 153). America enables freedom because sovereignty is not located in a single place as in France. This dispersion of sovereignty in Tocqueville’s mind is coterminous with the energetic awakening of all levels of American political life. But Tocqueville is not blind to the fact that the national government is more centralized and more powerful than any government in Europe. What makes American freedom possible is a strange combination of a regime at once more unified than those in Europe and more pluralistic than them.

But notice that Tocqueville does not envision the problem of political liberty in exactly the same way as Montesquieu or even The Federalist, which he carefully read and greatly admired. Hamilton and Montesquieu praise the modern “discovery” of representation as a great advance over ancient societies. It allows modern republics, in the words of the Federalist, to expand the sphere. It also provides other salutary benefits, including filtering and refining public opinion. Representation is a means of keeping power close enough to the people so that it is responsible to it, while distant enough from
the people so that power is not subject to the mutable passions of the demos.\textsuperscript{234}

Tocqueville affirms all these advantages.\textsuperscript{235} Tocqueville extols federalism for its ability to preserve participatory political freedom in the modern era. What Tocqueville most admires about American life are town hall assemblies and community forums where the “law of representation” is not admitted. For Tocqueville political freedom is intimately connected to direct participatory democracy, a form of democracy made possible in the modern world by a representative, compound republic.

This emphasis signals a departure in his notion of political liberty from his predecessors, Montesquieu and Rousseau.

Montesquieu rejects the ancient republic for modern times. Republics require a continual sacrifice of oneself for the patrie, and must include a number of institutions like Censors which can punish “lukewarmness” to the Republic, a crime of conscience that Montesquieu clearly forbids in Book 12. But if the ancient republic is not a serious model for modern political life, there are two other regimes that are. An enlightened monarchy and a commercial, representative republic. In chapter five of book 19 Montesquieu describes honor, the ressort of the French monarchy, as a middle term between ancient virtue and self-interest, the latter of which is foundational for the English regime, which he calls a republic in the guise of a monarchy (V.19). These two different regimes are two different ways (one with intermediary powers, and one without them) of guaranteeing political liberty in modern times.

\textsuperscript{234} Cf. Montesquieu XIX.27 “This is the great advantage that [a representative government] would have over ancient democracies, in which the people had an immediate political power; since, when orators agitate it, these agitations always had their effect.”

\textsuperscript{235} “The federal constitution of the United States seems to me the best, perhaps the only arrangement that could allow the establishment of a vast republic” (cited in Schleifer, 113).
But what is his understanding of political liberty? Montesquieu’s rejection of the ancient republics, and his strong affirmation of the advantages of representative government in Book eleven chapter six, imply that participatory democracy is not his understanding of political liberty. In fact the confluence between the power of the people and the liberty of the people is one of the great myths he seeks to dispel.\footnote{Therefore, since in democracies, the people appear just about to do whatever they want, one has normally lodged liberty in these sorts of governments; and have mistaken the power of the people for the liberty of the people” (EL, II.2).} For Montesquieu, freedom is different from ruling and being ruled; it is, in his famously contorted phrase: “In a state, that is to say in a society in which there are laws, freedom consists in being able to do do that which we should want, and not being constrained to do that which we should not want” (EL XI.3). This rather vague definition is concretized in his discussion of an idealized version of the English constitution and in Book 12.

Political freedom in Montesquieu’s England is “in a citizen, this tranquility of spirit that derives from the opinion that everyone has of their security; and, for one to have this liberty, it is necessary that the government is such that a citizen is not able to fear another citizen” (EL XI.6). Montesquieu also insists, however, that through a broad franchise and representation the people can salvage some sense of self-government: “Since, in a free state, every man who is supposed to have a free soul must be governed by himself, it is necessary that the people in a body have the legislative power: but, since that is impossible in a large state, and is subject to many inconveniences in small ones, it is necessary that the people, do, by their representatives, everything that it cannot do itself” (EL XI.6). The requirement of self rule is fulfilled by a large suffrage that elects a representative regime that carries out the people’s will, which Montesquieu calls “la
volonté générale de l’état” (EL 11.6). Political liberty then for Montesquieu is to be subjected to legitimate authority which carries out the people’s will. Liberty is obeying the right kind of laws. That is why a man who is legitimately convicted and will be hung the next day will be freer than a Turkish pasha.

Montesquieu’s political liberty is largely an instrumental one insofar as it protects a wide space of non-interference. And in book twelve Montesquieu reveals just how large that sphere of non-interference should be. In that book Montesquieu explicitly defines political liberty as a sense of security (which is a far cry from participatory democracy). And the realm of security, protected by the judiciary and a minimalist conception of what should be criminalized, is in fact quite large. Freedom of thought, speech and sexuality are all things that Montesquieu emphasizes. Montesquieu’s version of political liberty is then the idea that we should be free to participate in political power in order to protect ourselves from political power. The characteristically free citizen in Montesquieu’s modern commercial republic is one who vigilantly protects that large sphere of non-interference from government usurpation. Montesquieu outlines the type of activities of the free citizen in book nineteen chapter twenty-seven, where he shows the effects of the idealized English commercial republic. There he argues that a free regime is preserved by those who always raise a “terreur” by claiming that either the executive or the legislative is becoming a usurper. That “terreur” causes the citizens to be “inquiéts” and “attentifs.” And in this free regime a citizen will “write and say everything that the laws do not expressly forbid him to say or write” (EL XIX.27). Combined with the minimalist view of law in Book 12 it is clear that people will be will have a wide sphere of non-interference, which citizens will employ to participate in public debate and elections. In
the English republican model the activity of political freedom is a form of public vigilance against the encroachments of power, either in public media or by agitating for one’s party. Let’s call Montesquieu’s version of political liberty the *representational model* of political freedom.237

Rousseau adopts a different approach. For Rousseau popular sovereignty is the regime that attempts to eliminate being ruled by others and which inaugurates self-rule. But Rousseau too thinks the people should not rule directly. The problem is that rule is a permanent feature of political life. Some make laws that others obey. The way to solve this problem for Rousseau is to make distinctions between different levels of rule. It may be true that I do not control most of the laws that are made and that I must obey, but nevertheless I authorize the fundamental structure that determines the conditions of law making, or the general will. To take America as an example, those fundamental laws are embodied in the Constitution. But here again a problem arises. I myself didn’t make the Constitution. How can I then say that I rule myself when I neither made the laws that I obey or the fundamental laws that condition how those laws are made? Rousseau’s

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237 I agree with A. De Dijn “On Political Liberty: Montesquieu’s Missing Manuscript” *Political Theory* (2011: 39) that Montesquieu’s conception of liberty as security is perfectly compatible with an enlightened monarchy in France, and that Montesquieu defends the freedom of the French monarchy against its republican detractors. However De Dijn little discusses the form of freedom of the English commercial regime in Montesquieu, which he insinuates is a republic disguised as a monarchy and, unlike the France of the 18th century, it was a regime of representation and a franchise. Montesquieu’s discussion of a franchise, and even a substantial franchise, both as a means to protect people from government, but also as a means for the people to carry out their will through government, has a more republican flavor to it than simply freedom as security. It is, of course, a modern and not an ancient republic and thus this variety of republican freedom is a form of self-interest rather than self-sacrifice. Since freedom as security in Montesquieu can be had under multiple regimes, and since he thought that both England and France represent two different regimes in which political liberty could be housed, it is appropriate to think that political liberty would appear differently in each regime. The political activity of the English republic is different from the political activity of the French monarchy. However, a plausible case can be made that because the English are always *inquiet* and in a state of *terreur* they are not actually secure, which requires *tranquillité*. See Paul Rahe (2009), 94-9, also Keith Baker (1990), 168-178.
solution is an ingenious philosophic legerdemain. It is to say that the general will or the Constitution embodies certain democratic principles that, upon reflection, I would necessarily endorse as the proper ones for my society. After being educated and socialized into the regime I come to see that they are in fact good. At this point I come to identify with them as my own. When I identify with them I in effect authorize them. To authorize is to be the author of. It is as if I had created them myself. Popular sovereignty as self-government is salvaged even when the people do not directly rule on account of this identification mechanism. Let us call this the identification model of political freedom.  

Nevertheless, Rousseau gave a radicalized interpretation of the social contract. Even if he does not want the people to rule directly, he really does want the popular sovereign to show itself often. But this required a small regime and evidently runs afoul of large modern polities. This plagues the quest for a republic for the moderns. Montesquieu evacuates political liberty of direct participatory activity and Rousseau’s republic seems impossible in the modern era. It is Tocqueville, following The Federalist and Jefferson, who formulates the theory of the modern liberal republic. Tocqueville reintroduces “the world of action” as he calls it in the Ancien Regime to political liberty. He does so by developing a non-sovereign view of freedom. That view is supplemented by his appropriation both of the representational model and the identification model. But these two models are not the core of political liberty for Tocqueville. They are rather  

238 There are of course many assumptions involved in these moves: what is the rational regime? Why would I as a rational agent feel compelled to assent to it? What are the conditions of that assent? Is the identification mechanism just a specious means for me to consent to my own exclusion and non-participation? Isn’t this really just the transformation of obedience into freedom? Perhaps. Remember that Rousseau says man is born free and everywhere he is in chains. He does not say he will liberate man from the chains, only make them legitimate.
what opens up and guarantees a space for a more participatory sort of political liberty to occur.

Participatory freedom is of course a central feature of Tocqueville scholarship. Many commentators have pointed out that this participatory and so called “positive” model of freedom is central to Tocqueville’s thought. And they are not wrong. But they have a hard time saying something more precise about Tocqueville’s view of political liberty. That is the aim of the next few sections. In what follows I argue that Tocqueville operates a category shift in what freedom is. He moves away from freedom as sovereign control or political liberty as holding actual power. Sovereign freedom terminates in an unworkable political model in which one is only free if one rules and thus controls the institutions of political life. Tocqueville proposes a vision of non-sovereign freedom in which freedom is understood not in terms of ruling and being ruled, but rather in terms of engagement in a public world, broadly conceived. Tocqueville reconceptualizes the nature of the political by expanding the political to encompass a broader set of practices and sites of freedom that include, but are not exhausted by, the formal institutional structures of politics. He also shifts the meaning of political freedom away from ruling oneself, which is bound up with holding power, to a model of freedom as public engagement. Freedom is made possible by seeing popular sovereignty as the precondition of public life, since it makes a public world possible, rather than a constant and permanent feature of the individual’s political activity. Popular sovereignty morally affirms and practically establishes a democratic political world. But to be free is not to
exercise sovereignty. If that were the case sovereignty, and participatory political liberty, could only at best be episodic. And in any case the French tradition categorically refuses to make the individual sovereign apart from a collectivity. And yet if freedom is to be a consistent activity it cannot be as a member of the sovereign that we find our political liberty, for the sovereign is almost never active. It is of course possible for members of a state, say of Indiana, to act as a sovereign body by altering their Constitution. But that alteration is deliberated upon by a representative constitutional assembly, and then voted on by the people. While the exercise of sovereignty remains possible, the rarity of the event and the transitory and relatively minimalistic nature of the activity render it an unlikely candidate for a durable form of political freedom in the modern world. Popular sovereignty remains alive as an oppositional concept that protects the people’s sovereignty by refusing power to the government through written constitution, but it is a power that is, and has always been in modern political life, elusive, beyond the full grasp of the sovereign people. Rather, to be free is to be a member of and participate in the *res publica, la chose publique*, that sovereignty brings about. Popular sovereignty legitimates and sustains a democratic political world in which the primary activities are non-sovereign. In this sphere to be a citizen does not exercise *constituent, sovereign* power, though one may hold political office. Political freedom sometimes means acting on behalf of one who does hold political office, or who wants to attain it, or even with others on behalf of a political cause beyond the institutional confines of political life. The missing link of French liberalism is a public realm of

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239 I contrast then the political, which I take to mean the formal institutions of government with the public, which is any communal activity with a communal purpose. I also contrast engagement, which is participation in a public world, with rule, which means control of the institutions of government.
participatory freedom that is conceived as non-sovereign. And that is the realm that Tocqueville theorizes.

4.4.2 From political freedom to non-sovereign public freedom

“We are a long way from the ancient republics, it must be admitted, and yet this people is republican and I don’t doubt will long remain so. And the Republic is for it the best of governments.” (Toc. and Bt., pp. 129–30; Schleifer, ch. 17).

Civil society and local institutional life are the centerpieces of that realm. Civil society is one of the most studied and appreciated aspects of Tocqueville’s thought. Scholars have repeatedly emphasized Tocqueville’s creative reinterpretation of Montesquieu’s *pouvoirs intermédiaires* to protect the individual against the centralized state as well as to energize political life by constantly recreating community. Civil society is not seen by Tocqueville primarily as a realm of individual self-interest or economic competition but as a decidedly public-political realm that combats *individualisme*. In fact *individualisme* is a byproduct of the dogma of popular sovereignty itself, which claims that each individual is the best judge of their interests. Tocqueville accepts the counter-revolutionary discourse, appropriated by Guizot, that popular sovereignty dissolves society.\(^{240}\) It is political freedom that reintegrates the individual into it, it is no longer, as

\(^{240}\) Sheldon Wolin observes that for Tocqueville “the paradox at the heart of democracy was that, while political participation promoted solidarity, the idea of popular sovereignty, which provided the justification for it, was based on and anti-corporate individualism, which taught that each is the best judge of his own interest and needs” (Wolin, 2001, 215-216).
it was in Rousseau, the presence and activity of the constituent sovereign. Tocqueville effectuates a theoretical category shift in what it means to lead a meaningful public life away from exercising constituent sovereign power. Civil society and localism are vehicles through which Tocqueville attempts to rethink political freedom and the activities that are characteristic of a free life.

This shift can be discerned in the lexicon that Tocqueville employs. Rousseau’s famous catchphrase is that to be free is to obey a law that one has given oneself. The verbs give and obey are part of a conceptual universe of ruling and being ruled. This is no doubt part of Tocqueville’s understanding of freedom. Like Rousseau, Tocqueville also thinks political freedom at some level must mean that we have authorized the laws that we obey. It is through associations that individuals learn “to submit their will to that of all the others and to subordinate their particular efforts to the common action” (497). In the preface to the Old Regime he even asks “What person can be naturally base enough to prefer dependence on the caprice of one man, rather than follow laws which he himself has helped to make...?” (OR, preface).

Tocqueville also has the identification mechanism by which we recognize that the regime we inhabit promotes our interest and therefore is one that we authorize: “a man understands the influence that the well-being of his country has on his own; he knows that the law permits him to contribute to producing this well being, and he interests himself in the prosperity of his country at first as a thing that is useful to him, and afterwards as his own work” (DA I.ii.6, M 225). But

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241 Tocqueville provides a number of scattered and sometimes contradictory statements about what freedom is. I take the task of the interpreter to understand the dominant thrust of the author’s intent. Sometimes one must “leave out the details in order to get to the basic ideas” (OR III.1, K 196).

242 Also “Often the European sees in the public official only force; the American sees in him right. One can therefore say that in America man never obeys man but justice or law” (DA I.i.5, M 90).
to attempt to make these the dominant modes of freedom in Tocqueville is to do a
disservice to the main impetus of the text. Instead of ruling and being ruled in turn, or of
recognizing that the regime is really what one wills, or that the representative assembly
really carries out my will even though I am largely passive, Tocqueville’s view of
American civil society and localism encodes a complementary but different vision of
political freedom. In Tocqueville the primary focus of freedom shifts away from giving
and obeying laws. For Tocqueville the accent is much more upon participation as such in
a public realm which he calls “l’esprit de la cité” and “la chose publique” (a literal
French translation of res publica) (DA, M 89, 226).

The major thrust of Tocqueville’s lexicon is not ruling and obedience, nor is it
self- identification with rational law, but community and participation as such. And the
locus of this participation is not confined exclusively to the institutions of government.
Tocqueville does not downplay the centrality of political institutions. He appreciates very
much that America proliferates the number of political offices and that participation in
public life is more widely available for citizens. But Tocqueville does not think it can be
the case that one is free only when one holds political office and thus exercises political
power. What interests Tocqueville in the combat of elections is that “the electoral system
brings together in a permanent manner a multitude of citizens who would have always
remained strangers to one another” (M 486). An election promotes “treating in common
common affairs” (LF 889). I take this statement as central to Tocqueville’s thinking about
freedom. For the idea of the “common” was precisely what was lacking in aristocratic
times and what democracy makes possible. And it is this treatment of common things in
common that Tocqueville sees operating not just in American political life but in
American civil society. What is distinctive and praiseworthy in America is that the political does not have a monopoly on the public and that America is able to greatly proliferate the number of common spaces.

The key to American life is the mutually reinforcing feedback loop of vibrant local activity that takes place around political institutions and the public life of civil society. In the second volume of *Democracy* Tocqueville describes civil society as the primary locus of participatory engagement and frenetic political activity in the United States: “The legislators of America did not believe that, to cure a malady so natural to the social body in democratic times and so fatal, it was enough to accord to the nation as a whole representation of itself; they thought that, in addition, it was fitting to give political life to each portion of the territory in order to multiply infinitely the occasions for citizens to *act together* and to make them feel everyday that they depend on one another” (M 487). Freedom is precisely this “acting together.” Americans act together in ways that have an object that is “in no way political” (489). In fact, political associations are only a small “detail of the immense picture that the sum of associations” present in America such that “There is nothing, according to me, that deserves to attract our regard more than the intellectual and moral associations of America” (489, 492). These are “commercial”, “industrial”, and a “thousand other kinds” such as “religious”, “moral”, and “grave” (489). They have associations to “distribute books” and to “create schools” (489). What is important is that these associations fix a “common goal” (489). Every association opens up a space of commonality which can be a locus of *action* (490). Tocqueville does not want action to be conceived of as personal but as a common undertaking. “In civil life each man can, if he must, fancy that he is in a state of self-sufficiency. In politics he can
never imagine it” (DA II.ii.7, M 496). To be free is not to be completely self-sufficient. Freedom is not autarchy. In fact in associations individuals learn “to submit their will to that of all the others and to subordinate their particular efforts to the common action” (497). Freedom is making oneself part of a larger whole. Political freedom is taking part in that public “world of action” (OR III.1 K 197).

The importance of participation to political freedom makes Tocqueville more of a democratic theorist than his predecessors Montesquieu and Guizot. And the example of American life, of a participatory non-sovereign public sphere, allows him to make practicable the democratic aspirations of Rousseau and Constant. In fact, much of the language that Tocqueville employs to discuss associational life in America is saturated with Rousseau’s lexicon. But in making their democratic models practicable, Tocqueville shifts the focus of freedom away from being a constituent sovereignty actor and towards “cooperation”, “unifying”, “combining”, “associating” and “acting in common.” Freedom is not exercising sovereignty. Freedom is first about engagement in a public world, which is the participatory democratic freedom of the modern republic.243 That engagement, in turn, has tangential benefits for individuals and groups. It strengthens and matures individuals, enabling them to become independent personalities capable of self-direction. Collectively it empowers social groups, and insofar as one partakes in that group, one can say that one exercises some power. But having or not having power is not the final determinant of whether one is or is not politically free.

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243 “We are a long way from the ancient republics, it must be admitted, and yet this people is republican and I don’t doubt will long remain so. And the Republic is for it the best of governments.” (Pierson, 1996, pp. 129–30; Schleifer, ch. 17).
And freedom itself is the goal, it is a non-instrumental good: “That which, in all times, has so strongly attached certain men’s hearts to freedom, are its own attractions, its own peculiar charm, independent of its benefits; it is the pleasure of being able to speak, act, and breathe without constraint, under the government of God and the laws alone. Whoever seeks for anything from freedom but itself is made for slavery” (OR III.4 K 217). Tocqueville certainly thinks Americans combine because they want to achieve something in the world, whether it be temperance or the election of a certain person or the proliferation of an idea. They don’t associate with each other because they want to exercise their freedom. It is only after they have exercised this freedom that they come to see freedom as a great good in itself, a good not reducible to its benefits (M 225, 488). They come to see it rather as the life befitting a human being. Remember that Tocqueville thinks township freedom is natural (M 57). He does not endorse the modern vision of man as asocial or a vision of community as merely or completely artificial.

*Individualisme* is a pathology. It is something unnatural. Freedom is the natural state of man, not in the sense that it arises spontaneously and without human effort, or that it is man’s first beginnings, but in the sense that a life which is not free is not a fully human life. It is a life that is diminished. That is why soft despotism is so abhorrent. By eliminating public life it destroys a human possibility.

4.4.3 Enlightened Freedom

Both Montesquieu and Constant agreed that ancient freedom was impossible in the modern era because it relies on self sacrifice (EL V.19). Its prerequisites are then
incompatible with the modern society and its needs. If there is to be a modern republicanism it must be rooted in self-interest. Tocqueville explores this theme in his famous chapter *How Americans Combat Individualism by the Doctrine of Self-Interest Well Understood* (DA II.ii.8).

This is one of the chapters that Tocqueville’s working drafts and his *rubish* help us gain a much better understanding of his intent. As the title points out, this chapter is about “doctrines”, or the stories that we tell ourselves to justify our actions and their relation to others. The draft title to the chapter was *Of interest well understood as a philosophical doctrine* (LF 918). In the draft introduction to the section, which Tocqueville excised, he called these doctrines “the theoretical idea that men form of their duties and their rights” (LF 918). There are two doctrines that Tocqueville sketches, one that grows out of the aristocratic and the other of the democratic social state. In aristocratic times “the few powerful and wealthy individuals...loved to form a sublime idea of the duties of man; they took pleasure in professing that it is glorious to forget oneself, and that it is right to do good without interest, like God himself” (LF 918). There is a strong element of self-glorification involved in the aristocratic conception of the relation between self and other. It is in fact deeply hubristic, as they make themselves out to be like gods. And this of course means that they are not. For if only god can act without self interest, then *ipsa facto* to be a man is to act at least partially out of self-interest. And this is what Tocqueville affirms: “I doubt that men were more virtuous in aristocratic centuries than in others, but it is certain that they then talked constantly about the beauties of virtue” (LF 919). If the aristocratic moral philosophy was an embellishment that misdescribed the complexities of the individual’s true motivations, it
stands to reason that the moral philosophy that emerges out of democratic times would make a similar error. And this is in fact the case. If the aristocrats talk themselves up, democrats sell themselves short. “The Americans, in contrast, take pleasure in explaining almost all the actions of their life with the aid of interest well understood; they show with satisfaction how enlightened love leads them constantly to help each other and dispose them willing to sacrifice for the good of the State a portion of their time and wealth. *I think that in this they often do not do themselves justice;* for you sometimes see in the United States, as elsewhere, citizens give themselves to the disinterested and unconsidered impulses that are *natural to man*. But the Americans hardly ever admit that they yield to movements of this type; *they prefer to honor their philosophy rather than themselves*” (LF 920-1). If both aristocrats and democrats are mistaken about the role of interest and sacrifice in one’s relations to others, then what is the proper moral philosophy? In the final version that Tocqueville published he does not tell us. That is because in his copious draft he attempted to develop the rudiments of a moral theory, but probably abandoned it because of the incompleteness of his thought (and as a side note, for this reason he says in the text that the subject matter of this chapter is “extremely difficult”, which he rarely says).

In his drafts Tocqueville develops in outline what might be called a hierarchy of moral postures. In Pascalian style Tocqueville has three phases of knowledge: instinct, half-knowledge, and enlightenment (LF 921 j). There are two different instinctive moral theories, one for each social state. The instinctive moral theory of democratic times is
pure egoism and of aristocratic times is pure sacrifice. At one point in the hierarchy Tocqueville associates half-knowledge with egotism, but in another draft the middle point is a reasoned doctrine of self-interest that sees that one’s interest is to do good. The final stage is “complete enlightenment” which Tocqueville associates with “thoughtful sacrifice” and the ability to penetrate the mind of God to see that his design is for us to work for others. Nevertheless, Tocqueville still insists that “there is still personal interest there” but it is “small and secretive” (LF 924). Despite its incomplete nature, this hierarchy is revelatory of Tocqueville’s mind. Significantly, he thinks that behind both the democratic and aristocratic doctrines there is a steady human nature that acts both out of interest and devotion, and second, that there is a proper moral stance towards others which sees that our good is in fact bound up with their good, and that in promoting their good we can promote ourselves. And this notion of enlightenment, the highest rung in the hierarchy, is in fact central to the final version. He calls American self-interest “enlightened” and tells us it contains “a great number of truths” (LF 923). And that truth is that it is right and good and even in one’s interest to sacrifice and do good for others. The doctrine of self-interest rightly understood is a lower and perhaps slightly debased version of what Tocqueville calls in the rubish “The morality of the well enlightened man” (LF 924). But it is not to too far away.

244 Contrast the end of the chapter “blind devotions and instinctive virtues is already feeling far from us” (923) with “instinctive, crude egoism” (924).

245 Tocqueville affirms that he believed in the idea of elements of human nature are constant across time in his 1852 lecture to the Academy of Moral and Political Sciences, where he asks the question: what is political science. He says: “There is in politics two parts which should not be confused, one is fixed and another is mobile. The fist, founded in the nature of man himself, in his interests, faculties, his needs revealed by philosophy and history, in his instincts that change object according to the times, with changing nature, and that are as immortal as his race; the first, I say, teaches the laws that are the most appropriate to the general and permanent condition of humanity” (OC I 1216 [my translation]).
Central to this discussion is the idea that modern republicanism is in fact capable of producing the types of sacrifices that are necessary for a republican form of government to subsist.\textsuperscript{246} Moreover Tocqueville disrupts the hard distinction between ancient self-sacrifice and modern self-interest, suggesting that there is always a mix of the two and that the two moral standpoints should be seen on a continuum rather than as antonyms. However, as he says in the *rubish*, the sacrifices that are needed to sustain republicanism can only come about if political life is active: “Utility of provincial institutions in order to create centers of common interest in democracy. National interest is not enough. It is necessary to multiply links, to bring men to see each other, understand each other, and have ideas, sentiments in common” (LF 923 m). Republican political liberty as long as it is vibrant produces the habits required to sustain itself, even if those habits are imperfectly understood by a utilitarian democratic moral theory.

4.4.4 The Individual, The Intermediate, and the State

Tocqueville does not reduce the site of freedom to the private realm or confine it exclusively to the state. It takes place in both, and in an intermediate realm of civil society. This intermediate realm serves multiple functions. It preserves the public space of freedom by resisting the evacuation of the public wrought by privatization and the encroachment on the public by the administrative state. It combats *individualisme* by generalizing and enlarging the individual’s notion of self and belonging, and creates a

\textsuperscript{246} In this Tocqueville might actually be following Montesquieu, who argues that the English are also capable of great sacrifices (XIX, 27).
multitude of small societies that break up the tendency of modern regimes to become mass societies.

For Tocqueville civil society is not primarily the site of economic interests or even of a salon culture of public dialogue and debate. In the Old Regime he is very critical of the fruit of salon culture precisely because it lacked a meaningful connection to public practice: “for the complete absence of political freedom had made the world of action not merely badly known to them, but invisible...They therefore lacked the elementary education that the sight of a free society, and the noise of all that is said there, gives even to those who are least involved in government” (OR III.1, K 197). Civil society is a “world of action.” This action is not primarily economic or commercial. Business associations are only one of the many types of associations in American civil life. And the practice of freedom that Americans learn in civil society teaches them that there is more to life than their bien-être. We of course participate in the public to advance our economic interests and protect our private rights, but the public is not reducible to that. Criticizing the bourgeois spirit of his time in the Souvenirs he says: “the middle class, which must be called the ruling class, entrenched in its power, and shortly afterwards, in its selfishness, treated government like a private business, each member thinking of public affairs only in so far as they could be turned to his private profit, and in his petty prosperity easily forgetting the people” (S 5). What is distinctive about American associations is that they are dedicated to some vision of the public good, such as the Temperance movement. The intermediate realm of civil society should orient the mind towards the public, preventing an instrumentalization of the public on behalf of the private.
This is not to say that Tocqueville thinks private interests should be eradicated from the public space. Individuals often participate because they think that it is good for them to do so. To not be self-interested is not to be human: “[Aristocrats] formed for themselves a sublime idea of the duties of man; they were pleased to profess that it is glorious to forget oneself and that it is fitting to do good without self-interest like God himself” (DA II.ii.8, M 500). Speaking for democratic moralists and not in his own name, Tocqueville notices that they point out where the “particular interest happens to meet the general interest and to be confounded with it” and that “in serving those like him [he] serves himself, and that his particular interest is to do good” (DA II.ii.8, M 501). The public “expands” and “enlarges” the individual’s sense of self to encompass others.

It is also a realm in which the barriers to political practice are low, and this is what allows civil society conceived as the public space of freedom to solve a riddle of freedom in French thought. Freedom can be an opportunity concept and/or an exercise concept. The opportunity concept is that there is no legal (or even economic or other) barrier to your ability to participate in the public realm. The exercise concept is that freedom exists only when you exercise that right or hold power. The problem arises because French liberalism is committed to a vision of freedom as self-rule. That idea of self rule is connected to sovereignty. But it is in the nature of things that the people cannot rule. And the French liberals abhor a sovereign demos that is continually active. Tocqueville thinks that robust political involvement is really what we mean to say when we speak of political freedom. If there is no participation then political life is experienced as paternalistic rule and not as self-government. A realm then must be found in which the demos can be both active and non-sovereign. This is the realm of civil society. Rousseau
lacked the crucial American experience that revealed a *tertium quid* between an active sovereign and a quiescent, silent, and ruled populace. In civil society freedom is both an opportunity and an exercise concept. To be free is to have the opportunity, the right, and to actually participate in the *res publica*, which is both the public world of civil society and also the political world of the state broadly conceived (including parties, interest groups, movements etc.). Tocqueville does not connect freedom with rule or with domination. He does connect freedom with power and empowerment, but with the collective power of an association of which the individual is a part.

4.5 Conclusion: Freedom and Popular Sovereignty

This dissertation is an attempt to sketch the aspirations of the French tradition of liberal political thought and Tocqueville’s place within it. The tradition is unified because it attempts to solve a common problem: the problematic relation of sovereignty and liberty. That problem is that the affirmation of popular sovereignty is both an affirmation of the political freedom of a collective and of each individual to self-rule, but, in its practical entailments, empowers a regime that endangers the very freedom it is supposed to protect and ensure. This was the experience at the heart of the French Revolution.

The problematic interplay between sovereignty and liberty led French liberals to rethink the nature of the state. As it emerged out of the late middle ages, monarchical sovereignty was the notion that the state required the localization and monopolization of
supreme political power in a single authority. This made sense for a regime that sought to hold together such heterogeneous elements and combat meddling foreign influences. The characteristics of monarchical sovereignty were taken over but given a democratic meaning by Rousseau, whose theory of the state is in all its essential theoretical categories a monarchical one. Many of these categories continued to make sense in a regime of popular sovereignty, since it was thought that all regimes require a locus of final authority, an authority that was bounded by law and right. But the dangers inherent in grafting unitary sovereignty onto the people became devastatingly apparent during the French Revolution. For the transformation of popular sovereignty from a concept of opposition to a concept of rule did not in fact redound to the power of the people. Forced to delegate their authority to sovereign representatives, it was usurped by a succession of assemblies, cabals, and finally by one man. Popular sovereignty seemed destined to be forever illusory, the font of authority but not the agent of power.

In the wake of the Revolutionary experience Constant and Guizot rethought the nature and entailments of popular sovereignty without jettisoning the core moral commitments that informed it. Both thinkers gravitated around regimes of representation. Constant affirmed popular sovereignty but he resisted the idea that it could be embodied by any institution. It was held by the people but rarely exercised. Constant tried to affirm both individual and political freedom, freedom from government and freedom to partake in government. Vibrant localism would keep the people active and vigilant over the representative body to ensure that the government did not usurp sovereignty. Constant’s thought does much to anticipate Tocqueville, though his version of individual liberty is more romantic than Tocqueville’s aristocratic version. Guizot offered a different version
of representation, one which emphasized the aspirational moral content of sovereignty as rule of an objective standard. Like Constant, Guizot thought that no human institution was sovereign. Representational government was the institutional embodiment of man’s quest to approximate sovereignty as best as it could. In order to achieve that it had an elitist flavor (very much like the American founders) and was tempered by separation of powers and an active public sphere of debate. It turns out, in France at least, that both versions of representative government result in a minimalist conception of political liberty. In both cases political liberty is stripped of the the vibrant political participation that not only characterized political liberty in antiquity but seemed to be revitalized by the promise of popular sovereignty in the 18th century by Rousseau, only to be later abandoned after the Revolution. French liberalism seemed destined to make an unhappy choice: if one affirmed too strong a notion of popular sovereignty in order to produce political liberty, then individual liberty would be hopelessly endangered. And if one softened or even eliminated popular sovereignty in order to ensure individual liberty, political liberty would be gutted of any substantial content.

These were the debates and problems at the center of French liberalism in which the young Tocqueville was reared. Among Tocqueville scholars Larry Siedentop is one of the few who has clearly seen that the issue of sovereignty and freedom is at the center of his thought. Siedentop suggests that Tocqueville resolves the problem of sovereignty by providing a novel understanding of federalism and its constitutional mechanisms that had been lacking in French liberalism. But Tocqueville’s solution to the

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247 Other scholars attuned to this problem are almost all French. See Lucien Jaume (1997) and Pierre Rosanvallon (2000). American Tocqueville scholarship is not concerned with sovereignty because sovereignty is hardly an issue in American political history after the founding. Also Siedentop (1994) and Craiutu (2003) are concerned to place Tocqueville within the debates of the Restoration period.
problem of sovereignty and liberty includes, but is not limited by, a decentralized state that fragments sovereignty. This is nothing revolutionary. It was already advocated by the founders. Constant, in his *Principles of Politics*, also imaged what he called a new federalism (Siedentop, 1994, 42).

Popular sovereignty according to Tocqueville emerges out of, becomes the moral affirmation of, and subsequently perpetuates an entire democratic world of social practices, cultural habits, and political institutions. Rather than seeing popular sovereignty as a purely juridical event, as a way of denoting what body holds what powers over whom, he sees the judicial outcome as an epiphenomenon of more fundamental social and cultural causes. The democratic world as it evolved in America, and guided by its founding statesmen, allowed both for novel political possibilities and gave rise to new dangers. The new danger was that sovereignty was potentially more dangerous than in previous regimes since there was less that inhibited it, and since any lack of intermediate social structure left the individual more prey to novel social powers. But the political possibilities of democracy were also expanded because they, if managed properly, infinitely proliferate the sites of participation in a public world. What Tocqueville saw in early 19th century America was a free regime. And a free regime is characterized by almost frenetic individual participation in public life. That participation includes, but is not confined to, the institutions of the state. What Tocqueville noticed is that an active people is not one that constantly exercises their sovereignty. And this is because they found a new sphere of public life. Civil society and localism are spheres in which freedom as participation can be theorized without recourse to an exercise concept of sovereignty. It is the realm of non-sovereign freedom.
But the realm of non-sovereign freedom is itself dependent on the federal structure and a strong national government. The realm of non-sovereign freedom presupposes both the political freedom of the representational model and the identification model. Non-sovereign freedom presupposes the sovereign moment as well as the ability of the people to have recourse to their sovereignty if need be: “In England the constitution can change constantly, or rather it does not exist...In America, political theories are simpler and more rational. An American constitution is not supposed to be immutable as in France; it cannot be modified by the ordinary powers of society as in England. It forms a separate work that, representing the will of the people, obliges legislators as well as plain citizens, but that can be changed by the will of the people following forms that have been established and in cases that have been foreseen. In America, the Constitution can therefore vary; but as long as it exists, it is the origin of all powers. The predominant force is in it alone” (DA I.i.6, M 95). Tocqueville recognizes the paramount importance of liberal constitutionalism for solving inherent problems in the modern vision of popular rule. A constitution is the product of a sovereign moment and carries the expression of the people’s will across time even when the people is not active. This protects the people’s will from government. It also protects the people from themselves. One of the great shibboleths of counter-revolutionary thought as well as moderate revolutionaries was that to give political power to the people would create an unmitigated despotism because the people are bound by nothing. Moreover, it was thought, the people cannot bind themselves. But the American experiment proved that a written constitution that affirms individual rights as exemptions from public power can be willingly obeyed. If the counterrevolutionary shibboleth is disproven by the facts, so were
the concerns of Rousseau that a people that did not show itself as a sovereign would soon be enslaved. For Tocqueville the people does not need to show themselves as sovereign to protect their freedoms. They simply need to show themselves, and this is made possible by stable institutionalized forms of political life brought about by the sovereign moment. Tocqueville is a great admirer of durable, strong, and stable government. Noting the crisis of centrifugal forces in America under the articles, Tocqueville praises the creation of a strong federal government that “consolidated its power, America retook its rank among nations, peace returned to the frontiers, public credit rose; settled order succeeded confusion, permitting individual industry to follow its natural course and to develop in freedom” (DA I.i.10, M 371). American political freedom is made possible by the unique combination of a strong state that ensures a public world and a lack of bureaucratic administration that ensures that it is not asphyxiated.

If Tocqueville begins, as all French liberals do, by affirming popular sovereignty, the rest of his thought is an attempt to overcome it. There are few moments in his entire book in which he thinks the entire people actually exercise their sovereignty. But they are nevertheless very active. Tocqueville wants to preserve the democratic political world as such. He notices that there are various pathologies of sovereignty that need to be combated for that world to be maintained. One such tendency is to unify power in a central location, to make that power unlimited, and to lodge sovereignty in it as the only legitimate representative of the people. This is the French interpretation of the republic (M 380). A republic means that those who “know” the will of the people speak on their behalf, without consulting them. In America a republic is the action of society upon itself,

248 For the necessity of stability of a constitution and other “first laws’ M 382.
not the action of the government on it (M 379). From the perspective of international relations the state is sovereign because it has a monopoly on authority within a given territory; but from a domestic perspective to think the state sovereign is an error of grievous proportions. Only the people are sovereign. It is the affirmation of that sovereignty, and then the fragmentation, dispersal, and covering of it that keeps the public world of political freedom available. When the locus of sovereignty is transferred to the state that world is all but dead.

Tocqueville’s philosophy of freedom also accounts for mistaken views of freedom and sovereignty. Popular sovereignty as the product and affirmation of an entire socio-political world gives rise to psychological pathologies that are distortions of veritable freedom. One of those distortions is what I have called Cartesian sovereignty. This is the tendency to view the individual as the supreme sovereign agent in control of his identity and his future. But for Tocqueville this is both a category and a cognitive mistake fostered by democracy. Sovereign power and authority is not the attribute of an individual but only of a collectivity imbued by a moral aspiration that limits it. In this Tocqueville repeats French liberalism’s categorical refusal to treat the individual as a sovereign agent. The individual’s sovereignty takes place only as a member of a sovereign community. Cartesian sovereignty is also a cognitive mistake because the Cartesian vision of freedom as an agent’s autarchic self-determination does not correspond to the complex ways in which individual identity is constituted by social traditions. It is an illusory freedom because its infinite aspirations do not correspond to

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249 Pace Elshtain (2008) who argues that sovereignty necessarily degenerates into the idea that individuals are sovereign, chapters 8 and 9.
the realities of human finitude. Tocqueville’s philosophy of freedom serves as a corrective to this view.

Tocqueville attempts to combine individual and political liberty and to see them as mutually reinforcing. For him popular sovereignty which gives rise to the rule of the people is based on the individualistic premise that all are given sufficient lights by nature to run their lives as they see fit (M 381). This combination of liberalism and republicanism is a perennial feature and aspiration of French thought that finds its unique reverberations in Montesquieu, Rousseau, Constant, and Guizot. But for these thinkers a balance seemed illusory. Each one was forced to make a decision to either empower the people and prepare them for political liberty or to protect the people from government by ensuring a larger sphere of individual liberty. Rousseau adopts the former position, while Montesquieu, Guizot, and Constant, to varying degrees, adopt the latter.

Tocqueville combines the two. Most commentators agree that Tocqueville combines both a liberal moment of freedom with a political moment of freedom. Individual freedom for Tocqueville is, like other liberals, protection from the state and the guarantee of a large space of personal independence. But it is something more. As the opposite of the uniformity, individualité is the idea that the achievement of freedom is to become an original person. This freedom is made possible, Tocqueville thinks, by a tradition that provides a nurturing context for individual freedom and by engagement in a public world.

All the concepts discussed in Tocqueville’s œuvre, the individual freedoms of non-interference and as being oneself, and the political freedoms of the representational, identification, and non-sovereign participatory models fuse together to form what could
be called a freedom of engaged self-determination. This is the notion that freedom, both for an individual and a people, is the ability to choose the lives they want to lead in the things in which it is possible to have a choice. That freedom requires an entire social, cultural, and political world to even come about and to ensure its continuing possibility. And it is that world that Tocqueville describes and wishes to preserve.
The current state of one strand of democratic theory that we can call *radical democracy* paints a picture of the contemporary world that forces us to choose between two unlovely alternatives. On the one hand there is the longing for the semi-extraordinary as a way to revitalize democratic practice. Revolt, disruption, and insurgency are the catchwords. These are not institutionalized but sporadic democratic movements. If we do not have recourse to some form of the extraordinary, extra-political movement, it is insisted, we will be left with the current intractability of the American political scene. And in the books of Sheldon Wolin and Andreas Kalyvas that scene seems quite dire indeed. Let us remind ourselves of the formidable phalanx of horrors that Kalyvas wants us to endorse: “monopolized by political elites, entrenched interests groups, bureaucratic parties, rigid institutionalized procedures, the principle of representation, and parliamentary-electoral politics...civic privatism, depoliticization, passivity, carried out by political elites, professional bureaucrats, and social technicians” (6). Wolin’s *Democracy Incorporated* expresses very similar, if not more dire, warnings. In part a product of the cloud cast over the Left by the Bush presidency, Wolin nevertheless continues a line of critique that paints the United States as very near total

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250 A wide array of different and often incompatible movements and ideas traffic with the epithet democratic theory. See Ian Shapiro (2003).
collapse. If the old platitude was that what united the radical left and the radical right was their mutual hatred of liberalism, what unites them now is their mutual insistence that we have entered the twilight zone of democratic despotism.\textsuperscript{251}

The bleakness of the current situation, in the eyes of these authors, implies that we do not need minor tweaks. Our problems are not, in the words of Nabakov, a small rut that any frog could straddle. Such a dour diagnosis of the contemporary era is bound to produce a call for some form of radical revivalist movement. And this leads, in turn, to thinkers who radically question the sufficiency of the present. There is no harm in democratic theory having recourse to those who pose a radical critique of the contemporary world in order to rethink democratic possibilities. The turn to Hannah Arendt and Carl Schmitt are two such moves.\textsuperscript{252} The problem is that the attempt to appropriate a radical critique of contemporary practice for contemporary practice is an inherently paradoxical enterprise. It is essential to radical critique that the very traits that make such critique radical must be domesticated and defanged to make them compatible with a world that the radical thinker rejected. This is not to say that critique does not provide an important social and theoretical purpose. But a philosophy of critique is not a workable institutional alternative. Radical critique is by its very nature placed in a Catch

\textsuperscript{251} In this sense Sheldon Wolin’s \textit{Democracy Incorporated} (2008) and Paul Rahe, \textit{Soft Despotism, Democracy’s Drift} (2009) have very much in common.

\textsuperscript{252} Rosanvallon, calling the turn to Schmit a “dubious medicine” has suggested that “no one any longer regards revolutions as a strategic option. Once upon a time, the belief in revolution was the most incandescent expression of a belief in popular sovereignty, in the prospect of making the world anew...[It’s collapse signals] that the very idea of radicality has changed....Radicalism no longer looks forward to \textit{un grand soir}, a ‘great night’ of revolutionary upheaval; to be radical is to persist in criticizing the powerful of this world in moral terms and to seek to awaken passive citizens and their slumbers. To be radical is to point a finger of blame everyday; it is to twist a knife in each of society’s wounds. It is not to aim a cannot at the citadel of power in preparation for a final assault” (Rosanvallon, 2008, 255, and reference to Carl Schmitt, 312).
22, if it seeks to say something constructive about the world it is subject to its own venomous bite, if it stays detached from the world of practice it is sterile.

The turn to Hannah Arendt and Carl Schmitt, both concerned with the demise of the political, raises the question of what our image of the political should be. I think we are wrong to take the Athenians as exemplars of what the political should mean for us. It is always helpful to repeat Constant’s point that the social situation that gave rise to Athens is not our social situation. It is always helpful to remind us what, actually, Athens was like.

One of the most important studies of the ancient world in nineteenth century France was inspired by Constant: *The Ancient City* by Fustel de Coulanges (1830-1889), first published in 1864. Coulanges supports Constant’s thesis that the political life of the ancient polis was the product of unique and irreplaceable historical circumstances. He emphasizes what makes the ancient city so alien to us: it’s holiness, its small size, and most of all, its lack of individual liberty. What was permissible in Athens in the contemporary world we associate only with Middle Eastern dictatorships or the Taliban: in Athens it was forbidden to remain single; the law forbade women to take more than 3 dresses with them on a journey; and religion was strictly regulated (220-1). “It is a singular error, therefore, among all human errors, to believe that in the ancient cities men enjoyed [individual] liberty. They had not even the idea of it” (223). It was also, Coulanges insists, a garrison state. In Rome a man owed military service until he was 50, in Athens, until he was 60. A state could charge someone and bring them into court for

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253 “State, city, fatherland: these words were no abstraction, as they are among the moderns; they really represented a group of local divinities, with a daily worship of beliefs that had a powerful influence over the soul. This explains the patriotism of the ancients” (Coulanges, 198).
lack of patriotism. If the state required money it could confiscate women’s jewels or a man’s olive grove without compensation. Wealthier individuals were obliged to give liturgies to the state: boats, a chorus progression, or fund plays. These were not options. One can legitimately speak of the not so beautiful freedom of the Greeks.

If we are going to admire the political as it appeared in Athens we should have a correct idea of what it is. Two facts about Athenian politics are often underemphasized. Athens was a de-centered polis. Each citizen was a member of a deme and a tribe each with its own assembly and offices. Much of Athenian political life did not in fact take place in the ecclesia. The Athenians were a people of office holders. The number of public offices was astounding.\(^{254}\) The principal activities of ancient citizenship were not making speeches in the ecclesia. That was usually reserved to orators and heads of parties. In the assembly questions were freely debated, it is true, but the questions were all pre-given by the senate and there were many requirements of one who wished to speak. This is not to minimize the fact that the Athenians were deeply politically active. But the activity of the individual was most often as a magistrate in his deme and tribe and every third year as a member of the jury. At some point in their lives, perhaps twice, they sat in the senate. This was a full time post, from morning till evening every day for a year, conducting the business of the city: receiving ambassadors, issuing instructions for Athenian ambassadors, preparing laws for discussion by the assembly. As Coulanges summarizes, “men passed their lives in governing themselves” (336). The Athenian really

\(^{254}\) For example: archon, polemarch, thesmothetae, 10 oracle consulters, 10 athlothetae, who served for 4 years to prepare the festival of Bacchus, and 50 prytanes who took care of public fires and meals; the generals, 10 heads of police; 10 heads of the markets, 15 overseers of the grain trade; 15 metronomoi, who controlled weights and measures; 10 accountants; and 11 charged with executing sentences. These are only the “national” offices, almost every single one was repeated both in the deme and in the tribe. Most of these posts were annual (Coulanges, 329).
was a political animal. But to pass a great part of one’s time attending to public business means that private life was diminished, if not almost non-existent. One also spent little of one’s time in commercial life. This is why Constant stresses that ancient freedom necessarily depended on slavery.

That form of heightened political life is no longer available to us. Two facts prevent it. The first is that most citizens are primarily occupied with commerce, forcing them to leave government to professional politicians. And second, the people cannot assemble. In the contemporary age when the people assemble it is a moment of revolt. And since these are the same people that make the economy run when there is a revolt the economic life of the country shuts down, as is the case in Yemen, Syria, and Egypt today. This is not to say that these revolts aren’t necessary but it is no longer the case that we can dedicate ourselves to the political in the same way that the Athenians could. The political in Athens cannot be divorced from the context out of which it emerged. We cannot take the Parthenon and put it in Nashville, TN (which has, incidentally, the only full scale replica of it in the world, replete with a painted freeze and the full statue of Athena) and expect it to have the same significance and provoke the same emotions as for a 4th century Athenian. The Parthenon is now an artifact, a museum. Like Athens, it has entered the realm of nostalgia.

Arendt has been the most influential revivalist of the ancient political aspiration in contemporary life. Her thought plays the role of classical republicanism during the ancien régime. It is a discourse of opposition and critique. It attempts, as she says, to think what we are doing. It reminds us what we have lost. That is why she calls the revolutionary tradition the lost tradition. Arendt is also the most prominent theorist of non-sovereign
freedom today. But a surprising twist has occurred in the subsequent history of her concept. In Arendt, non-sovereign freedom is meant to be a discrete practice that was sustained by vibrant democratic institutions. The concept is currently morphing in the contemporary literature into questions about individual identity and agency.²⁵⁵ That is to say, in Arendt the category of non-sovereign freedom is deeply institutionalized, in contemporary scholarship the trend is to de-institutionalize and individualize it.

One way out of this dilemma is to look for resources within the liberal democratic tradition to revitalize it. This dissertation has been one such attempt. It has shown that there are resources within the tradition to think about political freedom in ways both salutary to democratic novelty and energy and that seek to forestall privatization and inhibit statism. And it does so without succumbing to the Scylla of revolution and the Charybdis of sterility. Moreover, it is a tradition that seeks to maintain the liberal freedoms so central to life in the western world for the last two centuries, liberties not present either in Athens or in Schmitt. Liberties, indeed, that we can no longer live without.

There are other abundant resources within the liberal democratic tradition to theorize democratic renovation. One could turn to the Temperance movement, the Civil Rights movement, or even the gay rights movement. Studies that mix close historical detail with theoretical novelty might emphasize that radical change is a slow and multilayered process rather than a momentary democratic insurgency. Change employs a

²⁵⁵ Sharon Krause (2011a and 2011b). This line of interpretation can also be found in Patchen Markell’s Bound by Recognition, pg. 5. Though Arendt is not a major player in the book it is clear, by examining his endnotes, that she is a strong background inspiration. Cohen and Arato suggest that in the “modern world” Arendt’s project might make some sense only if it turns to civil society (Cohen and Arato, 1992, 178).
number of existing democratic strategies: it works in courts, through local government, and it mobilizes support. Movements for change are fissured and complex. To know how change actually occurs is to understand what needs to be theorized.

If radical democratic theory wants to get serious about transitioning from a discourse of critique to a workable institutional philosophy, it must make a similar transition as what occurred in French liberalism. This transition emphasizes a combination of political philosophy and sociology. We need precise studies of the democratic movements that have had lasting effects, of the responsiveness of institutions to democratic needs, of the real effect of interests groups, of the precise nature of public activities that citizens are involved in and the ways that more effectively interest them in their communities. Radical democratic theory would benefit from an emphasis on concrete institutional change that relies on the work of social scientists. This will make the claims of democratic theory more grounded, and the recommendations more practical. In sum, we need to think about politics as Constant and Tocqueville did, as a mix of history, sociology, and philosophy: grounded in contemporary reality, cognizant but not overly nostalgic of the traditions that have been lost, careful to safeguard the liberal freedoms that are the great advancements of our age, and insistent that within a free and democratic society there is always hidden potential waiting to be discovered and unleashed.

256 I remember reading this idea somewhere in the work of Sheldon Wolin but I could not find the reference.


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