

THE TOCQUEVILLE REVIEW

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TOCQUEVILLE AS HISTORIAN OF THE STRUGGLE BETWEEN DEMOCRACY AND ARISTOCRACY IN AMERICA

Holly BREWER

Dans la plupart des Etats situés au sud-ouest de l'Hudson, de grands propriétaires anglais étaient venus s'établir. Les principes aristocratiques, et avec eux les lois anglaises sur les successions, y avaient été importés.¹

Most scholars of Tocqueville see him simply discussing an omnipresent liberalism in America. Building on the misleading work of Louis Hartz, which neglected both Tocqueville's discussion of feudalism in the American South as well as his discussion of the reasons why the North became so uniquely attached to democracy, they ignore his main arguments about the origins of democracy and aristocracy – and the struggle between them – in America.² This foreshortening of Tocqueville's grand vision does him a terrible disservice and limits the insights we can derive from it. For acknowledging that Tocqueville distinguished between American regions in the origin and development of democracy is critical for any understanding of the basis upon which democracy stands. Only in the wake of the Revolution did the South begin to reject the feudalism and aristocracy that had earlier shaped it so profoundly. Democracy did not develop naturally in the South – far from it. Indeed, Tocqueville believed that aristocratic mores still prevailed in key ways in the South because of the aristocratic laws that had existed at its outset and because of the continuing existence of slavery, which taught whites the aristocratic habits of command. In the North, however, democracy flourished because the Puritan religion had

fostered equality and encouraged consent and left a strong legacy in both laws and mores. Tocqueville's first chapters on the origins of democracy – and aristocracy – in America are central to his whole interpretation, as he disclosed. "Hence anyone who reads this book will find in the present chapter [on history] the germ of what follows and the key to virtually the entire work."³

Without taking seriously his careful analysis of origins, his arguments about feudalism in the American South and the role of Puritan religion in fostering the spread of democracy and challenging older feudal and aristocratic norms, one is left with a hollow commentary about a seemingly illogical attachment to equality in America in the early nineteenth century. That hollow commentary can neither explain slavery nor make sense of the Civil War – a war over the principle of equality – that exploded there in the years after his death. That hollow commentary also conceals a full understanding of how Tocqueville saw laws as sometimes critical to shaping mores and societies. Restoring Tocqueville's historical analysis of the struggle between democracy and aristocracy in early America reveals the broad brush strokes that lay at the heart of his work.

Not only was Tocqueville an astute observer of American democracy, but of its origin and development. A remarkable scholar, he collected and analyzed not only conversations and his observations, but many books – of history, law, and social commentary.⁴

Yet neither his footnoting nor his wide reading and interviews verify the keenness of his insight. Only comparison with the historical record reveals how remarkably well informed and astute he was in analysing the sources of democracy and what policies could sustain it. He identified the critical ideas about consent and equality in their religious roots among the Puritans, he traced the ways that consent-based institutions had often been allowed to flourish even under British rule, and most of all he was acutely conscious of how legal reforms and laws helped to put the principles of equality and consent into practice, and to create a relatively stable environment in which they could flourish. He was also at pains to explain why those same institutions and ideals had not developed in the South, at least until the years surrounding the Revolution, and why even then attachment to them was weaker.

He thought that the laws surrounding the ownership and inheritance of land could determine whether a society became an aristocracy or democracy, and that earlier policies had shaped the different mores and societies of the North and South. Over and over, he stressed that a broad distribution of landed property was necessary to democracy. If property were concentrated in too few hands, then those few could control and influence the many. Democracy would exist, if at all, in name only. Thus, he believed that the colonial policies of entail and primogeniture had made the South into an aristocracy, and that only the revolutionary reforms that abolished primogeniture and entail (laws that concentrated land ownership among the few) could begin to erode that aristocracy. These differing inheritance policies were crucial to the creation of different political systems in the North and South. He saw slavery as an aristocratic institution deeply connected to the laws that had created large estates, that continued to foster, by its very legal continuation, mores in the whites that made them aristocratic in their temperament. Thus his analysis here can explain not only the Civil War and the struggle over equality that was embedded in it, but slavery as well.

On some level, of course, Tocqueville thought equality to be foreordained and inevitable over time, as he indicates near the beginning of his work, when he called democracy and equality part of an "irresistible revolution" of all societies over time by "God's will." Yet as his analysis develops, it is clear that he is acutely aware that particular principles and practices are essential to its development.

For Tocqueville, the most critical element that led to democracy in Puritan New England was religion. While in nineteenth century France, religion was one of the enemies of democracy, the religious controversies in England stoked fires of liberty and education among the Puritans that made religion the precursor to democratic ideas and principles. "In America," Tocqueville wrote, "it was religion that showed the way to enlightenment." From it, the Puritans obtained "the cultivation of the intellect." Most significantly, their religious principles, stoked as they were in the struggles over political sovereignty that defined the reformation in England, "contained the most absolute democratic and republican theories." These theories and principles led not only to ideas that furthered consent and equality, but to practices and laws that shaped democracy. He lists what he believes to have been their central elements, which included

dividing the new land into small family estates, their relatively equal inheritance practices, trial by jury, individual liberty, public education, and government (especially town meetings) that was directly and immediately representative of the people, such that government officials were also accountable to them). By these means, as he put it “Democracy such as antiquity had never dared to dream of leapt full-grown and fully armed from the middle of the old feudal society.” Here he contrasted New England with England and especially with continental Europe, where at the same time (in the middle of the seventeenth century) “absolute monarchy stood in triumph upon the debris of the oligarchic and feudal liberty of the Middle Ages.”⁵ By extension, he was also contrasting New England with its Southern neighbours, whom he viewed as simply adopting English aristocratic norms in their colonies during the critical period of their early founding.

Tocqueville’s research and interviews helped to lead him towards some profound insights about how democracy had developed in New England, insights that often relied on his own reading of the primary sources. In explaining why they rejected the English model and sought more direct democracy, he quotes original compacts, for example, that emphasize the consent “consentement mutuel” of the people.⁶ He also explores at some length why the Puritans were so attached to principles of equality, identifying in the process some of the key reasons, although he did not make the connections in a fully nuanced way. As Tocqueville wrote: “Puritanism was not just a religious doctrine. In several respects it coincided with the most absolute democratic and republican theories. It was this aspect of Puritanism that had aroused its most dangerous adversaries against it.”⁷

Overall, Tocqueville’s larger analysis about the intellectual links between Puritanism and democracy have been vindicated by a growing body of scholarship. It turns out, for example, that John Locke – as well as virtually every other early Modern English thinker we could associate with “democratic” or “republican” political thought came from a dissenting background (Locke’s father actually fought for Cromwell on the Puritan side during the English Civil War). Locke’s religious writings arguably led to his political ones because his speculations about the conscience in religious matters led

into a broad argument about the centrality of consent and contract to the political order.

He came closest to an explanation for why these links should exist between Puritanism and Republicanism or more broadly between Puritanism and Enlightenment (it was clearly troubling him) near the beginning of book two when he wrote: "In the sixteenth century reformers submitted to the judgment of individual reason some of the dogmas of the ancient faith but continued to bar discussion of all others. In the seventeenth century, Bacon in the natural sciences and Descartes in Philosophy rejected received formulations, destroyed the empire of tradition, and overthrew the authority of the master. Finally, generalizing the same principle, the philosophers of the eighteenth century set out to subject all beliefs to the scrutiny of each individual."⁸ In this passage, he credits the religious reformers' fascination with the conscience – which encouraged individual judgment in religious matters – as causing wider and wider ripples of intellectual inquiry, first in science and then in politics.

As recent scholars are beginning to trace more fully, the ideas of consent and equality did get hammered out in the Anglo-American world within a religious context during the struggles over absolutism of the seventeenth century. This was partly due to the strong connections between church and state in England (where the King was the head of the Anglican church), so that challenging the religious purview of the King translated easily into questioning his political authority as well. Indeed, the Puritan arguments that they should be able to choose their ministers extended generally into arguments that they should be able to choose their political leaders. Puritan emphasis on a priesthood of all believers also emphasized equality in the sight of God and undercut a variety of older hierarchies. They raised questions not only about choosing leaders, but about choosing one's own church membership. The debates within radical Protestantism were particularly fierce over the question of infant baptism and when and whether one had the right to choose one's religious (and by extension, one's political) membership.⁹

This is not to say simplistically that Puritans had a complete and pure democracy, merely that Tocqueville was correct in tracing their crucial role in the development of a democratic theory and practice and in exploring why their laws and mores countered the English

norm. Town meetings were gatherings by eligible voters that carried political weight, both for the town and the colony. During them, members could speak their minds. The franchise, likewise, was much broader than in other colonies or in England itself. Critics have contended that their open discussions and voting could make poorer men vote the way of their richer neighbors. Recent scholarship has also emphasized that the Puritans were exclusive in their democracy, preventing non-church members (at least before 1664) and the poor from voting altogether. Neither of these criticisms, however, denies Tocqueville's larger point about how important this broad and direct democracy was in setting precedents for making it viable and for its future development in New England. Nor do they challenge his arguments about why Puritan religious belief, that emphasized education, independent thinking, covenant-making, and equality, led to democratic and egalitarian political ideas.

Tocqueville was also correct when he argued that only in New England were these practices and principles incorporated to any significant degree. The middle colonies and especially the South did not partake of the same spirit. "Southwest of [the Hudson River] and all the way to Florida, things were different. Great English landowners settled in most of the states southwest of the Hudson. *Aristocratic principles were imported along with the English laws of inheritance.*"¹⁰ He develops this point at great length. Tocqueville believed, partly due to his understanding of European history, that inheritance laws fundamentally shaped the government and form of any society, because they shaped the way people owned land. In societies that are largely agricultural, within which most wealth is derived from the land, as it had been throughout history, until at least the end of the eighteenth century, landed wealth determined status. His very description of the movement of society in general from the Middle Ages to the nineteenth century emphasized land distribution: "But then distinctions of rank began to blur; the barriers that had separated man from man began to fall. Estates were divided, power was shared, enlightenment spread, intellectual capacities grew more equal."

Most of chapter 3 is devoted to this question, especially in terms of how the inheritance laws first created the preconditions for an aristocracy in the American South, and then in the wake of the Revolution, with its inheritance reform, undermined them. As he puts

it most simply: "*But aristocracy is rooted in the soil; it is attached to, and dependent on, land. It is not just privilege that establishes an aristocracy and not just birth that constitutes it; it is property in land, passed on from generation to generation.* (My italics) A nation may engender both vast wealth and grinding poverty, but if that wealth is not territorial, one finds only rich or poor among its people, not aristocrats in the true sense of the word."¹¹

Because wealth had been based on landed estates in the South, he saw it as more of an aristocracy, though one that had undergone profound changes with the revolution. For his authorities here, Tocqueville relied on legal commentators such as Chancellor James Kent's *Commentaries on American Law* and on Thomas Jefferson, who had been the key legal reformer in Virginia in the wake of the revolution. (Jefferson had died before Tocqueville visited, but Tocqueville read his memoirs). Indeed, Jefferson's first legislative act after writing the Declaration, with its principles that "all men are created equal" was to go home and draft the act abolishing entail and primogeniture in Virginia, which he then pushed through the legislature, where it passed by only one vote. Jefferson later saw this as central to his effort to cleanse Virginia of "every fibre...of ancient or future aristocracy" and to lay "a foundation...for a government truly republican."¹²

Tocqueville agreed with Jefferson, legal scholars like Kent, and other American southerners he interviewed that the inheritance reform that came with the Revolution, which demolished both primogeniture and entail, also undermined the great houses and families and their influence. He interviewed a Mr. Latrobe of Maryland, for example, during his travels. This Mr. Latrobe was a lawyer and the son of the famous engineer. He asked him: "But your present legislation, your law of inheritance among other things, should change the look of your society?" Latrobe answered, according to Tocqueville's notes: "Yes, we used to have a race of landowners living on their estates... We still have a certain number of these 'gentlemen farmers'; but the law of inheritance and democracy are killing them. In two or three generations they will have disappeared." Latrobe indicated, as well, that slavery was part of the old aristocracy, and when estates were divided it disappeared too: "Everywhere in Maryland, where properties have been divided up,

slavery has disappeared and the white population has developed extraordinarily."¹³

Tocqueville's commentaries on this inheritance law reform are passionate. He elaborates his findings on America – together with his observations about European history – to write the following powerful paragraph, which I quote in full.

I am astonished that ancient and modern writers on public matters have not ascribed greater influence over human affairs to the laws governing inheritance. [He refers to entail explicitly in note 1 here]. Such laws, belong, of course, to the civil order, but they should be placed first among political institutions because of their incredible influence on a people's social state, of which the political laws are merely the expression. Furthermore, inheritance laws act on society in a sure and uniform way; in a sense, they lay hold of each generation before it is born. Through them, man is armed with an almost divine power over the future of his fellow men. Once the legislator has regulated inheritance among citizens, he can rest for centuries. Once his work has been set in motion, he can remove his hands from his creation. The machine acts under its own power and seems almost to steer itself toward a goal designated in advance. If constructed in a certain way, it collects, concentrates, and aggregates property and, before long, power as well around a single head. It causes aristocracy to spring, as it were, from the soil. If guided by other principles and launched on a different path, its effect is still more rapid; it divides, partitions, and disseminates wealth and power. In that case the rapidity of its progress is sometimes frightening; abandoning hope of halting its progress, people at least try to place difficulties and obstacles in its path. They would counteract its effects by contrary efforts, but in vain. The machinery of the law crushes or shatters anything in its way, it rises up from the earth only to hammer down again and again until nothing remains but a shifting, impalpable dust, on which democracy rests.¹⁴

Tocqueville thus considered inheritance law as possibly more critical than any other institution in shaping society. Primogeniture creates an aristocracy. Partition of estates, on the other hand, leads to the eventual shattering of that aristocracy; the hammer beat of the "machinery of the law" thus creates the equality necessary for democracy.

The few previous scholars who paid attention to this part of Tocqueville's work have belittled the importance of these inheritance law reforms. Pierson, for example, wrote that "the abolition of entail, whatever had been expected of it, had not in practice resulted in the complete disappearance of large estates. On the contrary, in 1831, a number of large holdings were being formed and exploited in the western part of the State; while along the Hudson more than one of

the old manors still survived.... And the Livingstons were still collecting rents from the Manor tenants."¹⁵

In fact, Tocqueville understood much more about inheritance law than his critics or than we do in a modern world where inheritance is so different. During the colonial period in the American South, primogeniture and entail had a powerful grip on society, and were helping to create a landed aristocracy. The legal institution of entails allowed one ancestor to lock in inheritance for an eternity, specifying that his property would always go to the eldest son of his eldest son (or daughter if no sons) *ad infinitum*. Once so designated, the property could not be mortgaged or sold, or conveyed in any way. Virginia entails could only be broken by legislative act that had to be approved all the way up to the King in Council, a very expensive and difficult procedure, that usually required that other property be entailed instead.

In Virginia in the colonial period, the orderly transmission of large estates from father to eldest son was thus maintained by the English inheritance laws of primogeniture and especially entail, which enforced it. About three-quarters of the land in Tidewater Virginia was entailed by the time of the Revolution, which meant that such land could not be mortgaged, sold, or transferred in any other way than by inheritance to the eldest son (or daughters if no son). These laws were viewed by lawyers – both before and after the American Revolution – as the essence of feudalism, and were indeed, as Tocqueville argued, imported from England.¹⁶

Entails in England were easier to evade in the eighteenth century but still exerted a powerful force there, and continue to do so, despite being markedly weakened in the twentieth century. When the sixth Duke of Sutherland died in 2000, he left more than a million entailed acres in England and Scotland (that went to a cousin, by the rules of primogeniture, as he had no children). Much of the city of London (300 acres in Belgravia and Mayfair) is owned by one man, the Duke of Westminster, as a result of an ancient entail (broken in the twentieth century to circumvent inheritance taxes, only to skip a generation, so that the grandson would inherit instead of the father, thus fulfilling the spirit of the entail).

The consequences of this and similar entails is that most residents of London even today do not completely own their houses or the

ground they stand on, but pay mortgages on houses that they only own on long term leases (sometimes for 99 years or less, sometimes for up to 999 years), a fact remarkable only to those who live outside it (this is beginning slowly to change as a result of land reforms of the last five years that allow leaseholders to buy the land under certain conditions). Even the American Embassy is on entailed land, leased from the Duke of Westminster! The larger point is that the old English property rules could exert immense power in shaping society, granting great wealth to a few, especially as generations pass – and where they still exist, continue to exert some of their former power.

Once entails were abolished in the American colonies in the wake of the American Revolution – and the law changed to specify that the land and goods of those who died intestate should be divided equally among the children instead of going to the eldest son, things were on a very different course. As Pierson pointed out, fathers could still choose to give all of their land to an eldest son, and estates could thus in some cases remain intact (unlike the French law of 1830, which forcibly divided estates regardless).¹⁷ However human nature is such – as reading wills from Virginia in the years before and after the revolution makes clear – that most fathers don't want to disinherit their younger children, even if they would like, in principle, a perpetual family estate. In Charleston, South Carolina in the 20th century, for example, some of the same families owned the great houses that had owned them in the eighteenth century. However the great estates that had once belonged to those families were gone – sold or willed away over the years. If entails had still existed, they would have prevented the large estates from being sold, would, in fact, because of marriage patterns where girls who inherited entails married boys who had also inherited entails, have resulted in the agglomeration of estates (as the lineage of the current Dukes of Westminster and Sutherland, mentioned above, verify). Entails would be even more important if land were still the main foundation of wealth and economic success that it was in the eighteenth century and in the medieval period.

The other important point is that these legal changes did not have an immediate and complete levelling effect. They did not confiscate the property of the elite and redistribute it evenly among the rest of society. But they did have a gradual effect. Even allowing property to be mortgaged meant that families would often have to part with it.

Jefferson – who inherited thousands of acres of entailed property himself – would not have had all his property sold at his death, and his heirs would have inherited his land and debts (though probably not as many, because Jefferson would have had much less collateral to wager). Thus when Pierson pointed out, above, that some big estates still existed, and when Latrobe pointed out that many estates were being worn away, though some still were held intact, both observations are compatible, not only with each other, but with Tocqueville's own commentary.

Of course as capitalism strengthened, there were other ways to make fortunes. Ironically, the capital to invest often came from land and the ability to mortgage it. Thus getting rid of entails allowed greater access to the capital stored in the land and the making of new and different fortunes, at the same time as it exposed that family estate to greater risks.

Slavery was also part of the older aristocratic Southern system in some fundamental respects, as Tocqueville recognized. Even in the nineteenth century, when Tocqueville visited, he viewed slavery as making white Southerners much more aristocratic in their mores than in the North, so much so that these different mores could lead to disunion. He wrote: "The Southerner is more spontaneous, wittier, more open, generous, intellectual, and brilliant. The northerner is more active, reasonable, enlightened, and skilful. One has the tastes, prejudices, weaknesses, and grandeur of every aristocracy. The other has the qualities and flaws characteristic of the middle class.... Slavery therefore attacks the American confederation not directly, by way of interests, but indirectly, by way of mores."¹⁸ The habits of despotic command, learned early by the Master and his children, in Tocqueville's view, corrupted them, leading them toward aristocratic mores. "The southerner is born into a sort of domestic dictatorship. From the beginning, life teaches him that he is born to command."¹⁹ These contrasting mores between North and South could lead, in Tocqueville's view, directly to disunion, though he doubted that the North would try to prevent it.²⁰

Yet Tocqueville's connections here also work on a deeper level, at the very origins of the system of slavery, as Tocqueville only suggests. Latrobe had commented that "Everywhere in Maryland, where properties have been divided up, slavery has disappeared." In

Latrobe's view, dividing estates into smaller parcels made slavery unnecessary. The great estates in the colonial South, that needed so many laborers, had imported indentured servants and slaves in great numbers, and used tenancy as well whenever possible. Smaller estates could use family labor. In theory, as well as practice there were links between great estates and slavery. Early Virginia laws, in force until the Revolution, allowed slaves and their progeny "for ever" to be attached to parcels of entailed land, destined to also follow a white family line "for ever" by the rules of entail. So the entail system that fascinated Tocqueville applied not only to land, but to slaves and their descendents as well, which makes the connections even tighter than Tocqueville realized. Indeed, the laws allowing the entailing of slaves and their progeny in the colonial South specifically sought to make it impossible to mortgage slaves (or take them for debt) in some of the same ways that they also protected land. These laws resemble feudalism, probably purposely so, given the familiarity of Virginia lawmakers with the English feudal law enshrined in their legal guides. Even though southerners abolished the entailing of slaves along with the entailing of land at the time of the revolution, the very fact that slavery continued to legally exist meant that it continued to shape southern mores, and the echoes of this conjoined aristocratic system of laws continued to influence Southern attitudes as well as laws.²¹

In some respects Tocqueville undervalued the extent of aristocratic influence in the colonial South.

In the South, a single man could, with the help of slaves, cultivate a vast expanse of land. Hence in this part of the continent it was possible to find wealthy landowners. But their influence was not precisely aristocratic as that term is understood in Europe, because they possessed no privileges and because the use of the slaves to cultivate the land left them without tenants and consequently without patronage. Still, the great landowners south of the Hudson constituted a superior class, with ideas and tastes of its own and generally concentrating political activity within its own ranks. It was a sort of aristocracy that differed little from the mass of the population, whose passions and interests it readily embraced, arousing neither love nor hatred. In short, it was feeble and not particularly robust.²²

In fact, the colonial Southern aristocracy had many tenants – for example, more than two-thirds of adult white men in some counties of Virginia on the eve of the Revolution were tenants. Also, because of oral voting (and all the procedures associated with it) patronage of

the old school was alive and flourishing in colonies like Virginia, with the elite openly influencing elections and dominating the elected offices even in the lower House of Burgesses (in the upper house, of course, they were chosen by the King to fill lifetime positions, which were themselves almost hereditary, mimicking the House of Lords).

There were also many cases in colonial America when the elite did not, in fact, reflect the views of the "mass of the population". When Nathaniel Bacon led a remarkably successful rebellion in 1676, for example, he did so with the help of a large, discontented tenant, servant and slave population, and against the largely elite rulers of Virginia. During this almost year-long episode, he attacked on the frontier and finally attacked Jamestown, causing the Governor to flee and burning it to the ground. Only Bacon's death (from dysentery) and the arrival of Royal Commissioners and 1,000 of his majesty's troops put an end the uprising. (Governor Berkely then exacted a sharp vengeance, with many executions of the remaining rebel leaders and broken promises of leniency to followers).

The colonial elite, – especially in the South – where the Royally appointed governors and councils were sometimes dramatically more powerful than the elected legislatures, – often had distinct differences from the poorer ranks, as one can imagine only too well. Even the elected legislatures tended to be wealthier there, reflecting a generally more restrictive franchise with higher property qualifications and a higher population of servants, tenants, and of course, slaves. Thus, in emphasizing how an aristocracy was imported into the South, Tocqueville was correct. His error (understandable in that he was visiting in the 1830s) was to undervalue its influence before the Revolution.²³

Tocqueville did not fully develop how the principles that he ascribed to Puritanism spread to become democracy in America. He indicates in the above paragraph that despite the big estates, perhaps aristocracy was not as strong in the South (due to slavery, which divided the aristocrats from the serfs in a race-based way). If so, he speculates (at the end of that paragraph) that would explain why aristocrats like Jefferson were willing to pen the Declaration's "all men are created equal," to support inheritance reform, and to play key roles in the fomenting revolution.

Tocqueville argues elsewhere that it was also just a gradual process of the spread of Puritan ideas.

It was in the English colonies of the North, better known as the New England states, that the two or three principal ideas which today form the basis of the social theory of the United States were first combined. The principles of New England spread initially to nearby states. Little by little they made their way to the farthest reaches of the confederation until ultimately they had, if I may put it this way, penetrated throughout. Their influence extended beyond New England's borders, to the entire American continent. The civilization of New England was like a bonfire on a hilltop, which having spread its warmth to its immediate vicinity, tinged even the distant horizon with its glow.²⁴

This glorious and eloquent explanation of the gradual spread of democratic ideas, however, is imprecise at best. In fact the story is much more complicated, and enmeshes with the struggles over political power within England itself over two centuries. It involves the transfer of these ideas about consent and equality away from the religious realm, and into the realm of the enlightenment, where they become less overtly religious. It was through the writings of John Locke and Algernon Sidney, two philosophers of the 1680s in England, for example, that Jefferson would be inspired. While they in turn emerged from the political struggles of seventeenth century England, and both came from Puritan backgrounds, the ideas stood on their own as arguments for consent and equality and against absolute monarchy. It was in this context that many took them up throughout America, even in the American South during the disputes over England's imperial control that eventually became the revolution.

Many elite revolutionaries in the South, however, were more like Landon Carter, who sought only to use the revolutionary rhetoric to stabilize their own position vis-à-vis England, but believed in the principles of hierarchy and aristocracy. They regarded the principles of equality laid down by Jefferson in the preamble to the Declaration of Independence as anathema, even in the prelude to the Revolution, and especially afterward. The spread of these principles – and their application in the laws – was neither as straightforward nor as simple as Tocqueville maintained. No bright light shone forth, no hilltop burned. Instead, it was a struggle: Jefferson's bill abolishing entail and primogeniture, for example, passed by only one vote – even in the newly elected and radical Virginia legislature of 1776 (which most

Tories had boycotted). Landon Carter is just one example of an elite Virginian who reluctantly supported the revolution on the grounds that *his* rights as a member of the aristocracy were being ignored. When he heard of Jefferson's bill to abolish entail, he called Jefferson a "midday drunkard" for, essentially, ignoring the interests of his class. Carter abhorred Thomas Paine's extremely popular pamphlet of 1776, with its emphasis on equality and its criticism of hereditary monarchy and aristocracy. He called the principles it espoused "the most absurd arguments in the world."²⁵

Oddly enough, Tocqueville's speculations in his notes mirror these insights about Landon Carter. During his visit to Maryland, Tocqueville sought out the last surviving signer of the Declaration of Independence, Charles Carroll. He noted that this 95 year old man lived on one of the richest estates then existing in America of 1830, with over 13,000 acres and 300 slaves living on just that estate. He learned several things from Carroll: that while Carroll was proud of having signed the Declaration and of his involvement in the Revolution, that Carroll had not thought they would actually have a revolution, but that the British would respond to the Declaration by seeking to "make up with us." Carroll regretted the loss of the "old aristocratic institutions" and disapproved in many ways of democracy, which he called "but a mob." "Everything in his conversation breathed the tone and ideas of the English aristocracy," Tocqueville wrote. In reconciling this aristocrat with the Revolution, Tocqueville speculated "Probably the great proprietors of the South, at the time of the Revolution, were much of this model." Thus Tocqueville suggested that many of the Southern elite – even those who joined the revolutionary cause like Carroll – cared more about protecting their own rights than in the underlying principles about equality espoused by Jefferson and the Declaration.²⁶

Was Tocqueville correct, that one needs great equality of condition, particularly in terms of landed property, in order to have political democracy? Certainly Jefferson thought so, who Tocqueville called "the most powerful apostle that democracy has ever had."¹⁶ Even if one ventures so far with him, one can still ask – is it only wealth in land that creates aristocracy? The great economic disparities brought on by mercantile and industrial capitalism in America, which were taking off in America in 1830 arguably could bring about the

same influence of an aristocracy, and destabilize democracy as well, leaving it nothing more than a name.

Indeed some scholars have ridiculed Tocqueville's observations about equality on exactly these grounds: they point to great disparities of wealth in Northern cities, disparities that only increased in the decades leading up to the Civil War. One study found that the wealthiest 1 percent of residents of the main Northeastern cities increased their share of the wealth from roughly 25 to 50 percent of the "wealth of their communities" between 1820 and 1860. Without delving into the statistical basis of these calculations too closely, the raw point that wealth inequalities were increasing in America's Northern cities can be easily granted. At the same time in these same cities, thousands of people were living on the margins, in crowded tenements and barely surviving.²⁷

The wealth inequalities generated by mercantile and industrial capitalism were not adequately factored into Tocqueville's analysis; Tocqueville tended to view the energetic exchange and growth he witnessed in Cincinnati as raising everyone's boat. Nor did he consider how the laws governing land acquisition in the west might make it more difficult for those without capital to acquire it, such that they favored large landowners and speculators, at least until the Homestead act of 1862: Tocqueville rather portrayed land as affordable for everyone. Likewise, Tocqueville did not foresee the explosive growth in immigration to America in the decades after his visit, nor what that might mean for poverty in the cities; for Tocqueville, immigrants brought growth and energy and industry. All of these factors counteracted the powerful egalitarian tendencies introduced by the revolutionary reforms that Tocqueville sketched.

However, none of this really challenges Tocqueville's main point about equality in America. He was most interested in the question of hereditary rank in the old sense. He cared about birth status and culture and beliefs more than pure equality of condition. He thought that equality of condition was relatively more equal in America. But most important, for him, was the absence of principles of deference and laws that created a permanent aristocracy, at least among whites. America, for him, was a place where the tenement dwellers did not have to doff their caps to the wealthy. Thus he commented that "the last vestiges of hereditary rank and condition have been destroyed" at

the same time he allowed that “not that there are no wealthy people in the United States, just as there are everywhere.”²⁸ For him, hereditary land ownership had gone hand in hand with the “right to command”, with power itself – so that “the right to command was part of a man’s inheritance.”²⁹

He did believe that the equality under the law went hand in hand with equality of condition, or at least that the one tended to generate the other. He thought that getting rid of the protections for hereditary wealth and American’s attachment to the principle of equality would lead towards real equality of condition. Here, he overemphasized the impact of one legal policy about inheritance. Many other policies shape the potential for equality of condition in society, including, to name only some of the most obvious, the taxing of hereditary wealth, educational policies, welfare policies, and the like. Jefferson would have added that the way the land was distributed in the West mattered too – that it should be given out in small estates to families, and not sold in large parcels to speculators – as he urged unsuccessfully during his drafting of the original Northwest ordinance of 1785.

Still, that one legal policy had been remarkably important. Without holding Tocqueville accountable for not predicting what the future would bring it was absolutely clear to him that in the past history, of England, France, and of course America (especially in the South), great landed estates – passed via primogeniture – had in fact served as the primary basis for an hereditary aristocracy and monarchy (these rules of inheritance had also formed the basis for the inheritance of titles and were critical to the whole ideology underlying aristocracy and monarchy). He recognized that before the Revolution the feudal model of hereditary land and authority had an institutional grip in the South, via entail especially, which had been powerfully anti-democratic, and would have continued to be a powerful aristocratic force had it been left intact

The land law reforms of the Revolution – getting rid of entail and primogeniture – and the revolutionary land confiscations (huge Tory estates, most notably the 21 million acre claim of the Penns to all of Pennsylvania) did destabilize the old elite, allow more equality of opportunity, permit greater distribution of wealth and in short, decrease aristocratic control of the governments. Numerous studies

have confirmed, for example, that the wealth of those elected to state legislatures in 1830 or even 1850 was much less, comparatively, than their counterparts in the colonial era, as even Tocqueville's critics acknowledge.³⁰ These reforms were necessary in order to create democracies outside of New England and indeed the basis for a federal democracy that unified the different states. Without them, the South would have been even more elitist and the Civil War would have come much more quickly. There might well have been no grounds for a federal constitutional compromise.

While it could be maintained that Tocqueville never fully explained how ideas about equality crossed from the Puritans to Jefferson, he did realize that it was partly via the enlightenment. He also recognized that such a transition had taken place, and was fundamental to the ideology that had accompanied the Revolution and had set in place the reforms that had followed from it. He saw the critical connection between ideas and practical legal reforms, and identified some of the key reforms that led towards democracy. He recognized the increasing attachment to equality throughout America, throughout a range of institutions and mores, even if he did not explain its development in the South. He also recognized that slavery belonged to a more aristocratic system and was left over from the semi-feudal society that had existed in the American South before the Revolution (as most current American historians do not). In many of the questions that he focused on, about the origins and strengths and weaknesses of democracy, he was insightful and informative, if not brilliant in his grasp of some fundamental principles.

Ignoring Tocqueville's distinctions between North and South is easy, given Tocqueville's tendency to see the Northerners as more representative, as it were, of America. His use of language that casually gives "Americans" certain characteristics makes it easy to quote him and think that he was speaking about all Americans. But he was not. Tocqueville was deeply troubled by slavery and its legacies, as his interviews and the several chapters he devotes to the "three races" testify eloquently. He saw that equality was not uncontroversial. Reading his discussions carefully, it becomes clear that when he states, for example, that "American soil was implacably hostile to landed aristocracy" he only means the North; he then speaks of "one [society] in the South, and the other in the North."³¹ Tocqueville grasped the essential struggle between aristocracy and

democracy that remained unresolved in 1830, in both the mores of the peoples and in their laws, a struggle that would culminate in the Civil War.

Tocqueville's basic analysis of the ways that principles were written into laws in the different colonies, in turn helping to create very different political systems and mores, was profoundly insightful. This part of Tocqueville's analysis – indeed his whole sections on slavery and the South, are ignored at the expense of understanding his argument. For it is in these sections that he probes most deeply into how laws create mores (and thus how legislation can shape society) and vice versa. He sees the Southern inheritance laws before the revolution as growing out of and helping to foster the same kind of aristocratic sentiment as did slavery, under which the “leaders of the American nobility” formed a “distinct and hereditary body capable of fostering and maintaining an *esprit de corps* and instilling it in people of all ranks.” The gradual levelling effect of the changes in inheritance law, however, meant that this aristocratic sentiment was undermined to some degree, particularly in the way it had idealized idleness. Once that was gone, white workers were more willing to compete with slaves, and slavery became less viable. So, at least, he speculated at one point.³²

Elsewhere, his argument is that the older inheritance law, because it was there at the beginning, still continued to have an influence on Southern mores. It had also helped to spawn the slave code; primogeniture and entail of land and slavery were paired aristocratic institutions. Because slavery was enshrined in the law, it continued to foster aristocratic mores, even without the prop of the older inheritance law. As his questions to Southerners and his discussion of slavery reveal, he thought that slavery should be abolished, and that this reform itself would encourage a different and more beneficial set of mores in the South that would cement the union. At the same time he acknowledged the costs of this type of reform, including the loss of some aristocratic brilliance and the threat to their former masters posed by the freed slaves. Still, there is no doubt that he supported abolition.

While he realized he had no final answers about the chicken and egg question of whether mores create laws or vice versa, he advocated institutional reform to achieve broader changes in how

people thought in order to encourage democracy and equality. "I do believe that if we do not manage gradually to introduce democratic institutions among us and ultimately to establish those institutions on a firm footing; and if we forsake the idea of instilling in our citizens ideas and feelings that will first prepare them for liberty and then enable them to make use of it; then there will be no independence for anyone – not for the bourgeois or the noble, nor for the poor man or the rich man – but only equal tyranny for all. And I predict that if, in time, we do not succeed in founding the peaceful rule of the majority, we will sooner or later find ourselves subject to the unlimited power of a single individual."³³

How institutions and laws shape aristocratic and democratic mentality was thus central to Tocqueville's work, because it helped him to develop a plan for legislative reform that could potentially create a better democracy – in France or anywhere else.

NOTES

[1] Tocqueville, *DAI, Œuvres 2*, P, 51.

[2] Louis Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution* (New York: Harcourt, Brace & World, 1955), 5, 35, 143-227. Hartz sees feudalism in the South as little more than a myth. Hartz's sifting of Tocqueville's thought has been especially influential on American political theory. A few studies of Tocqueville do acknowledge that he saw the South as more different and more aristocratic, such as Sheldon Wolin's *Tocqueville Between Two Worlds: The Making of a Political and Theoretical Life* (Princeton: Princeton University Press, 2001), 232, however even that persists in the misdirection that "Tocqueville did in fact assert that America had no feudal past to eradicate." Ignoring the chapters where Tocqueville discusses the American South's feudal past would be impossible to understand were it not that historians too had been denying the connection, a connection that has since been established upon much the lines that Tocqueville suggested (see below). The two scholars who did treat Tocqueville's discussion here somewhat seriously both doubted his analysis and even his attachment to these arguments about the role of the laws in shaping society: George Wilson Pierson, *Tocqueville and Beaumont in America* (New York: Oxford University Press, 1938), 126-128; Jack Lively, *The Social and Political Thought of Alexis de Tocqueville* (Oxford: Clarendon Press, 1962), 46-47. On the continuing emphasis in Tocqueville scholarship on his

ideas about equality, see Klaus J. Hansen, "Tocqueville: Frenchman for all Seasons?" *Canadian Journal of History* 43 (2003), 295-305.

[3] *DAI* (trans. Goldhammer), 33.

[4] "Whenever it was possible to make a point with the aid of written documents, I was careful to consult either the original or the most authentic and reputable sources. I have indicated those sources in footnotes, so that anyone may verify them. When it came to opinions, political practices, or remarks on manners, I sought out the best-informed people. On important and controversial matters, I did not rely on one informant alone, but based my opinion on all the testimony taken together." He continued: "For this the reader will have to take my word...When information was confided to me, I wrote it down immediately, but these notes will never leave my files." *DAI* (trans. Goldhammer), 16. However many of those notes are now transcribed and a sample of them available in Olivier Zunz and Alan S. Kahan, eds., *The Tocqueville Reader: A Life in Letters and Politics*. (Oxford: Blackwell, 2002). My comments here relate mostly to the first volume of his *Democracy in America*. He worked on it in the years immediately after his visit, and he was both more positive about American democracy and a better historian of it than in the second, where his analysis seeks more to compare American democracy with that of France.

[5] *DAI* (trans. Goldhammer), (in order of reference), 12, 33, 47, 37, 44-45, 40, 47. Also see Sanford Kessler, "Tocqueville's Puritans: Christianity and the American Founding," *Journal of Politics* 54 (1992), 776-792.

[6] *DAI* (trans. Goldhammer), 39.

[7] *DAI* (trans. Goldhammer), 37-39, and esp. note 7; Michael Zuckerman, "The Social Context of Democracy in Massachusetts," *William and Mary Quarterly*, 3rd Serial, 25 (1968): 523-544; Holly Brewer, *By Birth or Consent: Children, Law, and the Anglo-American Revolution in Authority*, (Chapel Hill: University of North Carolina Press for the Omohundro Institute of Early American History and Culture, 2005), ch. 2 and conclusion; James E. Bradley, *Religion, Revolution and English Radicalism: Nonconformity in Eighteenth Century Politics and Society* (Cambridge, UK: Cambridge University Press, 1990), esp. chs 6, 9; Richard Ashcraft, *Revolutionary Politics and Locke's Two Treatises of Government* (Princeton, NJ: Princeton University Press, 1986), esp. ch. 2.

[8] *DAI* (trans. Goldhammer), 485.

[9] Barbara Shapiro, *Probability and Certainty in Seventeenth-Century England: A Study of the Relationships between Natural Science, Religion, History, Law and Literature* (Princeton, NJ: Princeton University Press, 1983); Michael Walzer, *The Revolution of the Saints: A study in the Origins of Radical Politics* (Cambridge, MA: Harvard University Press, 1965); Holly Brewer, *By Birth or Consent*, esp. chs. 2 & 3.

[10] *DAI* (trans. Goldhammer), 52-53, my italics.

[11] *DAI* (trans. Goldhammer), 9, 34.

[12] *DAI* (trans. Goldhammer), Note 8, 850-853; Holly Brewer, "Entailing Aristocracy in Colonial Virginia: 'Ancient Feudal Restraints' and

- Revolutionary Reform" *William and Mary Quarterly*, 3d Series, 54 (1997): 307.
- [13] Tocqueville, "Excerpts from American Notebooks," in *The Tocqueville Reader. A Life in Letters and Politics*, eds. O. Zunz and A. S. Kahan (Oxford: Blackwell, 2002), 56-57.
- [14] *DAI* (trans. Goldhammer), 53-54 (my italics).
- [15] G. W. Pierson, *Tocqueville and Beaumont*, 127.
- [16] Brewer, "Entailing Aristocracy."
- [17] G. W. Pierson, *Tocqueville and Beaumont*, 127-128. On French inheritance law reforms of the revolutionary era and their egalitarian effect, see Suzanne Desan, *The Family on Trial in Revolutionary France* (Berkeley, CA: UC Press, 2004).
- [18] *DAI* (trans. Goldhammer), 434.
- [19] *DAI* (trans. Goldhammer), 433.
- [20] *DAI* (trans. Goldhammer), 432, 440-441, 460-461).
- [21] See Brewer, "Entailing Aristocracy"; and Brewer, "Power and Authority in the Colonial South: The English Legacy and Its Contradictions," in *Britain and the American South: From Colonialism to Rock and Roll*, ed. Joseph P. Ward (Jackson, Miss.: University Press of Mississippi, 2003), 27-51. This issue has been almost completely neglected by historians, yet it is fascinating and important.
- [22] *DAI* (trans. Goldhammer), 53.
- [23] See Jackson Turner Main's "The Distribution of Property in Post-Revolutionary Virginia," *Mississippi Valley Historical Review*, 41 (1954-55), 241-258; and Main's later book *The Social Structure of Revolutionary America* (Princeton, NJ: Princeton University Press, 1965); on patronage and oral voting see, for example, Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill, NC: Published for the Institute of Early American History and Culture, Williamsburg VA, by University of North Carolina Press, 1982), esp. ch. 5. On Bacon's Rebellion, see Wilcomb E. Washburn, *The Governor and the rebel; a history of Bacon's Rebellion in Virginia* (Chapel Hill, NC: Institute of Early American History and Culture for UNC Press, 1957).
- [24] *DAI* (trans. Goldhammer), 36.
- [25] On Landon Carter, see Brewer, "Entailing Aristocracy," 341; Rhys Isaac, *Landon Carter's Uneasy Kingdom: Revolution and Rebellion on a Virginia Plantation* (Oxford: Oxford University Press, 2004), esp. 293.
- [26] See G. W. Pierson, *Tocqueville and Beaumont*, 506-507.
- [27] Edward Pessen, *Jacksonian America: Society, Personality, and Politics* (Homewood, Ill: Dorsey Press, 1978), (Second ed.), 81.
- [28] *DAI* (trans. Goldhammer), 56.
- [29] *DAI* (trans. Goldhammer), 3. Although this quote is in his preamble about such laws in France, it reflects his thinking about such laws in America as well.
- [30] e.g. Pessen, *Jacksonian America*, 97.
- [31] *DAI* (trans. Goldhammer), 34.
- [32] *DAI* (trans. Goldhammer), 403.
- [33] *DAI* (trans. Goldhammer), 364.