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Tocqueville and the Question of Legalism

When Tocqueville first arrived in America, he was fascinated by the “equality of conditions,” which played a large role in shaping the “laws, . . . maxims . . . , and habits” of the country.¹ What this equality amounted to was a dismantling of the claims to nobility and permanent class that defined the aristocracies of Europe. Setting out to examine this novel democratic social state, Tocqueville, in his work *Democracy in America*, aimed to diagnose both the positive developments to come out of democracy and where its tendencies might lead man to ruin. Juxtaposing the vices and virtues of American democracy with those of the aristocratic systems he had been exposed to in Europe, Tocqueville hoped to find aspects of American society which could foster tendencies in democracy to prevent the rise of tyranny. He argues that America’s strong reliance on its law, the lawyers who practice it, and the judges that speak for it forms a ersatz aristocratic class that champions the legal forms and shapes the thought of the people, thus fostering the positive aristocratic tendencies that protect America from the excess of democracy. This argument for the virtues of, what I will call, the legalism of politics raises interesting questions when compared to the rest of Tocqueville's analysis of the virtues and vices of American democracy worth exploring.

A Friendly Critic: the Virtues and Vices of Democracy

The most appropriate way to begin a deeper discussion of Tocqueville’s reasoning behind his argument for the positive effects of the legalism of politics might be with his conclusion to

¹ Alexis de Tocqueville, *Democracy in America*, trans. Arthur Goldhammer (New York, NY: Library of America, 2004), 3.

Democracy in America. In presenting the following passage I hope to reveal Tocqueville's status as both a friend and a critic of America's young democracy:

“Having reached the end of my journey... I am full of fears and hopes. I see great dangers that can be warded off and great evils that can be avoided or held in check, and I feel ever more assured in my belief that in order to be virtuous and prosperous, democratic nations have only to want to be so.”²

What kinds of dangers do nations like America face, and what power do they have to battle them? This essay will serve to illuminate both the dangerous vices that Tocqueville hopes to bring to the attention of the democratic nations of the future, and the virtues he believes give democracy its merit and its best chances of achieving prosperity.

For Tocqueville, what makes American democracy fundamentally different from any other government in the past is the before mentioned “equality of conditions” that it fosters.³ This unique quality of the American polity sets it firmly apart from the aristocratic societies of Europe, while having a rippling effect that is evident throughout the American democratic social state.⁴ The society created by this new kind of equality is unique in both its vices and virtues, a fact that leads Tocqueville to conclude that to study America requires an entirely “new political science.”⁵ Departing from the traditional understanding of democracy, he aims to study democracy as a social state created by the equality of conditions. The following chart illustrates the main virtues and vices of this social state found in Tocqueville's account that are relevant to this essay:

² Ibid., 834.

³ Ibid., 3.

⁴ Ibid., 3.

⁵ Ibid., 7.

| Virtues | Vices |
|--|------------------------------|
| Free Association (Political and Civil) | Individualism |
| Rights | Mindset: Newness and Utility |
| Moral Superiority: Equality | Tyranny of the Majority |

These three pairs are combative forces that Tocqueville describes. Some of these pairings are offered by Tocqueville himself, as is the case with civic associations and individualism, which are discussed as forces that counteract one another in chapters that follow each other. Others are extracted from his larger argument, as is the case with the moral superiority of equality and the dangers of tyranny of the majority that this equality can produce which are discussed in different parts of the text, but, if understood correctly, can be seen as related to one another.⁶

“Aristocracy linked all citizens together in a long chain from peasant to king. Democracy breaks the chain and severs the links.”⁷

Of the three major vices that democracy encourages, perhaps the most interesting is the vice of individualism. This is precisely because we do not often see individualism as a vice in contemporary America. Instead, we encourage it, seeing it as a positive development of democracy. However, Tocqueville thinks otherwise, and he warns of the harmful effects that individualism can have on society and the wellbeing of its members. He starts by distinguishing individualism, which he considers a “recent expression” arising out of the new equality of the American social condition, and the “egoism” that belongs the old world.⁸ He describes egoism as

⁶ I hope that this relationship will be made more clear by the entirety of this account.

⁷ Ibid., 586.

⁸ Ibid., 585.

part of a “blind instinct,” while individualism rises out of an “erroneous judgment.”⁹

Individualism is “democratic in origin” and arises “as conditions equalize.”¹⁰ He argues that egoism, a part of men in all societies, was conquered by the firm immobility of the aristocratic societies of Europe, which lead each member of the community to have some sense of a devotion to the society in which they lived and a certain need of others either to follow them or to serve them. This organization of society leads one to have a sense of devotion to those to which they are tied.¹¹

This sense of devotion that pushes each member of society to look to their fellow citizen is “far from clear” in a democracy causing the “bond of human affection” to “stretc[h] and slacke[n].”¹² This leads people to only be interested in “those closest to [themselves].”¹³ Where as aristocracy was supported by a collection of well known families and classes, democracy creates an environment where each citizen begins to treat his fellow citizen like a “strange[r].”¹⁴ In a democracy, most people support themselves instead of looking to powerful, wealthy families for their livelihood causing them to “owe nothing to anyone, and in a sense... expect nothing from anyone.”¹⁵ This fact pushes democratic man towards isolation, which, for Tocqueville, wreaks havoc on both the health of the society and the happiness of the individual.

Individualism breeds indifference, which is a deadly sentiment in a democratic nation. When the citizens become indifferent to the polity, the government is free to act in devious ways

⁹ Ibid., 585.

¹⁰ Ibid., 585.

¹¹ Ibid., 586.

¹² Ibid., 586.

¹³ Ibid., 586.

¹⁴ Ibid., 586.

¹⁵ Ibid., 586.

and the citizenry fails to raise and solve problems that the government will otherwise overlook.¹⁶ Indifference is the enemy of political participation, and political participation is the backbone both of democracies moral legitimacy and its ability to function. At the same time, each citizen suffers from the harmful effects of individualism on his or her humanity, or as Tocqueville would call it his or her soul.¹⁷ He describes the power of individualism to lead man “again and again... back to himself” while it “threatens ultimately to imprison him altogether in the loneliness of his own heart.”¹⁸

“The Americans have used liberty to combat individualism born of equality, and they have defeated it.”¹⁹

While democracy might create the conditions for unhealthy individualism, it also gives rise to what Tocqueville sees as the solution to the dangers of individualism—association. He distinguishes between the political associations that support the elected representatives that make up the government and the civil associations that are formed outside the realm of politics. Tocqueville believes that the American system has the capacity to involve each citizen such that the “common affairs are dealt with in common” causing each citizen to see that “he is not as independent from his fellow man as he initially imagined.”²⁰ Just as the equality of conditions gives rise to a harmful individualism that turns man inward on himself and cuts him off from

¹⁶ This is exactly the sort of fear that Locke expresses. He fears that the citizens will allow tyranny to develop in the wake of citizens who are comfortable and ignorant. His solution, as was described in the introduction, is economic liberty and an emphasis on property rights.

¹⁷ When I use the term “soul” in the context of this paper, I mean the contents of a person’s conscience and character. The “soul” seems to have some extra-material needs, like companionship or virtue, to be satisfied, but the “soul” itself can be taken to refer to the aspect of a human that makes them more than animal or robot, and calls them to something higher.

¹⁸ Ibid., 587.

¹⁹ Ibid., 591.

²⁰ Ibid., 590.

fully expressing his humanity, free institutions supported by democratic elections push man to turn outward, to care for his fellow men, and to live a more fulfilling life.

However, Tocqueville does not mean to dismiss the problems posed by popular rule. He does not expect each citizen to be an expert in federal affairs, or as he puts it “America’s lawgivers” know that “a country’s general affairs occupy only its leading citizens.”²¹ Instead, he argues that one of the advantages of the division of power between the federal, state, and local government is that citizens can have an experience participating in local politics that is both better suited to solve the problems of individualism and less likely to get in the way of the nation dealing with its “general affairs.”²² Local politics require a more continuous association of a more close knit group of people than state and federal politics do, because the community that contributes to local politics is small enough to be in “constant touch” with one another, whereas politics at higher levels involves associations of lawmakers “only at intervals.”²³

At the same time, Tocqueville does not believe that a man can be “draw[n]... out of himself” over the interests of the “destiny of an entire” state, where as it is much easier to involve a man with the minor matters that ought to be taken care of in his town, like the construction of a road on his property.²⁴ He concludes that “if the goal is to foster the interest of citizens in the public good and make them see that they need one another constantly in order to produce it,” then “it is far better to give them responsibility for the administration of minor affairs than to put them in charge of major ones.”²⁵ As long as the local political climate is

²¹ Ibid., 591.

²² Ibid., 591-592.

²³ Ibid., 591-592.

²⁴ Ibid., 592.

²⁵ Ibid., 592.

vibrant, Tocqueville believes that the democratic man will be able to resist the destructive urge to turn inwards and continue to establish bonds with his fellow citizens.

Before moving forward, it is important to evaluate Tocqueville's claims, first, that the citizens will not be concerned with the larger issues that face the nation and, second, that involving the citizens in the minor affairs of their local community will be enough to form the kind of vibrant political community that is necessary to overcome the overwhelming force of individualism. It seems wrong to make the statement that citizens are not concerned with matters of the state at large. Even at the time that Tocqueville visited America, issues like slavery and western expansion dominated the average Americans conversation. While it might be wrong to say that the average citizen will always be apt to handle the issues that face the nation and that each individual will be concerned with each and every issue, it seems appropriate to claim that much of what would be required to involve the citizen in the political community in such a way as to protect the polity from individualism would be a level of involvement and knowledge of the average citizen in the affairs of the state and nation.

In a sense, it seems that Tocqueville means to hint at the problems of popular government, in particular the inability of large groups of citizens to be adequately educated to make the right decisions at the national level, before quickly setting them aside to praise its positive aspects, namely its ability to counter individualism. But, if the above problem with his thinking is accepted, then the full power of political association cannot be had at the local level alone, and the problems of popular government that arise should not be ignored. Perhaps this realization is one of the reasons Tocqueville argued for the positive effects of the legalism of politics, which will be discussed later.

Another possible answer to the insufficiency of political association comes in Tocqueville's discussion of civic associations that arise outside of the political realm. Tocqueville asserts that "political associations are but a minor detail in the vast canvas comprising all the associations that exist in the United States."²⁶ He observes that "Americans of all ages, all conditions, and all minds are constantly joining together in groups" to accomplish a wide variety of civil missions that expand beyond what is political, "commercial," or "industrial."²⁷ These groups of citizens contribute to their communities by building "hospitals, prisons, and schools."²⁸ They function as a replacement for the "great lords" that can be found in aristocracy."²⁹ The commonality and diversity of civil associations in America surprised Tocqueville, and he suggests a few possible reasons for their existence, as well as an examination of how they improve democracy.

First, Tocqueville floats the idea that civil associations are a necessity anytime that equality of conditions takes hold. Where as it only takes one man of great power to accomplish a needed task in the Old World, most individuals in America are equally "weak" so they join together with the realization that they will be "helpless if they do not learn to help one another of their own free will."³⁰ This means both that civil associations are a natural occurrence in the democratic social state and that they are a necessary feature of a functional democratic political state.

He then considers another possibility that might replace civil associations in their necessity and function—government. Tocqueville raises the possible argument that the decrease

²⁶ Ibid., 595.

²⁷ Ibid., 595.

²⁸ Ibid., 595.

²⁹ Ibid., 595.

³⁰ Ibid., 595.

in powerful individuals will simply require a more “skillful” and “active” government to act in the stead of the great lords.³¹ However, he believes this proposition is false, because government could never “hope to equal the countless multitude of small ventures in which the American citizens participate every day through their associations.”³² It is clear from his argument that civil associations are a necessity for the wellbeing of the democratic state, but his argument that they naturally appear in a democratic state is less strong. In fact, it seems that the natural impulse of individualism that is produced by democracy has the opposite effect on society closing men off from one another. Perhaps one function of government might be to encourage civil associations, or at least to act in such a way that they do not hamper them.

Further, Tocqueville believes that the civil associations in America serve to strengthen the morals and increase the intelligence of the citizens, and if the government were to replace civil associations with political power, than “the morals and intelligence of [the] democratic people would be at risk.”³³ This is because, as Tocqueville argues, when citizens join together in civil association “feelings and ideas are renewed, the heart expands, and the human spirit develops only through the reciprocal action of human beings on one another.”³⁴ In a sense, civil associations provide exactly the experience that individualism prevents—the full virtue of the fraternity of citizenship.

Tocqueville stresses that a government cannot accomplish this same effect, and even goes as far as to argue that the “moment [a government] tries to leave the sphere of politics to embark on [the mission to replace civil associations], it begins to exercise an intolerable tyranny.”³⁵ This

³¹ Ibid., 597.

³² Ibid., 597.

³³ *ibid.*, 598.

³⁴ Ibid., 598.

³⁵ *ibid.*, 598.

is because a government can only “dictate precise rules,” which have the effect of “impos[ing] the feelings and ideas it favors,” making it difficult to distinguish between the government’s “recommendations” and its “rules.”³⁶ This firm statement offers evidence of Tocqueville’s advocacy for a civil life that is distinct from political life, even if it is a necessary and natural feature of it. Further emphasizing the importance of civil associations, Tocqueville goes on to claim that in a democracy “the science of association is the fundamental science” on which the progress of all other endeavors depends, making it clear that “if men are to remain civilized, or to become so, they must develop and perfect the art of associating to the same degree that equality of conditions increases among them.”³⁷ It is clear that Tocqueville sees the fate of democracy tied to the fate of free and civil associations in America.

For Tocqueville equality gives rise to two inclinations in man that are not found in citizens of other regimes—individualism and the will to associate. Individualism turns man inward, cuts him off from his fellow man, and prevents him from living a fulfilling life. The will to associate drives man to turn to his fellow man, for a community, and experience the full virtue that community can offer. Tocqueville makes clear that a large part of the future success of the democratic social state relies on the fostering of civil associations in America to counter the vice of individualism and make life in the modern world as fulfilling as the life defined by firm societal connections under aristocracy. Thus, it seems reasonable to evaluate future developments in America based on their ability to promote or hamper civil associations. This standard will be applied to the questions related to legalism later in this essay.

³⁶ Ibid., 598.

³⁷ Ibid., 599

“Although the democratic social state and democratic institutions do not arrest the growth of the human mind, there can be no doubt that they steer it one way rather than another. Even limited in this regard, their effects are still very great...”³⁸

Tocqueville believes that the mindset of a nation’s inhabitants is, in some sense, shaped by the society in which they live. This is clear from the above discussion, but Tocqueville goes on to expand on the effect of the equality of conditions on the mental tendencies of the Americans in the form of a discussion of their philosophic and scientific methodologies. He argues that the same societal mobility that causes the growth of individualism in America encourages man to pursue a commitment to utility and novelty that can ultimately lead to an unproductive society and a dangerous novel form of tyranny.

Tocqueville begins his discussion of the philosophic method of the democratic man in America by stating that there is no other country in the civilized world where “less attention is paid to philosophy.”³⁹ Yet, Americans do have a “common philosophical method” which consists in breaking free of the “systematic spirit.”⁴⁰ This begins with casting aside “tradition” and “form” for “substance,” as each individual relies on their own reason.⁴¹ In this frame of mind, “people easily lose track of the ideas of their ancestors or cease to care about them.”⁴² Relying heavily on their own reason, the American has “little faith in the extraordinary” and a “distaste for the supernatural” that they cannot easily understand.⁴³ This distaste extends to forms which they see as “inconceivable veils placed between themselves and truth.”⁴⁴ He concludes

³⁸ Ibid., 522

³⁹ Ibid., 483

⁴⁰ Ibid., 483

⁴¹ Ibid., 483

⁴² Ibid., 484

⁴³ Ibid., 484

⁴⁴ Ibid., 484

that the scientific method of the eighteenth century is most clearly practiced by the Americans who use it to “attack everything old and clear the way for everything new.”⁴⁵

This methodological dislike for the extraordinary and the supernatural equates to distaste with the *distraction* of theory in science. Tocqueville observes that in America “the purely practical part of science is admirably cultivated” and “care is taken with [only] those theoretical aspects of science that are immediately necessary for the application at hand.”⁴⁶ That being said, he continues by explaining “almost no one in the United States devotes himself to the essentially theoretical and abstract aspects of human knowledge.”⁴⁷ This is because “meditation is difficult in democratic societies” and the democratic man holds it in “relatively low esteem.”⁴⁸ According to Tocqueville, democracy “encourages man to be constantly active” settling for “approximations” rather than “long and learned proofs.”⁴⁹ Here, we see the framing of the tendency of democratic man to put “too much value on quickness of mind... and too little on deeper[,] but slower exertions of the intellect.”⁵⁰

This tendency is born out of democratic man’s commercial mindset, which arises from his desire for “immediate” and constant “material gratification” because he is “always unhappy with the position [he] occup[ies]” and “free to abandon it” by finding “ways to change or improve [his] fortunes.”⁵¹ This pursuit of knowledge for its usefulness rather than its intrinsic value leads man to search for ways of “shortening the path to wealth” by making “any machine that saves labor, [and] any instrument that reduces the cost of production...” his “most

⁴⁵ Ibid., 486

⁴⁶ Ibid., 523.

⁴⁷ Ibid., 523.

⁴⁸ Ibid., 524.

⁴⁹ Ibid., 524.

⁵⁰ Ibid., 524.

⁵¹ Ibid., 526.

magnificent achievement.”⁵² These goals are what drive the scientific studies of democratic peoples.⁵³

For Tocqueville this tendency manifests a great danger for the future of the democratic peoples in which it is found. He argues that if the deeper theoretical sciences are not fostered, then the “sources of enlightenment... [will] die out.”⁵⁴ This is because limiting the study of science to “application” would cause the knowledge of “principles” to fade away.⁵⁵ Without this knowledge of principles, scientists would “make poor use of the methods derived from them” and “no longer be capable of inventing new methods.”⁵⁶ The danger here is that the methods we did employ would become “artless” and “no longer understood.”⁵⁷ For this reason “the human mind [in the democratic social state] need[s] to be forced to concentrate on theory.”⁵⁸

Tocqueville details how the commercialist people of China historically suffered this predicted fate, which crippled their ability to make progress in the following passage:

“When Europeans first landed in China three hundred years ago, they found that nearly all the arts had achieved a certain degree of perfection and were surprised that people who had come so far had not gone further. Later they discovered vestiges of certain advanced bodies of knowledge that had been lost. The nation was industrial; it had preserved most scientific methods, but science itself no longer existed... The Chinese, following in the footsteps of their forebears, had forgotten the reasons that had guided them. They continued to use formulas without seeking to fathom their meaning. They held on to instruments though they had lost the art of modifying or reproducing them. Hence the Chinese could not change anything. They had to give up making improvements. They were forced always to imitate their forebears in every respect lest the slightest deviation from the path laid out for them in advance plunge them into impenetrable darkness. The source of human knowledge had almost dried up, and

⁵² Ibid., 526.

⁵³ Ibid., 526.

⁵⁴ Ibid., 528.

⁵⁵ Ibid., 528.

⁵⁶ Ibid., 528.

⁵⁷ Ibid., 528.

⁵⁸ Ibid., 528.

though the river still flowed, its waters could no longer increase in volume or change direction.”⁵⁹

In this way, if an enlightened society fails to keep the lofty idea at the foundation of their methodologies alive, they risk submitting themselves to stagnation and, worse, nurturing the indifference of citizens that comes with living in a community of complex and inexplicable methodologies.

This indifference is similar in character to the indifference that arises from individualism, however it is more harmful. Indifference of this sort not only makes man live an unfulfilling life, it also threatens to destroy a society’s needed ability to deal with new problems in new ways. Novelty is a product of theory, and if theory dies in the democratic social state, then so does progress. At the same time, the democratic mindset allows for a modern form of tyranny to arise, which will be, discussed in a later section.⁶⁰

Tocqueville believes that lawyers and the phenomena of legalism are the solution to countering the vices of the democratic mind, and this position will be taken up later. However, he also hints at another solution, which is relevant to the objectives of this endeavor—property rights. Tocqueville believes that a shared right of each individual to own property will foster a certain kind of base virtue that, while low in nature, can still be protective against the wave of the masses.

⁵⁹ Ibid., 528.

⁶⁰ Another interesting consideration is the relationship between the democratic mindset and civil associations. It seems reasonable to believe that the citizens’ willingness to join together is driven by their love of utility and will to change society quickly.

*“The idea of rights is none other than the idea of virtue introduced into the world of politics.”*⁶¹

Tocqueville believes that rights can be a powerful force in a political community. Shared by all, rights connect people together in interests and practice, they give self-worth to the individual, and they give citizens an incentive for watching over the affairs of government more closely. In the face of a democratic mindset that destroys what is old to erect a new creation, rights are an old institution with universal respect and a firm foundation.

Tocqueville begins his discussion by defining rights as a form of “virtue” introduced into the “world of politics.”⁶² As in the Lockean conception of rights, Tocqueville sees the most visible right as the right of property.⁶³ Young children slowly take ownership of their possessions until they naturally begin to respect the property rights of others in the hope that they will respect his.⁶⁵ Tocqueville compares this natural, self-motivated inclination to protect rights in young children to the overwhelming support of rights, political and property, in American politics. He argues that the American has an “exalted idea of political rights because he has such rights,” and “he does not attack the rights of others because he does not want them to violate his own.”⁶⁶ The universal nature of rights that comes with the equality of conditions allows for the “idea of political rights to filter down to the humblest of citizens,” which Tocqueville sees as “one of [democracy’s] greatest merits.”⁶⁷ At the same time, he acknowledges that “teaching everyone to make use of political rights” is a challenge, but one he believes is worth taking on.⁶⁸

⁶¹ Ibid., 272.

⁶² Ibid., 272.

⁶³ Ibid., 273.

⁶⁴ That is not to say that the right to property is most important in either Locke or Tocqueville’s thought. In actuality both thinkers would most likely say that the rights to life and liberty are more important, however both see the base motives around property rights as something that can be taken advantage of in the interest of good government.

⁶⁵ Ibid., 272.

⁶⁶ Ibid., 273.

⁶⁷ Ibid., 273.

⁶⁸ Ibid., 273.

Here, Tocqueville seems to suggest that it is important that citizens be trained to make use of their rights effectively, even if this mission is a challenging one.

Where democratic man is quick to turn away old tradition, and slow to embrace forms, he will not give up his rights. Almost universally, democratic man protects his rights and is apprehensive of threatening his fellow citizen's rights out of fear of societal retaliation.

Tocqueville expands on the basis of rights in America in order to show how democratic man can hold them in such esteem. He argues that the old religious notion of rights is fading away as "belief is everywhere giving way to reasoning and sentiment [is giving way] to calculation."⁶⁹ For this reason, he explains that unless rights are tied to the "political interest that stands out as the only fixed point in the human heart," governments will have to resort to ruling through "fear."⁷⁰ By this notion he means that governments will have to use threats of force to compel behavior in governments where rights are not tied to the self-interest of individuals.

For Tocqueville, the ideas of rights that are cherished by the American people are somewhat paradoxical. While based on the same mentality of utility and self-interest that can create unhealthy individualism, they are a fixed feature of American life that reaches all corners of American society. At the same time, Tocqueville emphasizes that a certain education is absolutely necessary for the proper exercise of these rights. While this notion of rights is a possible answer to the vices of democratic man, it seems that Tocqueville sees it as a part of the phenomena of legalism. However, it is feasible to see a passionate, political environment where legalism is deterred and the notion of political rights is encouraged. Again, the emphasis is on

⁶⁹ Ibid., 274.

⁷⁰ Ibid., 274.

how citizens learn to use their rights. Tocqueville sees the answer in the law. However, this essay will suggest other possibilities.

“I regard as impious and detestable the maxim that in matters of government the majority of a people has the right to do absolutely anything, yet I place the origin of all powers in the will of the majority. Am I in contradiction with myself?”⁷¹

Tocqueville has a mixed opinion of majority rule that on first glance seems paradoxical. While he closes *Democracy in America* with a passage about the moral superiority of a system where all men are equal and share in the powers of government, he believes that this same aspect of democracy gives rise to the greatest dangers that the Americans face—tyranny of the majority. By this he means both the tyranny of majority that is often described as a political abuse of a minority by the will of the majority that is found most notably in the *Federalist* and a deeper intellectual tyranny of the majority that reaches man in a new and more stifling way than the hard-handed tyranny of the Old World.

Tocqueville worries that the political power of the majority will be unchecked in America.⁷² Even though the American system is designed to guard against this through mixed government, Tocqueville believes it is a mistake to think that there is any other power in America of comparable strength to the majority.⁷³ To illustrate this point, he remarks that a man who “suffers from an injustice [by the majority] in the United States” has no where to turn, he cannot turn to the democratically elected legislature or president, he cannot turn to the “public force” because they are nothing more than the “majority in arms,” he cannot turn to the jury

⁷¹ Ibid., 288.

⁷² Ibid., 290.

⁷³ Ibid., 289-290.

because they are made up of the majority; Instead, “however iniquitous or unreasonable the measure that strikes [him] may be, [he] has to submit to it” under the overwhelming power of the majority.⁷⁴⁷⁵ This predicament occurs because, as Tocqueville explains, there is no “guarantee against tyranny,” by which he means that nothing in American law can fully prevent the above predicament.⁷⁶

To prevent the political tyranny of the majority, according to Tocqueville, would require a legislature that was designed to represent the majority without being “necessarily the slave of its passions,” and executive branch that has a “force of its own,” and an independent judiciary.⁷⁷ What is striking about this passage is that he implies that we do not have such a government in the previous hypothetical predicament. Perhaps, this inclination suggests that even when a government is designed to prevent this kind tyranny, political tyranny of the majority will continue to be a threat. Strikingly, Tocqueville concludes his conversation of tyranny of this sort by declaring that the “mildness of government” that the Americans have enjoyed “must be sought in circumstances and mores rather than in the laws.”⁷⁸ This point taken with the implication that the legal structures of the branches are inefficient solve the problem of political tyranny seems to suggest that the answer to the problem of tyranny must exist in the civil space.

Next, Tocqueville turns to a conversation about the power the majority in America has over the mind of each individual. He explains that when we look at the way “thought is exercised in the United States[,]” it is clear that the “power of the majority exceeds all the powers” that exist in the Old World. This power is as distinct as it is new and it is a despotic one. Where as the

⁷⁴ Ibid., 290.

⁷⁵ Interestingly, a judge is not one of the options for recourse that Tocqueville suggests.

⁷⁶ Ibid., 290-291.

⁷⁷ Ibid., 291.

⁷⁸ Ibid., 291.

despots of old used “chains and executioners” to “strick[e] crudely at the body” to attempt to reach man’s “soul” and often failed, the *soft* or intellectual tyranny of the majority “ignores the body and goes straight for the soul.”^{79, 80} The *hard* or physical tyranny of the Old World could only reach so many men, and, ultimately, a great deal of intellectual freedom was often allowed to exist (especially in the private sense), but in America the majority “erects a formidable barrier around thought.”⁸¹ Thought is free inside the barrier constructed by the majority, but if one wonders beyond the barrier they are denied all parts of civic and political esteem.⁸² They cannot be elected into office and even if others agree with him, they dare not speak out against the majority.⁸³ Even worse, this virtual exile eventually drives the citizen who has spoken out of line to “ben[d] under the burden of such unremitting effort and retrea[t] into silence, as if he felt remorse for having spoken the truth.”⁸⁴ Tocqueville calls the dilemma caused by this soft tyranny where one must choose from being exiled from their community in thought and esteem or keeping within the bounds of the thought created by the majority a fate “worse than death.”⁸⁵

Besides making it challenging for many to live a fulfilling life, the intellectual tyranny of the majority also stifles the ability for Americans to think creatively. This is, for Tocqueville, a reason to doubt that America will give birth to great authors because “literary genius cannot exist without freedom of spirit, and [true] freedom of spirit does not exist in America.” This danger, similar to the dangers created by the democratic mindset, means that Americans might not be

⁷⁹ Ibid., 294

⁸⁰ The distinction between the “soft tyranny” and “hard tyranny” Tocqueville discusses is borrowed from the lectures of Jeffrey Tulis and inspired by a later discussion of soft despotism in *Democracy in America*. Also, it has come to my attention that John Stuart Mill also refers to this kind of tyranny as “intellectual tyranny” in *On Liberty*, however, I was unaware of this great work when the original draft of this essay was written.

⁸¹ Ibid., 293-294.

⁸² Ibid., 293-294.

⁸³ Ibid., 293-294.

⁸⁴ Ibid., 294.

⁸⁵ Ibid., 294.

able to solve novel, political problems when they arise, or create new solutions for problems that the old solution of the majority fails to solve.

It is clear that Tocqueville believes that the soft, intellectual tyranny of the majority produced by the equality of conditions is the greatest danger that the democratic social state will endure. Tocqueville suggests many possible ways at treating this sickness of the democratic state. One, as we will see in the next section, is the counterbalancing force of the legal community. While it is true that this horrid development rises out of equality, so to does a special sort of moral superiority that makes the democratic state superior regardless of its flaws.

“It is natural to believe that what is most satisfying to the eye of man’s creator and keeper is not the singular prosperity of a few but the greater well-being of all: what seems decadence to me is therefore progress in his eyes, what pains me pleases him. Equality is less lofty, perhaps, but more just, and its justice is the source of its grandeur and beauty.”⁸⁶

In the conclusion to *Democracy in America*, Tocqueville laments over the great men who exist in the aristocracies of Europe that are no where to be found in democracy, but expresses that these great men exist in a society of many lesser men who support the greatness of the aristocrat. With all of democracy’s faults and the vices it promotes in democratic man, there is something that is inherently more justified in the shared freedom and political virtue of the equality of conditions found in America.⁸⁷ He argues that this is clear when one takes the perspective of the “creator” and looks at the “greater well-being of all” in the democratic social

⁸⁶ Ibid., 833.

⁸⁷ Ibid., 833.

state.⁸⁸ This moral superiority of the equality of conditions makes democracy an end worth pursuing and makes countering its vices and supporting its virtues a noble endeavor.

“It is within [man’s] power to decide whether equality will lead them into servitude or liberty, enlightenment or barbarism, prosperity or misery.”⁸⁹

With the virtues and vices of democracy that are pertinent to the discussion of this essay laid out, it is clear that the same aspect of the human condition can often be either a vice or a virtue based on the spirit in which it is nurtured. The same flexibility of society that drives man inward due to individualism, allows for a frequency and diversity of civic and political associations that turn man outward into the arms of his fellow citizen. The same love of utility that threatens the future prosperity of the democratic man by driving him away from theory and tradition, drives man to prize his political rights and respect the rights of his fellow citizens. The same equality that nurtures the intellectual tyranny of the majority, gives rise to the most complete instantiation of justice in human history. These virtues and vices serve not only to counter one another, they also serve as examples of how the same inclinations of a society can be driven to two very distinct outcomes. As is often the case in Tocqueville’s thought, the difference is the nuanced design of society and the mores and customs of the people. The rest of this essay will explore, in part, how legalism may or may not succeed in encouraging the virtues of democracy and discouraging its vices.

⁸⁸ Ibid., 833.

⁸⁹ Ibid., 834.

Is Legalism the Answer?

“Lawyers in the United States constitute a power that... envelops the whole of society, worms its way into each of the constituent classes, works on the society in secret, influences it constantly without its knowledge, and in the end shapes it to its own desires.”⁹⁰

Having examined the virtues and vices of the democratic social state in the previous section, this essay will now explore Tocqueville’s argument that the movement of American society towards legalism represents a positive trend that will guard American democracy from its vices. This argument appears most clearly in a chapter of *Democracy in America* titled “On the legal spirit in the United States, and how it serves as a counterweight to Democracy.”⁹¹ Here, Tocqueville describes how the American legal class offers the Americans a set of tendencies that reflect aristocracy in a package he believes the Americans will accept and respect. Furthermore, the extent to which the legal class occupies important positions of private and political power gives them a sort of respect in American society, and it causes the larger population of citizens to emulate many of the lawyers “tastes and habits of aristocracy.”⁹² This in turn, as Tocqueville hopes, will prevent vices of democratic man from reaching their full destructive potential.

However, aspects of Tocqueville’s argument for this positive effect raise important questions that may serve to undermine his claims concerning the positive influence of legalism. First, his description of the interaction between the legal community and the citizenry seems inaccurate even for his time. Second, Tocqueville does not analyze how legalism may or may not hamper the virtuous aspects of the democratic social state. For example, it seems reasonable to ask how legalism will affect the societal will to form civic associations. The remaining sections

⁹⁰ Ibid., 311.

⁹¹ Ibid., 302.

⁹² Ibid., 304.

in this essay are dedicated to understanding the relationship of legalism to each of the pairs of virtues and vices presented in previous sections in order to better define what legalism is, how it interacts with the democratic social state, and what positive and negative effects it might have on the future of democracy.

Legalism, Individualism, and Free Association

This section will explore how legalism interacts with the vice of individualism and the virtue of free association in the democratic social state. It has already been seen that Tocqueville believed the vice of individualism and the tendency of man to turn inward that it carries with it harm both the ability of the democratic political state to function properly and the democratic man to enjoy the fulfillment of citizenship. Also, he sees free association and the political and the civil associations it leads to as both a panacea for the soul of the democratic man and a necessary feature for the smooth functioning of the democratic political state. From this, we can extract that Tocqueville's political proscription would be to encourage and expand free association, while discouraging individualism. This section will serve to evaluate legalism in this way.

Tocqueville admires the legal class and the political environment they encourage as a counterbalancing force to the vices of democracy. He hopes that the move of American politics towards legalism will bring order to a scattered field of politics and slow down the continuous cycle of innovation that can pose a great danger to the democracy. His general argument for why he believes this operates on the premises: (1) First that the American lawyers form a close community of citizens with an education that teaches them to love tradition and avoid innovation. (2) Second, that the lawyers, while different from the democratic man in their

tendencies, are united with the democratic man in his goals. (3) Third, that the democratic man understands the need for the lawyer class, respects the lawyer class, and is willing to unite with the lawyer class to accomplish his goals. (4) Fourth, That in working together and participating in juries, the democratic man will gain some of the tendencies, language, and morals of the lawyer class. (5) Fifth, that these developments in the character of the democratic man will have a positive outcome in preventing or countering the vices of the democratic social state.⁹³ While premise 2 will be expanded in the next section concerning the democratic mindset, the main thrust of Tocqueville's argument is clear from this formulation. This section will deal with analyzing the soundness of premise (3) concerning the willingness of the democratic man to operate in a political community dominated by legalism and premise (4) concerning the democratic man's ability to acquire the skills necessary to be part of a political community dominated by legalism.

It is important to examine how the democratic man will interact with the legal class in order to see how legalism affects the democratic man's willingness to work with others in civil associations and their desire to turn inwards away from society. For Tocqueville both civil associations and legalism act as replacements for the aristocrats of Europe. Civil and political associations allow groups of citizens to band together and accomplish vital tasks in their communities. At the same time civil associations allow for otherwise independent citizens to form firm ties with other citizens and experience the fulfillment that comes from active, civic virtue. The legal class provides democracy with a sense of order and distinction that Tocqueville believes it needs. Also, legalism slows down the rapid march of the majority, and it insulates an

⁹³ Ibid., 302-311.

alternative way of thinking from the intellectual or *soft* tyranny of the majority. Understanding the different problems that legalism and civil associations are supposed to solve, it is important to ask how they might mix with one another.

The clearest problem is stated well by Tulis in his introduction to John E. Finn's work, *Peopling the Constitution*, in which he suggests that "Tocqueville failed to see how his ersatz aristocracy [or legalism] would sap democratic vitality and diminish the meaning and practice of citizenship."⁹⁴ The idea is that the legal spirit has not, and cannot spread, to the people in such a way that citizens can continue to be part of the regime in a serious way. This is partly do to a quality that Tocqueville actually admires about the legal class. Lawyers, for Tocqueville, form a "superior political class" which will be needed to understand laws that are admittedly "obscure" and incomprehensible to the uninitiated.⁹⁵ This admission means that even if the public does learn the ways of the law from their service on the jury, as Tocqueville believes they will, they will still be unable to understand most of what is legal in society.⁹⁶ This means that the average citizen will be cut off from many important issues in his society. At the same time, the democratic man may feel as though his participation is not necessary or appropriate as the legal class takes charge of the state.

This development could serve to limit the will and ability of citizens to join together in free associations and participate in a meaningful way, while at the same time making those outside of the legal class turn away from society and towards harmful tendencies of individualism. As more and more of political speech becomes entrenched in the law, the citizen will understand less and less of what is at stake in the political sphere. At the same time, the

⁹⁴ Jeffrey Tulis, foreword to *Peopling the Constitution*, by John Finn (Lawrence, KS: UP of Kansas, 2014), xii.

⁹⁵ Tocqueville, *Democracy in America*, 303-307.

⁹⁶ *Ibid.*, 310-311.

more entrenched simple tasks like buying land or building a school get in the way and its complexity, the harder it will be for civil associations to provide their vital services to the wellbeing of democracy. This is important because even Tocqueville admits that the government and its laws cannot replace the positive energy civil associations bring to democracy. No longer attached to his fellow man and faced with a political class that speaks a *foreign* tongue, the democratic man may turn inwards down the dangerous road towards individualism and finally indifference.

However, a response someone supporting Tocqueville's position might make, following the line of his reasoning, is that the habits and morals of the legal class will strengthen civic and political associations. In the political sphere, legal language might serve to bring order to a scattered dialogue or allow for common grounds on which to argue. In addition, these same habits might lead to more organized and effective political associations. While the average citizen may not understand the intricacies of the law, the leaders of these associations might. At the same time, lawyers themselves may be responsible for working with or leading different associations, a possibility Tocqueville himself suggests.^{97,98} This order and efficiency may add to the attractiveness of civic participation, and it might discourage citizens from becoming disaffected and individualistic. Like most forces in society, it seems that this aspect of the legal spirit could influence the regime in both a positive and negative way.

⁹⁷ This line of reasoning was inspired by a graduate student from Jeffrey Tulis' graduate seminar on Tocqueville.

⁹⁸ *Ibid.*, 304.

Legalism, Rights, and the Democratic Mindset

This section will explore the interactions between the phenomena of legalism and the democratic man, his tendencies, and his respect for rights. As has already been discussed, Tocqueville argued that the democratic mindset contained dangerous extremes aimed at innovation, utility, and materialism that are capable of creating a stagnant political climate. Even with these tendencies, the democratic man respects the long and established conception of his rights and the rights of his fellow citizens. One of the main reasons Tocqueville argues for the positive force of legalism is the counterbalancing quality of the legal mind. Where the democratic man loves what is new and useful, the legal mind seeks what is old and what is in accordance with precedent. This section will seek to expand on Tocqueville's claims about the character of the legal mind and how it might counterbalance the tendencies of the democratic man. In addition, it will flush out the relationship between Tocqueville's conception of rights and legalism.

Tocqueville observes that the lawyer has a number of characteristics that make him distinctive from the democratic man. Expanding on this observation he describes how "men who make a special study of the law take form their work certain habits of order, a taste for forms, and a sort of intrinsic love of regular sequence of ideas that naturally" make them oppose the "revolutionary spirit and the unthinking passions of democracy."⁹⁹ This "special knowledge" that lawyers share amongst themselves gives them membership in a "distinctive rank" in society.¹⁰⁰ Within this rank they are united by their "common studies" and "like methods."¹⁰¹ According to Tocqueville, this naturally gives lawyers collectively "some of the tastes and habits of

⁹⁹ Ibid., 303.

¹⁰⁰ Ibid., 303.

¹⁰¹ Ibid., 304.

aristocracy” like the “instinctive preference for order and [the] natural love of formalities.”¹⁰² Lawyers will naturally have a deep and “secret contempt for popular government.”¹⁰³ Even with lawyer’s common characteristics, Tocqueville is careful to note that lawyers will be found in the “front ranks of all parties” in a democracy.¹⁰⁴ Even if all lawyers do not agree, Tocqueville concludes that “in a society in which no one contests the rights of lawyers to occupy the high position that is naturally their due, their spirit will be eminently conservative and anti-democratic.”¹⁰⁵ What makes lawyers unique is that they value legality above even liberty, and they are more afraid of “arbitrariness” than tyranny.¹⁰⁶

Even though the tendencies of the lawyer might oppose those of the democratic man, Tocqueville believes both the lawyer and the democratic man can be united in their cause and influential in each other’s thinking. He explains, “if lawyers are naturally drawn by their tastes to the aristocracy and the prince, they are naturally drawn to the people by their interests.”¹⁰⁷ This allows lawyers to “favor democratic government” without “sharing its inclinations or imitating its weaknesses,” giving them ability to “enjoy power through” democracy and have power “over it.”¹⁰⁸ For this reason, “the legal profession is the only aristocratic element that can mix readily with the natural elements of democracy to form useful and durable compounds.”¹⁰⁹ While he admits that the legal profession can suffer from defects, he does not believe that “any republic can survive... unless the influence of lawyers on its affairs increases as the power of the people grows.”¹¹⁰

¹⁰² Ibid., 304.

¹⁰³ Ibid., 304.

¹⁰⁴ Ibid., 304.

¹⁰⁵ Ibid., 305.

¹⁰⁶ Ibid., 305.

¹⁰⁷ Ibid., 306.

¹⁰⁸ Ibid., 306.

¹⁰⁹ Ibid., 306.

¹¹⁰ Ibid., 306.

Given this conclusion, Tocqueville expands on the unique tendencies of lawyers in America and how they affect the thinking of the people. The defining characteristic of the American lawyer is his “taste and respect for what is old with a liking for what is regular and legal.”¹¹¹ Tocqueville explains that lawyers are so committed to precedent that their thinking resembles a certain kind of mental “servitude.”¹¹² This is because they “estee[m] the law not so much because it is good as because it is old” making lawyers naturally opposed to innovation.¹¹³ This reluctance to change, allows the lawyer to “apply an almost impeccable brake” to slow down the effects of a populace “intoxicated by passion.”¹¹⁴

Next, he turns to a discussion of the judge, who has all of the aristocratic tendencies of lawyers with the addition that “his legal knowledge has already assured him of a high place among his fellow men” from which he cannot be removed giving him “further reason to love stability.”¹¹⁵ The judge is “armed with the right to declare a law unconstitutional,” and while he cannot “compel people to make the laws,” he can “insist” on their enforcement and make sure the laws “remain consistent with themselves.”¹¹⁶

While this power is limited in its physical practice, there is a deeper more important effect of the lawyer and judges actions on the multitude. Seeing as there is Tocqueville believes that the law will slowly envelop the entirety of the political sphere, the democratic man is forced to take on some of his language and habits.¹¹⁷ This effect is magnified by the fact that many politicians and public officials are themselves members of the bar, and the people are introduced

¹¹¹ Ibid., 307.

¹¹² Ibid., 307.

¹¹³ Ibid., 308.

¹¹⁴ Ibid., 309.

¹¹⁵ Ibid., 309.

¹¹⁶ Ibid., 309.

¹¹⁷ Ibid., 310.

to this way of speaking and thinking through their education as jury members.¹¹⁸ Ultimately, Tocqueville concludes that lawyers “are a power that arises little fear, that is barely perceived, . . . [and] that supplely blend to the exigencies of the times and surrenders without resistance to every movement of the social body,” but at the same time a power that “envelops the whole of society” and secretly “shapes” societies interests “to its own desires.”¹¹⁹ This means that the politicians and the people slowly take on the thought process and respect of the legal forms that the lawyers promote.

One possible problem with Tocqueville’s argument is the possibility that it will be the democratic mindset that influences the lawyer rather than the opposite as he suggests. If the power of democracy to create the negative tendencies in democratic man is as overwhelming as Tocqueville describes, then it seems reasonable to ask how the lawyer will be immune to it. Legal education only makes up a small part of young citizen’s education, and it seems reasonable that the larger portion of his time will be spent learning the tendencies of democratic man. When this question is asked, a veil is lifted off of Tocqueville’s ideal notion of a legal mind to find something that is more of a chimera. At best, a lawyer must reject the way of his family and childhood if he is to become Tocqueville’s perfect exemplar of the legal spirit, perhaps leaving him bitter and isolated or divided amongst two worlds of thought. At worst, the lawyer only plays the part of a lover of forms and tradition, while in reality he lusts for innovation and curses his forefathers. It would require an empirical study of lawyers in America to resolve questions of their character, however, it is clear that Tocqueville’s vision of the American lawyer is problematic.

¹¹⁸ Ibid., 310-311.

¹¹⁹ Ibid., 311.

Another possible problem with this argument about the legal mind is Tocqueville's account of how the democratic man will accept and respect the need for the lawyer to lead them. This proposition is troubling in a number of ways. First, it is not axiomatic that the democratic man respects lawyers. Instead, lawyers have a mixed reception in democracy. While many of our nation's greatest political and social leaders were lawyers, from the time of America's founding lawyers have also been the source of many jokes and the symbol of sleaze. Also, just because the industrious, democratic man *has to* work with lawyers to get the job done, does not mean that he *wants to* work with lawyers. There is no doubt that, in America, lawyers are necessary, but the claim that the citizens appreciate this is at least a questionable one.

One place where the positive effects of legalism might be stronger is in the case of rights. As has been discussed in, Tocqueville believes that rights represent a base form of virtue that exists in the law itself. The democratic man respects rights, first, because of his own self-interest, and then because he develops a deeper inclination towards them. Because rights exist in the realm of the law, the lawyer is their natural champion. While Tocqueville does not argue this directly, It may be the case that in fighting for the peoples' rights lawyers can become heroes and leaders in eyes of the people. Similarly, Tocqueville asserts, immediately after his discussion of rights, that Americans respect the law because they believe that they have a hand in creating it.¹²⁰ One way that lawyers might be seen in society is as assistants that guide the people in making the laws.

However, another possibility is that the lawyer, in his love of abstraction, might take over the conversation about rights and make the people feel as though they play less of a role in the

¹²⁰ Ibid., 275.

making of the law. This might cause the democratic man to lose respect for the law and, similarly, lose a degree of understanding of rights. This, in turn, could cause the democratic man to retreat from civic and political life into the darkness of individualism.

Legalism, Tyranny of the Majority, and the Moral Superiority of Democracy

This section will explore the way that legalism interacts with tyranny of majority and the moral superiority of the democratic social state. As has already been discussed, Tocqueville believes that the equality of conditions can give rise to both the most dangerous form of tyranny known to man and the most complete form of justice. Tyranny of the majority, and especially the intellectual tyranny of the majority, has the potential to crush all forms of thinking and difference that stand outside the will and mind of the majority. At the same time, there is a degree of justice in the shared political and social equality in democracy that makes it morally superior to aristocracy. This section will examine how legalism serves to enforce or fight the tyranny of the majority. Also, it will examine how legalism might diminish the claim of democracy to moral superiority over its alternatives.

A strong case for legalism can be made based on its ability to counter the political and intellectual tyranny of the majority. This is not a case that Tocqueville makes directly, but it follows naturally from the spirit of his reasoning. The political tyranny of majority refers to the ability of majorities to undermine minorities in the political arena. Using the rhetoric of legal rights and the order and forms supplied by legal thinking, lawyers and judges might be able to counter the political tyranny of the majority. Most importantly, they might be able to do this in a way that the people respect, making their victory more successful and lasting. This is a point that

those who argue against legalism often neglect. At the same time, implanting the habits and morals of the legal mind in the people, in the way Tocqueville believed would occur, might provide the majority with a more accepting mindset or, at least, a desire to let minority opinions be expressed in an orderly manner. In this respect, what is most important is that the legal mind offers a different way of thinking than the thinking of the majority, allowing for multiple lines of thought to exist. This is not a complete solution to intellectual tyranny, but it might be a partial remedy.

While it may be that the strongest case for legalism is its ability to lessen the evils of majority tyranny, majority tyranny also allows for a strong case to be made against legalism. If it happens to be the case that the legal class becomes infected with the habits of the democratic man, as was discussed in the previous section, then the legal class can increase the harms of tyranny of the majority, both political and intellectual. In the political arena, lawyers can manipulate precedent and legal code to accomplish injustices and bad policy objectives that the public might not have accepted had a passionate political debate occurred, even if the majority is on the side of the lawyer. The complexity of the law could allow for the legal class to skip a large part of the political debate that has the potential to awaken the majority to its mistakes before it harms itself or a minority group. Similarly, legalism can serve to standardize and limit the kinds of speech and the topics discussed in academic and policy arenas. This could serve to strengthen the hold of the intellectual tyranny of the majority on the minds of the nation's citizens.

In terms of how legalism affects Tocqueville's argument that democracy has a claim to moral superiority over aristocracy, there seems to be only two possibilities. The first is that the

moral superiority of democracy is not harmed because legalism does not lessen the equality of political and social conditions that gives rise to this claim. In this scenario, legalism is benign. The second possibility occurs if legalism pushes democracy too far in the direction of aristocracy, permanently cutting off the citizens from the political community. Tocqueville admits in his discussion of associations that he does not believe that most matters of national policy need to involve the larger citizenry, and in his discussion of lawyers he admits that the citizens will often not understand the laws.

These two factors combine to form a danger for a political community dominated by legalism. When the people are not expected to play a role in national affairs, and the language of politics is foreign to their ear, than it seems false to say that they are truly of the same status as the legal class. Here, the fulfillment that comes from being an active citizen, engaging in free association, and being part of a larger political community is denied to the vast majority of uninitiated citizens.

Looking at the Legal Spirit in the Spirit of Tocquevillian Thinking

Just as Tocqueville discusses vices and virtues that come from the same democratic sentiments nurtured in different ways, in the previous sections, I have attempted to begin a dialogue concerning the virtues and vices that can arise as a result of legalism. In the same way that social mobility can lead to both individualism and free association, legalism carries with it both a possibility to encourage dangerous vices, while discouraging important virtues, and to strengthen democratic virtues, while fighting off the evils of democratic vice.

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