

Art in America:

Solving the Problem of Democracy

Alexis de Tocqueville: “I think that 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” (645).

Tocqueville leaves open the possibility of governments in democratic centuries. Although, centralization may be the natural tendency in the democratic centuries; art can create other and various forms of democratic government. Before addressing what this art is, I should like to make clear what Tocqueville means by ‘democratic’ since it is not simply a type of government.

Since the democratic centuries that are going to open up are necessary, they must coincide with the providential fact of the development of equality of conditions (6). The most vivid fact that struck Tocqueville when he was in America was its equality of conditions. This seeming idiosyncrasy of America is not, however, particular to the New World. As Tocqueville returned his gaze to his hemisphere, he saw the “equality of conditions that, without having reached its extreme limits as it had in the United States, was approaching them more each day; and the same democracy reigning in American societies appeared to [him] to be advancing rapidly toward power in Europe” (3). Tocqueville, himself, makes the jump from equality of conditions to democracy and from the United States to Europe. He somehow destroys the distinctions between these particulars, while acknowledging their distinctness. In a way, *Democracy in America* is not just about democracy in nineteenth century America. What is the connection between equality of conditions and democracy for Tocqueville?

Equality of conditions, like democracy, is inevitable. "It is universal, it is enduring, each day it escapes human power; all events, like all men, serve its development" (6). Tocqueville's political science, therefore, must work with the gradual and necessary development of equality of conditions. Furthermore, his political science will need "to instruct democracy... to adapt *its* government to time and place" (7). Those who direct society cannot avoid this development of equality of conditions and democracy.

Tocqueville speaks of governments *of* democracy. Therefore, democracy, like equality of conditions, is not a particular form of government for Tocqueville. However, it should in his new political science be modeled according to the particulars of time and space, circumstances and men as to "reanimate its beliefs, to purify its mores, to regulate its movements, to substitute little by little the science of affairs for its inexperience, and knowledge of its true interests for its blind instincts" (7). The democratic government for Tocqueville, then, ought to evolve. Its primary criterion is equality of conditions (in the material of society) and since that is inevitable, the art of democratic government will need to work and develop with it.

The question still remains what precisely is this art. By defining democracy, not as a form of government, but simply as an equality of conditions, Tocqueville acknowledges the possibility of centralization in democracy (645). Centralization leads to despotism since it destroys distinctions between individuals; thus dehumanizing them (as I will address later). Centralization is driven by the providential fact of equality of conditions, which is a social passion, and therefore suppresses the weaker, individual passion for freedom, making him even weaker and more dependent on the government. The art of democratic government strives to reanimate democracy's founding beliefs (including a constitutionally limited government), which are contrary to a despotic central government.

Tocqueville distinguishes between two kinds of centralization: one he calls governmental, the other administrative bureaucracy (250). The national majority of the United States is limited since it does not have a central administration to be “carried away by its passions” (250). The lack of a national, central administration means that the national, central government must rely on the independent agents of “municipal bodies and the administrations of counties” (250). In a sense, a government without an administration is like a head without its body; it has will, but is handicapped in acting. For this reason, Tocqueville sees the institutions of a township as prerequisite for a nation to have the “spirit of freedom” (57-58).

The township nourishes the spirit of freedom since it keeps freedom in reach of the people. Tocqueville claims that without the township and the education it provides for its people, “fleeting passions, the interests of a moment, the chance of circumstances can give [a nation] the external forms of independence,” but despotism will eventually surface through centralization in a national administrative government. The distance created by centralization between the people and its government further weakens and dehumanizes the individual. The distinctions within the United States government between the townships, county, state and federation are made by an artful document, the Constitution.

The jury in civil matters is an even more “efficacious means society can make use of for the education of the people” than the township; in fact, Tocqueville regards it as “the most efficacious means” (262). The jurors in civil cases view the Judge as a disinterested arbiter between the passions of the parties (263). In the Judge’s courtroom, each of the jurors encounters the superiority of his intelligence. Only He knows all the proper turns of the proceeding.

Without any material power, which would contradict equality of conditions, the Judge comprises part of a superior class, the “sole aristocratic body” in democracy (263). His power comes

from his superior intelligence of the Law, which governs and binds together the people. The jurors respect his reason and intelligence of the Law, and thus, lend the authority of their society to his ruling. Furthermore, the judge teaches the jurors how the Law they represent applies reasonably to a particular case. The people in turn learn the personal and particular impact of their law. The art, here, creates the distinction between the magistrate and juror, where the magistrate is the aristocrat and the juror gladly accepts his position.

I believe that the jury in civil and criminal cases is also educated for the good of democracy by the pathos engendered by the courtroom (241-242). This pathos is created by the drama enacted by the defendant and the prosecutor. In civil cases, the jury is solely the audience, in the drama since it follows the judges lead. The Judge is the Greek chorus, articulating and reasoning the arguments presented. Whereas, in criminal cases, the jury applies its general law to a specific case, that is the universal to the particular. Once the facts are determined, the jury is limited to the law. If for example, a young adult is in fact guilty of manslaughter and the law necessitates death by hanging for this crime, the jury must find him guilty. In this scenario, the juror can sympathize with this criminal and feel pathos in the form of guilt for having sentenced this young adult to death. Then the juror may experience catharsis. This catharsis inspired by the drama of the courtroom is one of the “causes of the mildness of government” and of mores (242, 535). The distinctions inherent between the particular cases and the law and rights are reconciled in the courtroom. Simply put, a law or right is applied to a specific instance.

The primary reason that jurors in the civil court learn the art of good democracy as opposed to criminal court is because that is where the idea of rights is most developed. Criminal courts are concerned with determining the facts of the matter, and once the facts are gotten, then the law determines the verdict. On the other hand, civil courts have the facts and must determine the right only with the approval of the judge (698). Therefore, in the civil court the right in question is made real and

actual by the particular ruling of the judge and the verdict of the jury. This right is no longer just an idea since it has an effect on the outcome of the case.

The idea of rights is necessary for all great people since without it despotic “force is the sole bound” for a people (227). Furthermore, it changes the old, aristocratic distinction between rich and poor, ruler and ruled, to a new distinction between representative and citizen (10). For this reason, “each citizen could show himself independent without arrogance and submissive without baseness” since rights come from an idea, not an individual’s ego. In other words, the idea of rights creates a mutual distinction, that is, either side acknowledges the same right, between representative and citizen.

Since the distinction between representative and citizen is mutual (i.e. one wants what the other wants), it is not viewed as a contradiction of the equality of conditions. In fact, it becomes not a contradiction. The citizen, voluntarily and independently, grants the representative his right to rule. In other words, the condition of the ruler works in harmony with the condition of the ruled.

With the idea of rights, individuals qua individuals can act without being in conflict with one another or their sovereign body. As the government becomes more centralized, i.e. more removed from the individual, the individual has less freedom to act. Furthermore, the individual has fewer responsibilities with this increasing centralization and therefore his personal responsibilities become less and less distinct from every other person in his society. This is dehumanizing and the despotism of democracy.

The art that prevents this despotism possesses form in the universal (i.e. the idea of rights and freedom), but its content is particular to the circumstances and individuals. It is a constant and evolutionary process. For this reason, Tocqueville does not provide or cite an absolute work of art as the solution, like the Constitution of America. He finds in America a successful democracy in a particular time, but warns against its potential to centralize. Art creates the distinctions that are needed for a

democracy of individuals, not one of dehumanized mobs. For example, it keeps the spirit of freedom alive for the individual, while societal equality threatens to overtake it at every moment of its advance. It creates aristocrats, not vested with any special material power, but exerting a conservative influence only on minds (263).

This body of lawyers and magistrates forms the “sole aristocratic element that can be mixed without effort into the natural elements of democracy” (254). This mixture of the spirit of the lawyer with the democratic spirit is necessary for democracy to long govern society. The lawyer’s spirit has been preserved by the artful legislation of precedents in America. The lawyer’s spirit is ordered by his study of law, that which is regular and resistant to revolutions. As Tocqueville says, the lawyer has a “taste and respect for what is old” and a “love of what is regular and legal” (255). Therefore, his spirit is essentially conservative, and resistant to the passions of the mob and the moment.

The spirit of the lawyer in America is opposed to the despotism of a “centralizing public power in a democratic society” in two similar ways (650). First, a reminder that the individual’s existence becomes weaker, more subordinate, and more precarious as society’s love for equality centralizes the government. This love for equality is “much more ardent and tenacious” than the love for freedom (479). The lawyer, who is naturally opposed to any passion, is much more circumspect and resistant to any equalizing revolutions than other men are. In the other way, the American lawyer’s reverence to precedent ties him to freedom since “freedom is old and equality is comparatively new” (646). Lawyers, then, are the distinct few that see in the love of equality “that obscure notion and instinctive penchant for political independence at the bottom of the mind and heart of each man,” in a word, freedom (640).

The artist must come from this legal class, which is the harmony of aristocracy and democracy. This artist’s material is the law, and he creates with it the distinctions necessary for a democracy of free citizens. The necessary distinctions are within in the government, between the people, and in the ideas

of democracy. The artist's government has its administration in the township and its government in the federation; this is accomplished with a legal document (i.e. this Constitution). His people have aristocrats with democrats and representatives with citizens. His ideas evolve in his studio (i.e. the courtroom). Rights are argued and articulated here and become real and substantial. Freedom is defended and distinguished from equality. Without the artist, the seeds of freedom remain buried in equality, and its fruits are never reaped. The lawyer is the sole aristocrat in democracy, and as the artist he finds the proper harmony of the old and the new.

Bibliography

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