Tocqueville, Associations, and the Law of 1834
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The concept of voluntary association plays an important role in Tocqueville's thinking about the viability of democracy.[1] His fears for democracy were informed by his analysis of absolute monarchy. Absolutism, he believed, had developed when the state ceased to be the creature of society and instead made society over to suit its purposes. Traditional intermediary bodies such as the nobility, municipal corporations, guilds, parlements, provincial estates, and religious fraternities, when not simply ignored, were either suborned, supplanted, or crushed, and society itself was reduced to "dust," to use Tocqueville's metaphor for what modern liberal theory likes to call the naked citizen, shorn of all distinguishing characteristics and capacity for resisting the sovereign will.

Democracy in itself offered no means of countering the danger of such aggrandizement of the state. Indeed, by denying political legitimacy to individual differences, democracy arguably

compounded the danger. Taken one by one, democratic individuals were but motes to the central government; only in association did they acquire a political potency comparable to that of the old nobility. As Tocqueville remarked in the introduction to *Democracy in America*, "Citizens joined together in free association might … replace the individual power of nobles, and the state would be protected against tyranny and license."[2]

Even as Tocqueville was putting the finishing touches on the manuscript of the first volume of *Democracy*, to be published in January 1835, the Corps Législatif in March of 1834 approved a new law aimed at political associations. Unauthorized association of more than twenty individuals had been illegal since the introduction of Article 291 of the Penal Code in 1810. In the turbulent conditions of 1834, the government of Marshal Soult, seeking to restore order, broadened the definition of an illegal association and imposed harsher penalties on members. Hence Tocqueville's praise of associations at this juncture was no mere caprice of a theorist concerned solely with political order in the

abstract. It was an audacious if circumspectly formulated protest against a repressive policy that the government insisted was essential to the restoration of political order. Indeed, Tocqueville made his provocative intent explicit by way of a specific reference to the new law, albeit in terms so characteristically understated as to be easily missed: "What resistance [to tyranny] can mores offer when they have already yielded so many times? What can public opinion itself accomplish when there are not *twenty* people united by a common bond? When there is no person, family, body, class, or free association capable of representing that opinion and enabling it to act?"[3] Here, the mention of the number "twenty" evokes the legal definition of an association in France.[4]

The terms in which Tocqueville states his objection to the law of 1834 indicate the grounds of his rupture with the traditionalist conservatism of his day. In presenting the proposed law to the Chamber, Barthe, the minister of justice at the time, had made clear the government's belief that to tolerate illegal associations was to empower "'a sort of insurrectional government'

representing a minority of society that had allegedly 'declared war on the mores and laws of the vast majority.'"[5] Like Tocqueville, Barthe perceived a link between association, envisioned as organized public opinion, and the ability to act politically, but he deemed any such action, when not sanctioned by the state itself, to be "insurrectional," a form of "declared war" against the "majority," and therefore to be resisted by repressive force. Tocqueville, by contrast, looked forward to a republican regime, where by "republic" he meant "the slow and tranquil action of society on itself."[6] The ability to act politically resides, however, not with individuals but with "people united by a common bond," that is, with "free associations." Barthe views the development of any ability to act politically without state sanction as potentially insurrectionary, whereas Tocqueville, already looking beyond the crises of the early July Monarchy to a future democratic republic in France, sees it as essential to the health of public mores and to the political maturity of a people.

Tocqueville expounds his views on this point at several different places in *Democracy in America*, most notably in volume II, published in 1840, after the insurrectionary situation that had prompted the law of 1834 had subsided. Yet in volume I, drafted in the very midst of actual insurrection at home, he described the formation of a potentially insurrectionary association in the United States in terms chosen deliberately to mute the threat of armed faction. I will return to this contrast in a moment, but first I want to consider the virtues of association as Tocqueville saw them.

The key to understanding Tocqueville's positive evaluation of the right of association has already been mentioned, namely, his belief that "citizens joined together in free association might … replace the individual power of nobles." Pre-absolutist French society, as Tocqueville idealized it, possessed a backbone that absolutism had shattered. It had, "along with a multitude of individuals who [could] do nothing by themselves, a small number of very powerful and very wealthy citizens, each of whom [could] undertake great ventures on his own."[7] Democratic

societies have no such backbone: "All citizens are independent and weak; they can do almost nothing by themselves, and none … is capable of obliging his fellow men to assist him. Hence they become helpless if they do not learn to help one another of their own free will."[8]

The analogy between nobles and associations could be carried further, moreover. Nobles, in Tocqueville's view, had possessed not only the capacity to act individually but also the breadth and durability of vision to act in the common interest, whether of their dependents or of their estate (and Tocqueville, in extolling aristocratic sacrifice, frequently neglected to say which common interest he had in mind). Because their wealth and power were rooted in land and transmitted from generation to generation, nobles were allegedly less susceptible than the multitude to volatile passions. Thus it comes as no surprise to find that in Book II, Tocqueville's chapters on association form a sequence leading up to the key chapter on "self-interest properly understood," in which he makes the case that democratic individuals must

somehow be induced to evolve a quasi-aristocratic conception of self-interest if democracy is to survive.

Tocqueville left the meaning of the phrase "self-interest properly understood" ambiguous, I think deliberately, but on one point, at least, he was absolutely clear: associations are essential to achieving the "proper understanding" required to check the ravages of unmitigated self-interest. Indeed, proper understanding involves an admixture of what at first might seem the opposite of self-interest, namely, sacrifice: not "self-sacrifice on a grand scale" as in aristocratic societies "but … small sacrifices every day."[9] One might gloss this remark by saying that a proper Tocquevillean democrat seeks not to maximize his satisfaction at any given time but rather to forgo some measure of gratification in order to forestall the growth in others of resentments that might threaten his future well-being. This doctrine appears to have some affinity with the Rawlsian maximin criterion[10] that the best-off ought to be required to sacrifice only as necessary to make the condition of the worst-off tolerable should Fate's lottery force them to endure that

condition themselves: "The doctrine of self-interest properly understood may prevent a few men from climbing high above the ordinary level of humanity, but a great many others who used to fall below that level will rise to it and remain there. Consider a few individuals and the doctrine brings them down. Think of the species and the doctrine raises it up."[11]

In thinking about associations, Tocqueville anticipated Mancur Olson as well as John Rawls. He identified what has come to be known as the collective action problem: "When the bonds among men cease to be solid and permanent, it is impossible to get large numbers of them to act in common without persuading each person whose cooperation is required that self-interest obliges him to join his efforts voluntarily to those of all the others." He was perhaps too sanguine in his belief that newspapers could resolve this problem owing to their ability to "deposit the same thought in a thousand minds at once," although, to be sure, press organs in Jacksonian America played a role quite different from the role they play today.[12]

Tocqueville further argued that association helps to stabilize democracy in two ways. First, it enables the "citizens of the minority … to ascertain their numerical strength and thereby weaken the moral ascendancy of the majority," thus presumably moderating the eagerness of the majority to impose its will and encouraging temperate compromise.[13] Second, it promotes competition of ideas and sorts out those with the greatest popular appeal.

If the bond of association were no stronger than the bond of a common idea, however, the fact of association would have seemed neither so great a threat to Barthe and the government nor so hopeful a promise to Tocqueville. The specific virtue of association was to give animating warmth to ideas so as to resurrect the social body from the democratic dust: in association "men can see one another … and exchange views with a forcefulness and warmth that the written word can never achieve." In the political realm they can form parties to give force, scope, and longevity to ideas of public good.[14]

Thus for Tocqueville an association was an idea made flesh. The idea in its comprehensive and reciprocal inclusiveness was what lifted the association above the mere material solidarity of the interest group or faction[15] and made it not a divisive organ of exclusive self-regard but a unifying agent of republican virtue and enlightenment. Here again the analogy with nobility shaped his thinking, for it was his conceit that in aristocratic society the "official doctrine" was "that it is glorious to forget oneself and proper to do good without self-interest."[16] The tendentious hyperbole in this "official" representation of noble instinct, honor, and self-sacrifice was transferred to associations: if the powerful obligingly served the powerless in the aristocratic republic, in the democratic republic the power of ideas lifted isolated individuals out of the dust and allowed them to serve themselves whenever it enabled them to "see one another" with the "forcefulness and warmth" that had formerly been supplied by the supposed organic solidarity of a hierarchical social organization.

Now, it is curious, given the importance that Tocqueville attached to voluntary association, that in all of the *Democracy* he supplies one and only one example of a voluntary political association that is not a political party.[17] A party is a kind of association, but since its purpose is to exercise power through the state, it cannot fulfill the defensive role that Tocqueville wants to ascribe to associations as bulwarks against the state's potentially liberticide encroachments. Although he has some astute remarks to make about parties, his lapidary judgment that "parties are an evil inherent in free governments"[18] seems all but oblivious of his previous defense of political associations as a positive good, not least for their role in building trust that spills over into civil society.[19] Although I cannot pursue the distinction between parties and other forms of political association in depth here, I want to suggest that it is an important distinction to fathom if we wish to grasp Tocqueville's view of democracy and some of the limitations inherent in that view.

The one non-party political association that Tocqueville did discuss was the free-trade convention convened in Philadelphia in 1831.[20] In some respects this example offers a good illustration of his general thesis about associations: the convention was organized around an idea, and the publicity afforded by newspapers played a crucial role in bringing together people from different sections of the country and walks of life. It also exemplified the deferential form of political leadership that Tocqueville preferred, in that "distinguished men … devoted all their efforts to moderating the convention's rhetoric and limiting its objectives."[21] In other respects, however, the example is problematic. The free-trade idea was hardly of a nature to encourage the exaltation of fellow-feeling above material self-interest. It rather abetted the peculiarly American tendency to translate matters of economic interest into questions of constitutional principle, in this case of states' rights and implied powers. In his discussion of the convention, moreover, Tocqueville explicitly opposed party to association on the grounds that under the spoils system central to the Jacksonian conception of party "all

public power passes into [the victorious party's] hands" with the election of a president, thus contributing to the "omnipotence of the majority" and justifying the recourse to the "dangerous means" of association to oppose it.[22] In this passage Tocqueville seems to suggest that the victorious Democracy opposed tariff reductions, which was of course not the case. Interestingly, when he returned to the tariff question at the end of Book I, he gave a fuller and more accurate account.[23] Earlier, moreover, he observed that associations were subject to co-optation by states (or, implicitly, by blocs of states or politicians purporting to speak for such blocs, as Calhoun did on the tariff issue), thus blurring the distinction between party and association or state and social movement.[24]

The most crucial flaw in Tocqueville's account of the free-trade convention, however, is his failure to consider the possible encouragement it gave to armed insurrection. He notes that Congress, "having failed to listen to its suppliant subjects, … began to heed their complaints when it saw them take up arms."[25]

The allusion is of course to the mustering of the South Carolina militia in defense of the doctrine of nullification. It must have occurred to Tocqueville, given the general tenor of his analysis, that the convention, by comforting southern proponents of free trade in the belief that their position enjoyed wide national support, also led them to believe that other sections would support their muscular resistance to the Tariff of Abominations.

Tocqueville's choice, then, was to portray association as an instrument of resistance to majoritarian tyranny while understating its potential to incite minority insubordination. He had, I believe, two reasons for this choice. The first was a matter of political tactics but also reflected his characteristic ambivalence about the state of France. He disliked the French government's approach to associations in 1834 because he thought it reflected a tendency to "look upon freedom of association as nothing more than the right to make war on the government" (echoing Barthe's words to the Chamber).[26] This could easily become a self-fulfilling prophecy: to treat all oppositional associations as enemies was to

force them into a militant posture in which discipline replaced persuasion and members submitted to a martial type of authority.[27] On the other hand, because the French lacked "experience in the exercise of freedom," the consciousness of strength that association afforded could lead all too readily to violence.[28] In the long run, Tocqueville believed, the cause of liberty in France would be better served by taking a tolerant attitude toward associations; in the short run, however, given the volatile situation of France in 1834, he could not be sure that the government's course was not the prudent one. His analysis of democracy pushed him in one direction: Providence had decreed that Europe's future would be democratic, and democratic order required the substitute for aristocracy that he hoped associations could provide. His anxiety about France in 1834 pushed him in the opposite direction. Hence his praise of association, full-throated so far as posterity is concerned, was decidedly muted with respect to the here and now. Here we see ironic confirmation of his assertion in the introduction that he "did not try to look at things differently from the parties but … did try to see further."[29] Indeed, but the

ambivalence that stood him in such good stead with posterity blunted the force of his protest and vitiated his advice.

His second reason for portraying association as he did, neglecting the problem that the strengthening of the minority's obstructive power posed for a system in which order rested on the legitimacy of majority rule, was his belief that local institutions represented a lesser threat to liberty than central institutions. His treatment of association, emphasizing as it does the moral power of ideas made flesh, insists on an opposition between association and party. Hence he does not consider their complementarity, as the example of the free-trade convention and the Calhounites might have inspired him to do. Yet wherever we look at political life in the Jacksonian era, we find rich shoals of associational life flourishing beneath the level of the party. In these shoals, moreover, lies a distinctive quality of American democracy that Tocqueville missed, perhaps because its full significance did not become apparent until later.[30] I am speaking of the peculiarly intense interaction between associations and local and state

political institutions. The resistance to centralization that Tocqueville hoped subnational institutions would provide could not have been effective if American political parties had developed organizations of the Jacobin type. In the latter part of the 19th century, when domination of the national parties by business interests was rampant, local institutions became the focal point of the activities of a variety of associations based on class, ethnic, religious, cultural, and intellectual affinities. Tocqueville's insights into association as resistance remain relevant but need to be incorporated into a less rigid framework. In 1834 he was anxious that the authoritarian reflexes of the French government would delay the apprenticeship in freedom necessary to ease the inevitable advent of democracy. He was therefore keen to promote voluntary associations as a force for moral suasion. But at the same time he feared that the government might be right that disciplined, militant associations could become agents of insurrection. The evolution of associational life in the United States suggests that the dichotomy between moral suasion and disciplined militancy is too sharp. A revision of Tocqueville's analysis of associations will

accordingly figure in the book I am currently writing on democracy in America after Tocqueville.

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[1] Even so casual and occasional a Tocqueville scholar as George W. Bush has remarked on this fact: see NY Times ??.
[2] DA I, Intro, 10.
[3] DA I.2.9, pp. 362-3.
[4] The footnote in DA II.2.7, 606, though written some years later, can also be construed as a critique of the government's policy in 1834, in that Tocqueville here allows for the regulation of associations by legislation and the courts but disapproves of prior restraint by administrative fiat banning the formation of associations on arbitrary and unspecified grounds. The point is further reinforced by an earlier remark: "It is even worse if the government believes that it has a real interest in putting a lid on all activity. It will then cling to the status quo and voluntarily surrender to lethargic torpor" (DA I.2.5, 598). In mitigation of his critique of the French government, however, Tocqueville concedes that associations in Europe are often conceived as "weapons of war" and for a variety of reasons driven to violence (DA I.2.4, 220-21). Furthermore, in America "no one sacrifices his will or his reason" when joining an association, whereas the more militant type of organization that European conditions foster enforces such sacrifice.
[5] Quoted in Pierre Rosanvallon, *The Demands of Liberty*, trans. Arthur Goldhammer (Cambridge, Mass.: Harvard University Press, 2007), p. 120.
[6] DA I.2.10, 456.
[7] DA, II.2.5, 596.
[8] *Ibid*.
[9] DA II.2.8, 612.
[10] John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1999 [1971]), pp. 132-36.
[11] DA II.2.8, 612.
[12] DA II.2.6, 600.
[13] DA I.2.4, 220.
[14] DA I.2.4, 216.
[15] Tocqueville does not use the former term, of course; more surprising is that he seldom mentions the latter.
[16] DA II.2.8, 610.
[17] I am indebted to Seymour Drescher for calling my attention to this point.
[18] DA I.2.2, 198.
[19] See the discussion in DA II.2.7, "Relations between Civil Associations and Political Associations," esp. p. 605.
[20] DA I.2.4, 218.
[21] DA I.2.4, 219.
[22] DA I.2.4, 218-9.
[23] DA I.2.10, 450.
[24] DA II.2.5, 597.
[25] DA I.2.10, 452.
[26] DA I.2.4, 221.

[27] Cf. the final quote in n. 4 above.
[28] DA I.2.4, 221.
[29] DA Introduction, 17.
[30] For a detailed recent overview, see Sean Wilentz, *The Rise of American Democracy* (New York: Norton, 2005).