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Alexis de Tocqueville and the Two-Founding Thesis

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Abstract: Alexis de Tocqueville's account of the formation of the American regime identifies two constitutive moments: the Puritan colonization and the Revolution and the Constitution (1775–1789). Contrary to historians of the day, Tocqueville gave as much credit to the Puritans as to the Founders. Yet far from being a pure history, Tocqueville's narrative also had the purpose of promoting a new political foundation that replaced the philosophical doctrine of natural rights with an account based on "Customary History." Tocqueville's approach was intended to further a great theoretical project inaugurated by Montesquieu that offered an alternative model to the mainstream Enlightenment position for how political philosophy should enter into and influence political life. This article analyzes the two-founding thesis, explores the underlying theoretical project on foundations of Tocqueville and Montesquieu, and presents and assesses the debate on the merits of attempting to change the political foundation of the American regime.

Alexis de Tocqueville was one of the first thinkers in the nineteenth century to challenge the prevailing historical account of the American Founding. According to that account, which was well on the way to becoming solidified when Tocqueville visited the United States in 1831, America's polity or regime was established in the period that began with the Revolutionary War and ended with the ratification of the Constitution. The principal leaders during this time, referred to as "founders" or "fathers," were celebrated for having decisively shaped the character of America's way of life. An illustration of this position can be found in Timothy Pitkin's widely read *A Political and Civil History of the United States*, published in 1828. Pitkin begins by promising his readers "a more intimate knowledge and recollection of the difficulties which their political fathers had to overcome," so that they might better appreciate the "great charter of their union, as their best and only security against domestic discord and foreign force."[1]

Tocqueville, by contrast, presents an account of the Founding that identifies not one but *two* formative moments. The Puritan–New England tradition, in

[1]Timothy Pitkin, *A Political and Civil History of the United States of America* (New Haven, CT: Hezekiah Howe and Durrie and Peck, 1828), 1:3. For an overview of the historiography of the early period, related to the Founding, see Lester Cohen, *Revolutionary Histories* (Ithaca, NY: Cornell University Press, 1980).

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his view, was every bit as consequential in constituting America as the Founding of 1775–1789. From the Puritan colonies come "the two or three principal ideas [that] were combined [and that] today form the bases of the social theory of the United States." New England's "civilization"—Tocqueville helped introduce this sense of the term to America—was like one of those "fires" set on a high slope whose light "still tinge[s] the furthest reaches of the horizon."[2]

These two interpretations of America's origins are strikingly different. Although it is possible to imagine how Tocqueville might have brought them more closely together, perhaps by refining the meaning of the concept of "founding," he made no effort to do so. Without either acknowledging or criticizing the prevailing view, Tocqueville proceeded simply to sketch his own narrative, with the evident aim of having it modify or replace the existing one. His version will be referred to here as the "two-founding thesis."[3]

Tocqueville introduced the two-founding thesis near the beginning of *Democracy in America*, in a chapter entitled "On the Point of Departure and Its Importance for the Future of the Anglo-Americans," which reads as if it is providing a straightforward *historical* explanation of how America developed. Yet further analysis reveals that something else, something more important than historical explanation, was also at stake. Tocqueville, it will be argued, introduced the two-founding thesis in order to promote a new *theoretical* position for the proper kind of political foundation for modern liberal democratic government. The prevailing view at the time, derived from the entire tradition of Enlightenment thought, was that a political foundation should rest on a public doctrine of philosophy, such as natural law theory. Foundations of this kind, Tocqueville thought, endangered the cause of liberty. His alternative was a foundation based not on philosophy, but on "Customary History."[4] The two-founding thesis was Tocqueville's version of Customary History crafted specifically for America. In offering this foundation, Tocqueville was furthering a great project inaugurated by his chief mentor, Montesquieu, and designed to alter the way in which political philosophy entered into and influenced political life.

The exploration of this argument requires treating a number of interlocking issues. I begin by identifying the major theoretical implications that flow from adopting the two-founding thesis and presenting evidence for the claim that Tocqueville intentionally favored this position in order to promote a new political foundation. After defining—with help from Tocqueville's thought—the

[2]Alexis de Tocqueville, *Democracy in America*, trans. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 31, 32. Hereafter cited as *DA*.

[3]This term was coined by Michael Zuckert, *The Natural Rights Republic* (Notre Dame, IN: Notre Dame University Press, 1996).

[4]This term is derived from J. G. A. Pocock, *The Ancient Constitution and the Feudal Law* (New York: Norton Books, 1957), 36, 37.

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analytical concept of a political foundation, I turn next to a discussion of the original theoretical project for Customary History as sketched by Montesquieu in his *Spirit of the Laws*. Finally, I examine Tocqueville's adaptation of Montesquieu's theory to America, concluding with a few comments intended to help assess Tocqueville's position on foundations.

The Theoretical Premises of the Two-Founding Thesis

The two-founding thesis is linked to a number of arguments or conclusions that become evident when considered against the backdrop of the prevailing view of a single founding. Five points are worth mentioning.

First, the idea of two founding moments has the inevitable effect of diminishing the Founders' status, for the simple reason that they are no longer *the* founders. To be sure, Tocqueville speaks of the men of 1775–1789 with great admiration, praising them for both their "patriotism" in coming to the nation's aid at a critical moment and for their "courage" in instructing the public, somewhat against its inclinations, about how to protect and maintain freedom.[5] His comments nevertheless display a certain reserve concerning the magnitude of their accomplishment. He ascribes the victory in the Revolutionary War more to America's "[geographical] position than to the valor of its armies or the patriotism of its citizens"; he praises the Convention for including "the finest minds and noblest characters that had ever appeared *in the New World*" (emphasis added); and he describes *The Federalist* as a "fine book … though special to America."[6] These judgments hardly seem calculated to create an aura of greatness around the Founders. Tocqueville never ranks them with the famous lawgivers of antiquity, such as Lycurgus or Numa, which is a comparison that the Founders themselves invited.[7] Indeed, Tocqueville never directly refers to them as "founders," reserving that term for New England's leaders ("first founders").[8]

Second, the two-founding thesis fits with Tocqueville's cultural or sociological approach that considers "mores," which derive mostly from inherited dispositions and customs, to be more important in the formation of a regime than

[5]*DA*, 143, 144. Tocqueville lauds the character of the Founders, who were "remarkable for their enlightenment, more remarkable still for their patriotism," and he judges the framework they produced to be "superior to all the state constitutions" (143). His greatest praise of the Founders' originality comes in his account of their invention of what we know as federalism: "This constitution … rests on an entirely new theory that will be marked as a great discovery in the political science of our day" (147).

[6]*DA*, 106, 107 (emphasis added).

[7]*The Federalist*, No. 38.

[8]*DA*, 399.

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constitutional forms and arrangements.[9] This approach, too, has the effect of reducing the Founders' status by assigning more weight to tradition—in this case, to the practices deriving from the New England colonies—than to the Constitution. Tocqueville directly addresses his readers to tell them that they will "find in the present chapter [on the Point of Departure] the seed [*germe*] of what is to follow and the key to almost the whole work."[10] The two-founding thesis thus also reverses an implicit premise of the standard historical account that divides American history into the colonial and modern eras, an account that has the effect of relegating the colonial period to a kind of prehistory. For Tocqueville, by contrast, colonial history is every bit as important as what has occurred since the Revolution. His presentation likewise directs attention away from the Founders' handiwork—the Constitution—to the practices within the states: "The great political principles that govern American society today were born and developed in the *state* . . . it is therefore the state that one must know to have the key to all the rest."[11]

Third, and following directly from the last point, the two-founding thesis diminishes the importance of the doctrine of natural rights, what *The Federalist* refers to as the "transcendent law of nature and nature's god."[12] This doctrine was the theoretical basis that the Founders adopted to justify the Revolution and supply the criteria for the fundamental ends of legitimate government. In Tocqueville's account, the preexisting mores, not this foundation, were the key to the development of republican government in America.

Fourth, the two-founding thesis depreciates the understanding of founding as a conscious act of "making," or construction, that draws on models conceived by reason. "Making" according to reason best expresses what was usually meant in the eighteenth century by the term "natural," as in establishing a government in accord with natural law. Tocqueville introduced another understanding of the natural, one based on the notion of organic development, as seen in his account of the growth of a nation: "Peoples always feel the effects of their origins. The circumstances that accompanied their birth and served to develop them influence the entire course of the rest of their lives"; these origins are the "first cause" of a people's "prejudices, habits [and] dominant passions," and comprise a "national character" that continues to evolve partly on its own.[13]

Present-day political theorists often stress the connection between the idea of organic development and reactionary thinkers, such as Joseph de Maistre,

[9]*DA*, 295. "I am convinced that the happiest situation and the best laws cannot maintain a constitution despite mores, whereas the latter turn even the most unfavorable positions and the worst laws to good account" (ibid.).

[10]*DA*, 29. I include the term *germe*, translated variously as "germ," "seed," or "kernel," because of its importance in other accounts of Customary History.

[11]*DA*, 56.

[12]*The Federalist*, No. 43.

[13]*DA*, 56.

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who mistrusted the use of science or reason in political affairs.[14] But as Tocqueville's case makes clear, this connection did not hold across the board. There were many organic liberals fully open to reason. Tocqueville, in fact, was renowned for his advocacy of a "new political science" meant to "instruct democracy" and "substitute little by little the science of affairs for its inexperience." What is noteworthy about his political science, however, is that it subjected the role of rationalism in public life to critical inquiry, including the question whether the cause of liberty is best promoted by a public understanding of founding as a wholesale remaking on the basis of a theoretical model. Whatever Tocqueville's answer to this scientific question, his two-founding version of American history clearly removes the period of 1775 to 1787 from consideration as an example of a full-blown rationalist founding. He presents it more as a reform than a founding: "The form of the federal government of the United States appeared last; it was only a modification of the republic, a summary of the political principles spread through the entire society before it and subsisting independently of it."[15]

Fifth and finally, the two-founding thesis seems to have been calculated to influence people's "mental habits," a key concept for Tocqueville that refers to the epistemological premises that people use to process reality. A nation's mental habits will be influenced by how its citizens conceive of their origins. In the measure that Americans embraced the two-founding thesis, then, they would abandon thinking primarily in terms of abstract models of politics. Instead, they would concentrate on the content of their tradition, exploring the question "Who are we?" This approach fits well with Tocqueville's understanding of how best to introduce basic standards of right or good into society, including aspects of natural right (the idea that certain things are just by nature and accessible to human reason). The idea of right, Tocqueville thought, was best taught not through public philosophical doctrines, which lead to extremes and utopian notions, but by being discovered as embedded within historical experience. The task of instructing people about natural right is best undertaken by the analytical historian (like Tocqueville), who sifts through a tradition, indicates the practices of right, and offers corrections to specific aspects of the national character.

On Discerning Tocqueville's Intention

These five points taken together add up to what looks to be a full theoretical position on the character of founding. But did Tocqueville *intend* to set forth a general theory, or is what looks like a theory just the result of his effort to

[14]For one of the early treatments of these thinkers, see Isaiah Berlin, *Against the Current*, ed. Henry Hardy and Roger Hausheer (New York: Viking, 1980), chap. 1.

[15]*DA*, 7, 56.

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recount America's historical origins? There are certainly grounds for favoring the last position. *Democracy in America*, after all, does not proceed in the manner of a theoretical treatise that sets out different possible conceptions of origins and then weighs their respective merits. Furthermore, Tocqueville makes clear his interest in historical explanation, announcing that one of the reasons for writing the book is to understand the rise of the democratic revolution by studying the American case. At the same time, however, Tocqueville presents *Democracy in America* first and foremost as a work of political science intended to promote free government. The question therefore becomes whether, in the event that these two aims are not in perfect harmony, Tocqueville would somehow have "adjusted" his historical explanations to promote an objective commanded by political science.

Tocqueville unfortunately never directly commented on this issue, either in his published works or in his notes. A judgment can accordingly only be reached by inference, which will be investigated here in a slightly roundabout manner. In an important article written over a decade ago, Thomas West identified what he called a major "flaw" in *Democracy in America*: its omission of any mention of the doctrine of natural rights in the context of the Founding. Tocqueville, according to West, failed to note the decisive fact that "in our founding we Americans understood ourselves to be dedicated to the truth that all men are created equal, and that this dedication, and this truth, are what justified the break with Britain and made us a nation."[16] Indeed, as West points out, Tocqueville never so much as mentions America's seminal document, the Declaration of Independence.

Setting aside for the moment the question whether this omission was a "flaw," West's observation is striking, perhaps even more so than he makes out. Classic accounts of America written in a comparative perspective have often characterized the United States as a "propositional" or a "creedal" nation, referring to Americans' core belief in rights and equality grounded in the laws of nature. G. K. Chesterton, one of the first to develop this theme, argued that Americans were bound by the "creed … set forth with dogmatic and even theological lucidity in the Declaration of Independence."[17] Gunnar Myrdal followed in the same path in *The American Dilemma*, in which he speaks of American history as "the gradual realization of the American Creed." Finally, Samuel Huntington, whose

[16]See Thomas West, "Misunderstanding the American Founding," in *Interpreting Tocqueville's "Democracy in America,"* ed. Ken Masugi (Lanham, MD: Rowman and Littlefield, 1991). Although careful to point out that Tocqueville eloquently defends the importance of individual rights, West notes that he does not do so by reference to the standard of natural rights. Tocqueville discusses the importance of individual rights in *Democracy in America*, 672 and 227–28, among other places. The latter passage is reminiscent of John Locke's treatment in *Some Thoughts concerning Education*, especially in its references to children.

[17]G. K. Chesterton, *What I Saw in America* (London: Hodder and Stoughton, 1922), 7.

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book *Who Are We?* restates Tocqueville's two-founding thesis, felt obliged to contrast his position with what he acknowledged is a widely held "creedal" understanding of the American polity, a position to which he himself had previously subscribed in an earlier work.

If *Democracy in America* meant to provide a comprehensive historical account of America's origins, it is fair to ask how a thinker of Tocqueville's rank could have missed so fundamental a point. Was his omission an oversight of some kind—an instance of Homer nodding—or must it be explained as a deliberate act undertaken with a "strategic" purpose in mind? Published scholarship on Tocqueville only touches on this question.[18] Turning for help to the work of historians, there are two possible responses that can be drawn. One, relying on arguments of the "republican" school of historiography, might almost excuse Tocqueville's oversight on the grounds that—contrary to what most have long thought—the doctrine of natural rights was not very significant at the time of the Founding; indeed, one historian has gone so far as to entitle an article "The Irrelevance of the Declaration of Independence."[19] Only with Lincoln and the rise of the Republican Party in the 1850s, this argument continues, did the foundation of natural rights become central to American political life, after which historians made the mistake of reading its importance back into the Founding era. The other response, based on the views of many recent historians, makes it almost inconceivable that Tocqueville could have overlooked the doctrine of natural rights. Perhaps, say these historians, the doctrine was not quite as central as older historians, such as Carl Becker, claimed, but it was still very important.[20] In addition, it had reemerged as a topic of debate in the 1820s, just before Tocqueville arrived in America, in conflicts about property rights and labor issues.[21] By this account, Tocqueville's omission of any

[18]In addition to West, see Paul Rahe, *Soft Despotism, Democracy's Drift: Montesquieu, Rousseau, Tocqueville, and the Modern Prospect* (New Haven, CT: Yale University Press, 2009).

[19]John Phillip Reid, "The Irrelevance of the Declaration," in *Law in the American Revolution and the Revolution in the Law,* ed. Hendrik Hartog (New York: New York University Press, 1981), 46–89. Reid's view is that "natural law principles played a relatively minor role … in motivating Americans to support the Whig cause" (48). For a summary of the republican school's position, see Alan Gibson, *Interpreting the Founding* (Lawrence, KS: University Press of Kansas, 2006), 22–36, and Thomas Pangle, *The Spirit of Modern Republicanism* (Chicago: University of Chicago Press, 1988).

[20]See Daniel Rodgers, "Republicanism: The Career of a Concept," *Journal of American History* 79, no. 1 (1992): 11–38, and Alan Gibson, *Interpreting the Founding*. Carl Becker's *The Declaration of Independence* (New York: Harcourt Brace, 1922) was for many years considered the major work in this area. It stressed the centrality of the ideas of the Declaration, in particular the importance of the natural rights doctrine.

[21]Daniel Rodgers develops this point in his survey of discourse on political concepts in early America in *Contested Truths* (Cambridge, MA: Harvard University Press, 1987). Rodgers explains (69–71) that natural right discourse, having served in a perfunctory

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reference to natural right would have been intentional; something besides pure history must be going on in his developmental account in *Democracy in America*.

Other considerations lend further support to this last position. From an examination of Tocqueville's correspondence from the period of his visit, it is clear that he was acutely aware of the Declaration and its importance. In one letter, written to his friend Ernest de Chabrol, Tocqueville movingly describes a July Fourth celebration that he attended in Albany at which the Declaration of Independence was read in full. The ceremony made a strong impression on him: "there was in all of this something deeply felt and truly great."[22] Could Tocqueville have forgotten this "great" moment when he wrote *Democracy in America*? Even more compelling is the fact that Tocqueville was a close reader of Jefferson's writings. *Democracy in America* includes more citations to Jefferson than to any other source. Tocqueville's judgment of the importance of Jefferson's thought speaks for itself: "I consider him to be the most powerful apostle that democracy has ever had."[23] As much as anyone else, Tocqueville knew the central place that Jefferson gave to the foundation of natural rights as an "expression of the American mind."[24] Can his omission, then, have been anything other than deliberate?

Yet if one is to charge Tocqueville with the crime of being selective in his historical account, it is necessary to supply a motive. Tocqueville, it may be surmised, sought to make America's success appear less dependent on a foundation of abstract natural right than most claimed, because of the dangerous effects of "public philosophy." He developed his objections to philosophical foundations in his book *The Old Regime and the Revolution*, when discussing

way in the early decades of the century, had been revived by the late 1820s, not only because of the celebrations attached to the fiftieth anniversary of the Declaration in 1826, but also because elements of the Jacksonian movement had begun to employ natural rights claims in political debates relating to economic issues.

[22]Tocqueville to Ernest de Chabrol, July 16, 1831, in *Lettres choisies, souvenirs*, ed. Françoise Mélonio and Laurence Guellec (Paris: Gallimard, 2003), 205–6. Tocqueville commented that the reading of the Declaration was "really a fine spectacle … it seemed that an electric current made the hearts [of the audience] vibrate" (ibid.). For further discussion of this event see George Wilson Pierson, *Tocqueville in America* (Baltimore: Johns Hopkins University Press, 1996), 179–84, and Rahe, *Soft Despotism*, 195–96.

[23]*DA*, 249. See also Tocqueville's characterization of Jefferson as "the greatest democrat who has yet issued from within American democracy" (193). In addition, there are whole passages of *Democracy in America*, especially in the chapter "On the Three Races That Inhabit the United States," in which Jefferson's analysis lies in the background, though it is not explicitly cited (see, e.g., *DA*, 341–48).

[24]Jefferson to Richard Henry Lee, May 8, 1825, in *The Writings of Thomas Jefferson*, ed. Andrew Lipscomb and Albert Ellery Bergh (Washington, DC: Thomas Jefferson Memorial Association, 1903), 16:118.

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the disastrous role that intellectuals played in preparing the way for the French Revolution. "The men of letters," as he called them, all began their thought from the same "point of departure": "they all think that it would be good to substitute basic and simple principles, derived from reason and natural, for the complicated and traditional customs which ruled the society of their time."[25] According to Tocqueville, theorizing in this way leads to excess and encourages mental habits that abstract and simplify, when what is needed to promote liberty is habits that recognize particularities and complexity. Tocqueville expressed the same concern about "general ideas in political affairs" in *Democracy in America*, though without explicitly mentioning natural rights doctrine.[26]

The Concept of Political Foundation

The contemporary term "political foundation" is not one that Tocqueville used, but his analysis of what transforms a collection of discrete individuals into a political community treats the same concept. A community, by Tocqueville's account, only comes into being where certain ideas are shared: "without common ideas there is no common action, and without common action men still exist, but a social body does not."[27] Scattered throughout his work are examples of the kinds of ideas that perform this function. Three types stand out.

First, in a well-known passage on patriotism, Tocqueville identifies customary thinking as the traditional source of attachment to the nation. Whereas the modern concept of patriotism stresses the individual's rational calculation of a stake in the community, the older form rested on an "instinctive love of country." This mode of attachment, which once dominated in Europe, was based on what Tocqueville described as "a taste for old customs, the respect for ancestors and the memory of the past." Traditional patriotism, Tocqueville emphasized, had nothing philosophical about it. Neither was it essentially religious, though in some nations custom contained elements of Christianity. Rather, traditional patriotism was "itself a sort of religion, it does not reason at all; it feels, it believes, it acts."[28]

[25]Alexis de Tocqueville, *The Old Regime and the Revolution*, trans. Alan S. Kahan (Chicago: University of Chicago Press, 1998), 196.

[26]*DA*, 415, 416.

[27]*DA*, 407. He goes on: "in order that there be a society . . . it is necessary that all the minds of the citizens always be brought and held together by some principal ideas" (ibid.).

[28]*DA*, 225. In another passage, Tocqueville expresses some doubts about whether the modern theoretical basis of solidarity can ever work entirely: "What maintains a great number of people under the same government is much less reasoned will than

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Second, Tocqueville identified a genuinely religious basis of solidarity. The prime example he cites was found in the original New England communities. These were formed by their devotion to "*an idea*" (his emphasis) to fulfill a sacred mission.[29] There was nothing customary in this idea, which called for a clear and active commitment of ongoing faith. Christian thought, Tocqueville indicates, also had an allied idea in the form of the doctrine of providence that could contribute to forming the common ground of a community.

Finally, Tocqueville spoke of plans to make philosophical doctrines the basis of community. He noted the efforts by intellectuals in the eighteenth century to introduce ideas of natural law as the main political foundation of the new order, and he identified in his own time another philosophical idea, pantheism, that combined the laws of the natural physical processes with a vague progressive historical movement. These instances illustrate the central role that modern thinkers ascribed to philosophical doctrines in politics, which would become active as a political force in the name of philosophy (or science) and supply the bond to hold modern societies together. Philosophy also held out the hope of providing an impartial and objective standard of political right that might eventually supersede the disparate standards deriving from particular histories, partisan views of justice, or different religious beliefs.

America's Founders were deeply influenced by the general philosophical ideas of the eighteenth century, even though, as men of great practical experience, most of them had tempered expectations about how far or how quickly this project could succeed in the world at large. Still, the major leaders were fully conscious of the "revolutionary" step they were taking in America by offering this new ground of political solidarity. John Adams, for example, recorded a seminal debate in the Continental Congress in 1774, where the issue in question was the "*foundation* of right" to be used to justify American policy: "We very deliberately considered and debated … whether we should recur to the law of nature" along with the historical foundations of the tradition, such as the "common law" and "the charters" or "the rights of British subjects."[30] Americans were the first to bring a theoretical doctrine down from the tracts of philosophy and insert it into the city. The claim that modern polities rest on theoretical doctrines later received one of its clearest statements from Abraham Lincoln: "No policy that does not rest upon some philosophical public opinion can be permanently maintained."[31]

the instinctive and in a way involuntary accord resulting from similarity of sentiments and resemblance of opinions" (358).

[29]*DA*, 32.

[30]John Adams, *The Works of John Adams* (Boston: Little and Brown, 1850), 2:371 (emphasis added).

[31]Abraham Lincoln, speech at New Haven, March 6, 1860, in *Complete Works of Abraham Lincoln*, ed. John G. Nicolay and John Hay (New York: Century, 1894), 2:619.

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"Political foundation" is the term used here to designate the central idea (or set of ideas) that is proposed to supply the commonality of a political community, assuming that there is some such core idea. A foundation, as noted in the last section, refers to a general idea, whether explicit or implicit, of right or good, and ultimately to the source or authority that sanctions that idea. By this account, there are many specific political foundations, nearly as many as there are different communities (nearly, because some communities may adopt virtually the same foundation as others, as was the case, for example, in various Communist regimes). For purposes of analysis, foundations can best be categorized on the basis of their respective *sources* for the understanding of right. Reorganizing slightly Tocqueville's list, these sources may be located in religion, nature, and History (capitalized here to distinguish it from ordinary narrative accounts). In the case of religion, God or scripture fixes a standard of right, or shows where history is going; in the case of nature, right is found in a permanent or eternal standard discovered by philosophical (or scientific) investigation; in the case of History, right is known from something that occurs in time, whether from what is old or ancestral (Customary History) or from knowledge of where history is going (Philosophy of History). These sources are parallel to categories used in discussions of philosophy or theology, but as *political* foundations they have special reference to ideas that are capable of moving large numbers of people and supplying the solidarity for what Tocqueville called a "social body."

The Theory of Customary History

With the help of the concept of political foundations, the theoretical project embedded in Tocqueville's two-founding thesis can now be more fully described. Tocqueville sought to replace the theoretical foundation preferred by modern philosophers with a foundation in Customary History. The revival of this historical approach, which is most often associated today with Hume, Burke, and Guizot, originated with Montesquieu, and it is in his thought that the character of this project comes most clearly to sight.[32]

[32]The interpretation that follows develops one aspect of Montesquieu's thought, not the whole of it. More than perhaps any other political theorist, Montesquieu articulated his thought in different "parts," the harmony among which has long been a subject of debate. For example, certain chapters of the work indicate that Montesquieu also favored a public doctrine of natural law. He should perhaps be seen as providing a number of alternative foundations, the choice (or mixing) among which must be at the discretion of the legislator, as context would dictate. For arguments on the importance of history as a standard along with or in place of natural law, see James Stoner, *Common Law and Liberal Theory* (Lawrence, KS:

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The fact that Customary History had to be revived in the modern era meant that its properties had to change. In a world already altered by the introduction of philosophy, Customary History could not assume the form of the naïve and unconscious "instinctive patriotism" that Tocqueville described. It required something new and more rational. For one thing, the premises underlying Customary History needed to be elaborated theoretically, if not for a general audience, then at least for those who would be engaged in the project of bringing it back. For another, the modern mind could no longer readily accept legend and fable. Customary History had at least to appear to meet the standard of genuine history, in Gibbon's sense of "apply[ing] the science of philosophy to the study of facts."[33]

Montesquieu began the task of creating modern Customary History in his famous chapter on the English constitution, the longest in *The Spirit of the Laws* (XI 6).[34] The English constitution, which had political liberty as "its direct end," was Montesquieu's preferred regime for his time (XI 5). Most of the chapter is taken up with a description of the constitution's animating structural principle of the separation of powers. But near the end, Montesquieu abruptly shifts focus and raises the question of the origins of this constitution. From Tacitus's work on "the mores of the Germans," Montesquieu observes, it becomes clear that "it is from them [the Germans] that the English took their idea of political government. This beautiful system was founded in the woods" (XI 6).

The discovery of the origin of modern liberty in the "forests of Germany" was the basis of the celebrated Gothic (or barbarian) thesis, which was subsequently embraced in one form or another by so many thinkers, including Gibbon, Guizot, and Tocqueville (XXX 18). For Montesquieu, it was the Goths, those "valiant people," who taught men the worth of liberty (XVII 5). The Gothic thesis remained a major theme of historiography until the world wars of the twentieth century, when the German forests lost much of their luster along with their foliage. Nearly all of the American historians who established the professional discipline of history in the latter part of the nineteenth century embraced this thesis.[35]

University Press of Kansas, 1992), 154, and Pierre Manent, *The City of Man* (Princeton: Princeton University Press, 1998).

[33]Edward Gibbon, *The Decline and Fall of the Roman Empire*, ed. Hans-Friedrich Mueller (New York: Modern Library, 1995), 167.

[34]Because many readers use different editions of *The Spirit of the Laws*, references here are to book and chapter number. The edition used is Montesquieu, *The Spirit of the Law*, trans. Anne M. Cohler, Basia Carolyn Miller, and Harold Samuel Stone (Cambridge: Cambridge University Press, 1989).

[35]For an account of "Gothic history" and its use in America, see Trevor Colbourn, *The Lamp of Experience* (Chapel Hill: University of North Carolina Press, 1965).

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The challenge that the Gothic thesis posed for modern political philosophy could not have been greater. Instead of the origin of liberty being found in the philosophical abstraction of the state of nature, Montesquieu located it with "our ancestors" in their ancient historical condition. What a remarkable slight to philosophy, and, for that matter, to theology! According to this view, the principles of liberty did not originate with philosophy, or indeed with rationalist thought. Liberty derived from the mores of a barbarian people who originally knew neither philosophy nor Christianity. Montesquieu here also initiated a new method for investigating political right: not deductive or geometric reasoning from abstract premises but the tracing of things to their origin or "germ" and the observation of their subsequent development. The mental habits encouraged in society by this approach also differ from those that flow from rationalist philosophy. Individuals develop a disposition to look to the past with appreciation, rather than to dismiss everything that is old as a "prejudice." With this explanation, the modern idea of Customary History was born.

Following his treatment of the English constitution, Montesquieu turns in the next chapter to the "monarchies we are acquainted with," meaning the earlier monarchies found on the Continent (XI 7). This form of government differs slightly from the English constitution in that it had honor or glory rather than liberty as its direct end—a fact that did not, however, make it less able to secure liberty. It is result, not intention, that matters, and in the world of politics the two often differ. These older monarchies also derived from the German forests, making them cousins of the English regime, and Montesquieu here takes the occasion to develop further the Gothic thesis by tracing their development (XI 8). Originally, the German tribes were each able to assemble in pure republican fashion, in the manner that Tacitus recounted. But after they conquered much of Europe, the process of popular consultation could only continue by developing a system of representation. In addition, having initially enslaved those whom they conquered, which created ranks in society, the rulers eventually took steps to grant certain civil liberties to all.

At the end of this process, the old-style European monarchy emerged—the "gothic government among us"—with its institutions of representation, its different orders, and its complex balances. Montesquieu pronounces his judgment on this system: "I do not believe there has ever been on earth a government so well tempered." He concludes the chapter: "it is remarkable that the corruption of the government of a conquering people formed the best kind of government that men could imagine" (XI 8).

It is unclear whether Montesquieu is asserting that the Gothic monarchy is the best regime simply, that is, forever, or whether it was the best that men could imagine *until that time*. No matter. If the main question of political theory is the character of the best regime, Montesquieu in this brief chapter—indeed, in three sentences—provides his response to classical political philosophy. The contrast is striking, even more in the method recommended for

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investigating how to determine the best regime than in the exact character of that regime itself. For the classics, the best regime is discovered by reason and has the form of an eternal model. For Montesquieu, the best regime is a gift of historical accident that is tied to a particular context, not a product of something intentionally constructed by thought. The best regime is a product of unconscious development inside of actual history, in this case even of a falling away (a "corruption") from an original form. Before the best regime came to be, it could not have been known.

This difference accounts for the otherwise curious placement of the next chapter (XI 9), entitled "Aristotle's Manner of Thinking." Montesquieu faults Aristotle for the incompleteness of his treatment of the different kinds of monarchy, one form of which, absolute kingship of the best person, arguably represents Aristotle's conception of the best regime. Montesquieu's deepest criticism of Aristotle is not that he erred in constructing the best regime that reason could discern, but that he held that reason had the capacity to construct the best regime in the first place. The "ancients"—this would include Plato—"who did not know about the distribution of powers in the government by one, could not form a just idea of monarchy." They could not form this idea, because monarchy in its best form had not yet come into being. The classics' "manner of thinking" overestimated what pure theory can know.

In Montesquieu's presentation of Customary History—I will refer to it now as his doctrine—reason plays a role in political life, but its scope is limited in comparison to what modern political philosophy envisaged. (In comparison to classical political philosophy, Montesquieu, as just noted, also offered a more modest view of what *theorizing* about politics could discover, though classical political philosophy, unlike its modern counterpart, never embraced a project of trying to actualize the best regime.) Under Montesquieu's doctrine, political philosophy entered political life in a new way, abjuring the modern approach of openly proclaiming the authority of philosophical doctrines and of encouraging people to think of starting society anew. Instead, political philosophy should be introduced more indirectly. It should be inserted into society by thinkers who engage in concrete political analysis and by historians. These historians will look for the good in what has come to be, extracting and refining ideas of right in the process of their analysis. The good, contained in part in the original germ, carries with it a measure of authority deriving from the usual social disposition, perhaps created or perhaps innate, to respect the original, the old, and one's own. Cultivating and encouraging the "historical sense," as distinct from the "metaphysical sense," in turn promotes the weight of the customary within society.[36]

[36]The term "historical sense" comes from the German historian Friedrich Carl von Savigny, *Vom Beruf unserer Zeit für Gesetzgebung und Rechtwissenschaft* (Hildesheim: Georg Olms Verlagsbuchandlung, 1967), 5.

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Finally, historically-minded thinkers, unlike Enlightenment theorists, will not try to usurp the role of political actors, but will appear to defer to them, serving as their counselors. Political philosophy will encourage moderation.

Underlying this view of history is a premise, for which Montesquieu perhaps never fully accounted, that what unfolds or develops on its own, so long as it is not violently interfered with by vast rational plans, tends to work out well (XIX 5, 6). This process of unfolding is not teleological, in the sense of development toward a single known end (and ultimately toward a perfect and universal model). It is "organic" or "natural," in a sense reminiscent of biological beings that follow a slow and not perfectly defined process of growth, with each particular being having its own "genius," or "spirit." Montesquieu's insertion of this premise into Customary History did as much as anything else to define and shape the modern alternative to the Enlightenment concept of rationality.

Montesquieu helped invent the idea of what we today call "tradition," referring to that which grows insensibly and which is worthy of respect. Tradition is the antidote to the modern philosophic animus against the past. A tradition is presented as something already there, as a natural fact that all recognize; but in fact it may be something that the artful poet or historian must find and articulate. Authors who discover a tradition would of course be reluctant to announce their invention, as any claim of originality undermines the purpose of the project. Montesquieu presents the Gothic thesis as the real, that is, the historically actual, path of evolution in Europe, a proposition he labors to prove in the second half of *The Spirit of the Laws* by detailing the development of European constitutions and jurisprudence. (Tocqueville proceeds in a similar manner, claiming no act of invention in articulating the Puritan tradition.) Still, it would be hard for scholars today to acknowledge the Gothic thesis as fully historical. There seems to be more than a touch of artifice in Montesquieu's discovery of it as "our" tradition.

Customary History envisages a new way of introducing natural right into the political world. Right is brought in piecemeal and judged in specific contexts, as these can be examined in the unfolding of history. As practices enter history, the "historian" (Montesquieu) selects them and pronounces on their worth. This approach is the forerunner of Burke's concept of "prescription," where the historian modestly judges what has proven its merit, calling on history to serve as the lead witness. Montesquieu's wish, by his own account, was to promote "moderation," which he praises as a great virtue (XXIX 1). Moderation is arguably the best emulator of prudence, the classical political virtue par excellence. But moderation is not prudence, which on occasion demands boldness and immoderation. This consideration prompts one to ask whether Montesquieu's doctrine represents the best way to introduce right in the political world, or the best way to do so *now,* even with its limitations, in an era in which all viable positions must be offered as doctrines, even one as seemingly antidoctrinal as Customary History. Prudence

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no longer has the resources it once had to stand on its own, but needs the backing of a doctrine to provide the space within which it can operate.

Classical political philosophy was modest in its political aims, urging great caution in the political application of philosophy. It was maintained that philosophy should never be introduced in an unmediated fashion as public doctrine or foundation. The limited role that political philosophy prescribed for itself was for the purpose, first, of promoting the political good, since philosophical teachings about right were too complicated to be made into doctrines, and, second, of protecting philosophy itself, since philosophy might be endangered by becoming directly embroiled as a claimant to authority. By Montesquieu's day, however, the classical approach was effectively foreclosed, in large part because of a new path that philosophy had chosen. Philosophy was now engaged in a project of wholesale reconstruction of the political world. Whatever the reasons or motives for this new disposition—whether to rescue the world from theology, to serve the interests of the many rather than the few, to construct a new defense for free inquiry, or to make use of philosophy's new powers of control (perhaps for the sheer pride of exercising power)—the consequence, for Montesquieu, was not in doubt. Philosophy had become unfriendly to the cause of political liberty and was serving as chief supporter of a new absolutism known as "enlightened despotism."

Customary History was a counterdoctrine to modern philosophy. It was believed that in a contest with the philosophic idea of nature, tradition would be more than able to hold its own. Customary History also offered some powerful new theoretical arguments. It emphasized the *fact*—making it perhaps more of a fact than it was—of an existent substance: the "spirit" of a nation or a civilization. The staying power of this "spirit," above all its resistance to being altered or engineered, encouraged a kind of moderation. Respecting what has developed, correcting or reforming its ways without attempting to begin anew, is not only the milder and wiser policy, it is also the one in accord with how things are. It is "realistic." Montesquieu answers Machiavellian (and philosophical) realism by a realism of his own making. Modern philosophy overestimated the plasticity of political matter and thus exaggerated its capacity to shape political matter. It was "utopian."

On a theoretical plane, the doctrine of Customary History introduced a new and rival understanding of nature. What is natural is what is unique to each being, with a "being" in politics now referring not just to an individual person, but also—and especially—to collectivities, such as nations and civilizations. Each unit lives and unfolds on its own in interaction with an environment. Each nation develops its own "general spirit" (XIX 4) or what Tocqueville called a "national character." This view of the natural contrasted with the most common view of modern philosophy, where the natural meant the human discovery or construction of laws that account for the movement and properties of the things around us. Customary History also promised

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great appeal as a rival political doctrine, as people have generally displayed a strong inclination to look back to the past with veneration.

Two final observations may be offered about Montesquieu's doctrine. The first is that "tradition" is, of course, a general idea or an abstraction. There are only particular traditions—unless there would develop a universal tradition that applied to the whole world, which is the basis for Hegel's concept of "spirit." While Montesquieu counsels respect for tradition as such, that is, as a general rule, he shows along the way that there are many cases in which a prevailing tradition has little to recommend it. In such instances a full-scale attempt at renewal might not be unreasonable, even if the chances that it will occur are unlikely and the chances that it will succeed are less likely still. For the sake of his doctrine, however, he does not take his general bearings from these cases, but presents the normal course of development as tending to work in a salutary direction. This approach serves to bolster moderation and to dampen the impulse to remodel societies.

Second, although Montesquieu adopts a rather "traditional" stance in politics, it does not follow that he held to a traditional view of philosophy. He opposed one doctrine (that philosophy should direct and control politics by the introduction of theoretical models) with another (that Customary History should be society's point of departure). His doctrine was a philosophical innovation that was as bold, and as much of a construction, as anything that modern philosophy had ever attempted. Or, as he obliquely acknowledged, "And I too am a painter" (preface).

Montesquieu's political goal was to foster a disposition to moderation, which in his age required a new theoretical doctrine. No act of theoretical intervention, he taught, is ever without unforeseen consequences. This law of unforeseen consequences would obviously apply to his own doctrine. Whatever the risks involved, Montesquieu must have concluded that they were worth running, given the destructive consequences of prevailing theoretical views. It remains an open question whether the project he launched ultimately produced the moderation that he hoped for.

Tocqueville's Application of Customary History to America

Tocqueville cited three thinkers—Pascal, Montesquieu, and Rousseau—who were most influential for him while writing *Democracy in America*, of whom Montesquieu seems to have been the most important.[37] Tocqueville continued Montesquieu's theoretical project, though with major innovations, by

[37]In a letter to his friend Louis de Kergorlay, Tocqueville spoke of the three thinkers who influenced him most ("the three men with whom I live a bit every day"): Pascal, Montesquieu, and Rousseau (letter of November 10, 1836, in *Oeuvres complètes*, vol. 13.1, ed. André Jardin and Jean-Alain Lesourd [Paris: Gallimard, 1977], 418).

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fashioning a Customary History for America. Insofar as he intended America as a model for the modern world, akin to Montesquieu's presentation of England in the previous century, his account was also meant to offer instruction for how to establish and maintain liberal democratic government. Europeans, of course, would have a different Customary History from Americans, but the example of the American case, as Tocqueville presented it, might provide a template for how Europeans could treat their own past.

It is reasonable to ask why Tocqueville chose to anchor his Customary History in Puritan New England rather than in some other tradition in America. Other options were open. New England, in fact, was not the first English colony—Virginia was—but Tocqueville quickly dismissed the Southern tradition, with its slave regime, from the center of the America he wanted to discuss. *Democracy in America* was above all a book that was meant "to instruct democracy."[38] Tocqueville might also have chosen the same Customary History that Montesquieu used, tracing American liberty back to the Goths. Strange as it sounds, many Americans before Tocqueville (including, for a time, Jefferson) had adopted this approach, and, in a development that would almost certainly have surprised Tocqueville, it was to enjoy a huge revival among intellectuals following his visit. For his part, Tocqueville subscribed to the Gothic thesis *for Europe*. He referred to Tacitus and the "political institutions of our fathers, the Germans," whose influence may very well have constituted "the fertile seed (*germe*) of free institutions [that] had already entered profoundly into English habits" (and thus formed the colonists' idea of liberty).[39] But Tocqueville went no further, thinking it unlikely that those who left the Old World would be interested in linking themselves to the forests of Germany.[40] To be effective, Customary History now had to appear as fully rational. This possibility could be realized in America, indeed only in America, because its history was, so to speak, visible from the beginning. It is the "only country … where it has been possible to specify the influence exerted by the point of departure on the future of

Scholars have disputed the degree of influence among the three, but I follow Raymond Aron and Jean Claude Lamberti in assigning the prize to Montesquieu.

[38]*DA*, 7. Virginia helped to form the general mores of a romantic and more aristocratic slave nation in the South (31). Although the book's central theme is democracy, Tocqueville provides extensive treatment of the South's national character.

[39]*DA*, 315, 29.

[40]The only connection Tocqueville makes between America and the Goths is between not the Goths and the European settlers but the Goths and the Indians. Tocqueville speaks of the "resemblance that exists between the political institutions of our fathers, the Germans, and those of the wandering tribes of North America, between the customs recounted by Tacitus and those I was sometimes able to witness" (315).

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states."[41] Tocqueville could rely on documents and known sources, avoiding the inventions that opened the Gothic thesis to serious questions.

Most of the historians whom Tocqueville met in America were from New England, and the greater part of historical work in America at that time concentrated on that region.[42] Locating the essential point of departure in New England thus had the advantage of being accurate, or at least plausible, on historical grounds: "New England's principles spread at first to the neighboring states; later, they gradually won out in the most distant ones and . . . penetrated the entire confederation."[43] But historical considerations aside, Tocqueville found in New England the kernel of the principles of right needed to sustain modern democracy. New England history contained three fundamental components of free government and liberty: self-regulating individuals, political liberty (civic participation), and, eventually, private rights.

Developing self-regulating individuals depended on sound mores, which were best cultivated by religion. New England became the basis for Tocqueville's famous judgment in favor of combining "*the spirit of religion* and *the spirit of freedom*."[44] The spirit of religion, which was ignored or rejected in modern philosophical doctrines of right, was also absent in Gothic Customary History, which is another reason why New England represented for Tocqueville a more attractive point of departure than Germany. Tocqueville modified Montesquieu by substituting the Puritans for the Goths and by bringing religion into the equation.[45] New England demonstrated the reciprocal and reinforcing relationship between Christianity and democracy. To be sure, the original Puritan theocratic community had to undergo changes before it could become compatible with modern liberty. Its "tyrannical" excesses had to be purged.[46] Tocqueville introduced considerations of natural right by approving the devolution (or "corruption," as Montesquieu might have called it) from the original regime and its change to a more modern form. Like Montesquieu, Tocqueville elected to introduce

[41]*DA*, 28.

[42]His is the first fully rational Customary History. As for other options—for example, treating Pennsylvania as the most influential colony (as George Bancroft would shortly do)—Tocqueville either did not know enough about these possibilities or found the arguments unconvincing. The greater part of historical work in America at that time concentrated on New England.

[43]*DA*, 31–32. This is a point many historians today might dispute and was also called into question in George Bancroft's famous nineteenth-century history, which develops the thesis of multiple traditions in the American colonial period.

[44]*DA*, 43.

[45]Montesquieu appeared quite content to omit religion from the principal narrative of the early development of liberty. But when he directly takes up the theme of religion (especially in book X), he supports a moderate form of Christianity.

[46]*DA*, 39.

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natural right teachings piecemeal, inside of an historical account, rather than to offer a sweeping philosophical doctrine to remodel the entire society.

Political liberty is a second essential element of a modern liberal democratic regime. Those living in democratic times, Tocqueville stressed, need to learn the habits of taking part in governing, not only to protect themselves from the growth of an all-encompassing central state, but also to promote their personal development as human beings. The roots of this participatory theory, which were largely absent from modern philosophical doctrines, could be found in New England. Puritanism "was almost as much a political theory as a religious doctrine. . . . Democracy such as antiquity had not dared to dream of sprang full-grown and fully armed" in New England.[47] In the New England communities, Americans learned the skills of self-government, becoming citizens in a meaningful sense.

Finally, the third element—private rights—developed in the course of time in New England. This idea held that "man is free and owes an account of himself only to God."[48] Private rights were an aspect of liberty that was promoted in modern philosophical doctrines, although Tocqueville also made clear that the sentiments and energy that supported securing private rights depended heavily on cultivating the first two forms of liberty. Liberty, for Tocqueville, consisted in a combination of different principles that are arrayed in a complex and uneasy balance.

Nothing in Tocqueville's account suggests that he was a proponent of a progressive view of the movement of history, according to which matters tend to evolve for the good. His muted account of "growth" in New England is not part of a general theory of development. As for his overall view of history, Tocqueville invoked "Providence" to seal the argument for the movement of modernity to a stage of equality, which he thought held the potential to be the most just era man had known. But he saw nothing in this dispensation that assured a beneficial result. His argument rather was in the other direction: left on its own, modernity was trending to one form or other of democratic despotism. To forestall this outcome, he emphasized the need to employ "art" or "political science." Reason was required to help shape and guide society, but it was reason of a different kind from the model of rationalist reconstruction developed by modern philosophy. It was the reason of political science.

Likewise, in cautioning against establishing political foundations based on modern natural law doctrines, Tocqueville was not rejecting natural right. He referred often to what is "by nature" or according to "the order of nature."[49] In a reversal of the modern philosophical view, however, his

[47]*DA*, 43.

[48]*DA*, 62.

[49]Tocqueville never offers a full, discursive treatment of his understanding of natural right, which must be pieced together from various portions of his work.

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understanding of what was right by nature led him to be wary of public doctrines of right, including modern natural rights doctrines, which are inevitably oversimplifications. Natural right is best seen when expressed in particular cases, through different and shifting notions of conventional right. In recounting a Customary History, the theorist-historian can purge national character of its excesses while assuring that the core of that character remains intact.

Many other thinkers in America at the time, especially in the Whig Party, were engaged in a similar project of creating an American Customary History. Their aim was to combat what they saw as the materialism and easy progressivism of modern philosophical doctrines—problems they often attributed, rightly or wrongly, to the philosophy of John Locke. Customary History, usually offered in combination with a natural rights teaching, was meant to correct the philosophical foundation of the Founding. One of the most thoughtful writers in this school was the New England Whig leader Rufus Choate. In a series of orations in the 1830s and 1840s, including one entitled "The Age of the Pilgrims, Our Heroic Period," Choate called for new histories to celebrate the resolute qualities of our earliest "fathers."[50] Choate sought to cultivate the historical sense—a disposition to look back with reverence to what is old and one's own—that was being threatened by a rationalist mindset that led each individual, to use Tocqueville's description, to "take tradition only as information … [and] to call only on the individual effort of his reason."[51] For Choate, this way of thinking was insufficient to hold a society together and promote the virtues of a free people.

Statesmanship and Political Foundations

How should Tocqueville's two-founding thesis be judged? Thomas West, in the article referenced earlier, does not hesitate to provide an answer. West's concern, it turns out, is not chiefly with Tocqueville's historical error, but with what West regards as his theoretical error of downplaying natural rights doctrine. For West, that doctrine is the fundamental source of

Instances can be found at *DA* 98, 184, 282, 284, 348, and 510. Natural right often appears in passages having a poetic quality, as when Tocqueville speaks of men building monuments to history, of the Indians being driven from their native lands, and of the strivings of those with great souls and great ambition. Tocqueville leaves open the question of how revealed religion helps man to understand right in all of its dimensions.

[50]Rufus Choate, *The Works of Rufus Choate with a Memoir of His Life*, ed. Samuel Gilman Brown, vol. 1 (Boston: Little, Brown, 1862).

[51]*DA*, 43.

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protection of liberty in America and the core of the regime. Any flaws that have developed in American politics since the Founding are not attributable to that doctrine, but owe their origins to other, and unrelated, theoretical sources. Nor would it make sense, by West's reasoning, to close the door to all philosophical doctrines in order to block the dangerous ones: the good would only be thrown out with the bad. However admirable *Democracy in America* may be in other respects, West regards it as defective on the central point of mistaking America's political foundation.

Some have defended Tocqueville's omission of the doctrine of natural rights by claiming that his audience was chiefly among Europeans, not Americans. Attempts to promote natural rights theory with moderate Europeans at that time, it is argued, would only have been dismissed, as the lesson they had drawn from the French Revolution was that its excesses resulted from its philosophical foundations.[52] Natural law doctrines were considered to be dangerous. Furthermore, any effort to distinguish a moderate, Lockean version of natural law from a more radical one—supposing even that Tocqueville had been so inclined—was too refined an argument to make headway in public. The French, going back to 1776, had interpreted the American Revolution and its doctrine of natural law in the radical sense of giving full license to completely remaking society: "The Americans ... gave substantial reality to what we were dreaming about."[53] The practical choice in Europe was between a foundation that was based on philosophical doctrine and one that relied on Customary History.

This argument about audience, if true, still leaves unanswered the question of what effect Tocqueville's two-founding thesis might have on *Americans*. If his concern was exclusively for Europeans, he might be charged with endangering the cause of good government in America in order to promote good government in Europe, or, on a more charitable interpretation, with helping Europe while doing no harm to America. Americans, by this last reading, would never abandon their cherished founding principles just because a well-intentioned foreigner failed to assign the Declaration the credit it deserved.

An alternative position would claim that Tocqueville intended *Democracy in America* to instruct *all* readers, Americans as well as Europeans. His teaching about the danger of theoretical doctrines in political life was therefore meant to have an effect within the American context, and it seemed in fact to bolster the aforementioned body of thought at the time, calling for a corrective to the Lockean natural rights doctrine. Versions of the two-founding thesis subsequently became a major theme of American historiography.[54] Others

[52]Rahe, *Soft Despotism, Democracy's Drift*, 195.

[53]Tocqueville, *The Old Regime*, 201.

[54]Other versions of the two-founding thesis were already under discussion or had been sketched. Included here was Daniel Webster's Plymouth Oration, December 22, 1820.

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were in accord with Tocqueville's *general* position of promoting Customary History, but they rejected the two-founding thesis, with its New England–Puritan narrative, on the grounds that it was inaccurate historically (it undervalued the Founding), spoke only to one locality (most Americans did not regard the Puritans as their "fathers"), and presented a dangerous model (religious themes were too deeply enmeshed in politics). They offered alternative versions of Customary History that were more national in scope. The leading candidate located the "germ" of liberty within the Founding era (1775–1787), although now on customary as much as philosophical grounds. This approach, adumbrated in *Federalist*, No. 49, sought to place the "prejudices of the community on the side" of law and to inculcate a "reverence" and "veneration" for the Constitution and the Founding. Rufus Choate came around to this approach by 1845 in his celebrated speech to the Harvard Law School, in which he commemorated the general idea of law, crediting the constitutions of the Founding era, national and state, as the source of American liberty.[55] Earlier, a young and unknown Whig politician from Illinois, Abraham Lincoln, introduced a similar account, proposing to make obedience to the laws, attached to the memory of the Founding, into "the political religion of the nation."[56]

Tocqueville's argument for Customary History thus connects *Democracy in America* with the general Whig approach in America that urged a foundation based on a synthesis of natural rights theory and Customary History. Tocqueville, of course, went further than any of the Whigs in his silence about the Founders' natural rights doctrine, which they acknowledged. But Tocqueville at one point appeared to concede the effectiveness of this doctrine *in America*, when he noted that Americans never displayed "as blind a faith [as the French] in the goodness and absolute truth of any theory."[57] Americans had a philosophical foundation that worked, in part because they applied it with a large dose of prudence. A theoretical foundation so hedged might satisfy the demands of good government.

If, as argued here, Tocqueville intended his theory of the Founding to instruct Americans, then this would answer the criticism that he was concerned only with his European audience. But it does so only by strengthening Thomas West's general objection to *Democracy in America*, because Tocqueville now can be charged with deliberately downplaying the natural rights doctrine. For West, any approach that veils or qualifies, let alone omits, "the abstract principle" at the core of the Founding undermines the cause of liberty.

[55]Choate, *Works* 1:414–38.

[56]Abraham Lincoln, address before the Young Men's Lyceum of Springfield, January 27, 1838, in *Complete Works* 1:12.

[57]*DA*, 415.

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There remains, therefore, an unresolved issue, not only of intellectual history, but also of political theory and of practical politics today. What political foundation is best for America, and how does one even approach answering a question of this kind? Searching for a simple determination of the "one best foundation" may go beyond what political philosophy can furnish. An alternative is to proceed in a more "political" fashion by considering the merit of foundational ideas as judged in part by their effects in different contexts. This approach recognizes a role for what amounts to "statesmanship" in determining the proper application of political ideas. Statesmanship, as Tocqueville explains, involves making judgments that abjure a strict adherence to laws or formulae, on the grounds that the changing character of political life demands varying methods to achieve certain fixed ends.[58] The form in which political foundations are expressed must therefore take account of different circumstances, not in the ordinary sense of the shifting political situation, but, since fundamental ideas generally outlast such situations, in the much broader sense of great changes of context that bear on the character of the nation.

The historical experience of the United States since Tocqueville's visit obviously provides new material for judging the question of the best presentation of foundational ideas. The slavery crisis of the 1850s made it evident that the "general spirit of the nation" could not be expressed without acknowledging the centrality of the foundation of natural rights. There are reasons to think that Tocqueville himself, in his responses both in public and in private to the slavery crisis—he died in 1859—was already moving in this direction, as he was searching for a clear doctrinal expression of right to oppose slavery and its expansion.[59] In any case, following the Civil War and the refounding of America's polity, the context of American political life changed, and it became impossible thereafter to ignore the thought of America's most important statesman at its most critical moment.

If the essence of the doctrine of natural rights is to state a truth, then it must be asserted in this form, that is, as a truth, and not merely as a useful idea for its day, much less a helpful myth. To say, however, that it is a truth does not deny that it may be less than the whole truth. Incompleteness can lead to

[58]*DA*, 15, 416.

[59]See especially Tocqueville's letters to Theodore Sedgwick, Edward Childe, and Jared Sparks from 1857 in *Tocqueville on America after 1840: Letters and Other Writings*, ed. and trans. Aurelian Craiutu and Jeremy Jennings (Cambridge: Cambridge University Press, 2009), 226, 224, 240. In addition, Tocqueville took the (for him) unprecedented step of publishing a public testimony in America against slavery in 1855, which appeared first in the *Liberty Bell* and was reprinted elsewhere. In this testimony he inches toward a natural law position, though the final source he cites is God's conception of man.

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distortion and error, which suggests the need for an ongoing process of adjustment or supplementation. This process can take place through a creative interpretation of the natural rights doctrine or by introducing other foundational principles to qualify and complement it. Tocqueville's *Democracy in America* remains the indispensable text for guiding us in this difficult task.

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