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Beyond the "formidable circle": Race and the limits of democratic inclusion in Tocqueville's Democracy in America

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Citation

Beyond the "Formidable Circle": Race and the Limits of Democratic Inclusion in Tocqueville's *Democracy in America**

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Despite his assertion that the first volume of *Democracy in America* (1835) would concentrate upon institutions, Tocqueville found himself finishing the draft manuscript in 1834 and unable to conclude his study without discussing race relations in the United States. In the end, he quickly penned a final chapter. That chapter—by far the book's longest—offers "Some Considerations on the Present State and Probable Future of the Three Races That Inhabit the Territory of the United States." Tocqueville begins the chapter by acknowledging that its subject "is American without being democratic" (*DA*, p. 516),[1] and to the extent that it analyzes slavery in the South and the interactions of the Native Americans with the Anglo-European white Americans,[2] this is true. When read in the context of his broader analyses of the psychology of equality, of majoritarian power, and of the importance of mores over laws, however, Tocqueville's analysis of black–white race relations goes beyond its American context to offer an examination of the extra-legal barriers to inclusion and membership within a liberal democracy. As such, it offers a critical perspective on democratic theory, by suggesting that there are certain types of exclusions that cannot be resolved through formal institutions or by reformed processes of democratic deliberation.

In spite of the length of the "Three Races" chapter, race has been an under-investigated theme in Tocqueville scholarship, developing after the mid-1960s. Only recently has a small strand of scholarship begun to explore the "Three Races" chapter as a commentary on race and race relations within American democracy. Perhaps the most prolific among this group of scholars is Alvin B. Tillery, Jr, who has convincingly argued that Tocqueville presages many key insights from whiteness studies and critical race theory.[3]

Like Tillery's work, this article also advances an interpretation of Tocqueville that places him in dialogue with contemporary analysts of race. It moves beyond Tillery, however, in drawing attention to the less-noted connections between the persistence of racial prejudice and tyrannical majoritarianism in Tocqueville's own thought.[4] Exploring *Democracy in America*'s analysis of race relations within the

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[1] All references to Democracy in America (DA) will be made parenthetically in the main text, with page numbers referring to Tocqueville [1835/1840] 1835.

[2] Tocqueville's discussion of Native Americans is not my focus here, but to move past that topic without drawing attention to the directness and forcefulness of the language in which Tocqueville condemns the injustice and criminality of US governmental policy toward the Native Americans would be remiss.

[3] Tillery 2008, 2009. While Kohn (2002), Lieske (1999), Mitchell (2002), and Welch (2006) also touch on the contemporary relevance of Democracy in America's discussions of race, they do so either in passing or in a less sustained manner. The bulk of the classic literature focusing on Democracy in America alone argues either that Tocqueville did not fully appreciate the challenge American race relations posed to his portrait of egalitarian democracy (e.g., Crouthamel 1982; Nimtz 2003; Reinhart 1997; Stokes 1990; Welch 2001) or that his bleak prognosis for the future of America's "three races" was overstated (e.g., Colwell 1967). Recent scholarship offering a more articulated and nuanced view of Tocqueville's analysis of race relations has done so by reading Democracy in America in conjunction either with Tocqueville's writings on Algeria (e.g., Richter 1963; Tocqueville 2001) or with the criticisms of American racial prejudice found in Gustave de Beaumont's 1835 Marie (e.g., Janara 2004; Kohn 2002; Schaub 1998).

[4] Although a few scholars have picked up on this connection, it is typically mentioned only in passing (e.g., Kohn 2002; Stokes 1990) or cast as a parallel Tocqueville drew "without fully intending it" (Mitchell 2002, p. 149).

context of its discussions of tyrannical majoritarianism highlights the barriers to racial integration as a democratic problem, rather than merely an American one. This interpretation of racial prejudice as a particular form of tyrannical majoritarianism whose operations permanently exclude another group reveals race as a de facto form of exclusion, persisting after the granting of formal rights. The Tocquevillian analysis thus allows us to glimpse weaknesses in democratic theory's ability to resolve certain issues of inclusion, either through institutional design (such as mixed constitutions, checks and balances, multiple centers of decision-making, and so on) or through formal and informal methods designed to transform deliberative processes and render them more "other-regarding, reasoned, inclusive and equal."[5] From this perspective, the article reconsiders the plausibility of a range of remedies Tocqueville proposes, both in the context of democratic majoritarianism and in the race chapter itself, to see if they offer any resources to help address a problem that, despite Tocqueville's assertion that it was "American rather than democratic", turns out to be very much both American *and* democratic.

I. Slavery's harms

In *Democracy in America*, just as in his later speeches and writings in favor of abolition, and throughout his correspondence, Tocqueville condemns slavery as "fatal" and "unjust," an "immoral" institution that "violates the most sacred rights of humanity" and overturns "the order of nature" (*DA*, p. 581). Chattel slavery deprives the slave of his liberty and all of the rights associated with freedom, including the rights to an education, to enjoy the fruits of his labor, to marry, and to raise a family. Given Tocqueville's assertion that rights were "nothing more than the idea of virtue introduced into the political world" (*DA*, p. 389), the denial of these rights alone sufficed to class slavery as a "horrible plague" and an "unpardonable crime against mankind."[6] In addition to its manifest injustice, however, the experience of slavery had negative consequences extending to both races, for, in Tocqueville's view, it eroded—albeit in different ways and to different degrees—the abilities of each to practice democratic freedom.

Slavery's most direct harms were suffered by the slaves themselves. A life spent as the property of another and under the "care" —such as it was—of an owner damaged the slave's sense of personal autonomy and his ability to develop foresight, thus weakening two of liberty's essential preconditions.[7] Tocqueville's thinking on this point derived from the application to the slave's situation of an intellectual framework that understood New England's Anglo-Americans as able to simultaneously enjoy liberty and equality precisely because of their long apprenticeship in the exercise of rights in England and in the New England township itself. If the institutions of township self-government were schools of liberty that provided citizens with "a taste of its practice and accustom them to its practice" (*DA*, p. 102), then the experience of a life lived without freedom—without being able to make choices, to engage in associative life, and to learn the meaning of self-interest well understood—would surely prevent an individual from developing the capacities necessary for making wise use of that freedom.[8]

Thus, Tocqueville asserts that "habit alone" had prepared one race to use its freedom more judiciously.[9] In an 1839 parliamentary speech delivering his "Report on Abolition," Tocqueville emphasizes this point, blaming whites for having "made him [the slave] unworthy of liberty" by

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confining him "in a state where reason is useless to him, and where its exercise may be injurious."[10] Tocqueville's discussions of Liberia, where "American" political and civic institutions of free democracy had been transplanted and flourished among a non-white population, further underscore his belief that barriers to personal self-government perceived or thought to exist among the black population in the US resulted only from a lack of experience, rather than from any natural incapacities (*DA*, pp. 576–7).[11]

Tocqueville believed that a life spent obeying the commands of others left the slave with only "the thoughts and ambition of a slave," including a complex hatred–admiration for his white masters and pride from the servile imitation of whites rather than from his own achievements. He recognized that the perpetuation of slavery required an enslavement of the mind or spirit; this was modern slavery's "improvement" upon ancient slavery. Like Frederick Douglass, Tocqueville grasped that the South's laws against teaching slaves to read or write sought to "annihilate the power of reason of the slave," and he understood such measures to be vital tools for achieving social control at the individual level.[12] Anticipating contemporary analysts' recognition of tactics like these to reinforce structural racism's psychological dimensions,[13] Tocqueville sharply condemns them as forms of a "spiritualized despotism" (*DA*, p. 579), which he describes as sharing features with the soft despotism analyzed at the end of *Democracy in America's* second volume. What both soft and "spiritualized" despotisms seek is to prevent the *desire* for doing anything other than that which the despotic—or hegemonic—power permits.

While a life spent enslaved distorted and stunted the capacity for the wise exercise of freedom among the African population, a life spent enslaving others and living off their labor also warped the white population's capacities for freedom. Calling mastery "the most unremitting despotism," Thomas Jefferson had worried about the moral depravation occurring among slaveholding whites who were "nursed, educated, and daily exercised in tyranny."[14] Tocqueville shared these misgivings—for his deepest objections to slavery were moral ones—and *Democracy in America* adds to the Jeffersonian concerns about slavery's detrimental effects upon white majorities. In particular, Tocqueville notes that slaveholders grow uninterested in work and in improving their lives through their own efforts; they become lethargic and, worst of all, committed both by principle and by interest to denying the "providential fact" of the fundamental equality of all peoples. In short, slave owners become the opposite of Tocqueville's Anglo-American exemplars of the healthy combination of freedom and equality: they fail to acquire the vigor and do-it-yourself mentality required for self-government; they come to lack concern for their fellow (black) community members; and, perhaps worst of all, they become unnatural in their denial of human equality.[15]

Christianity's doctrinal commitment to the equality of all men in the eyes of God had required that modern slavery be justified by characterizing the enslaved as sub-human, dependent, and thus requiring the slaveholder's benign paternal care. Tocqueville rejected this self-serving ideology, as well as any notion of natural inferiority between the races, as we see in his correspondence with Arthur de Gobineau and his explicit condemnation of Gobineau's racialist theories as "very probably wrong and very certainly pernicious."[16] As scholars such as Schaub, Tillery, Turner, and others have noted, Tocqueville anticipates contemporary race theory in understanding race largely as a construct, with categories of whiteness and blackness invented by (white) majorities as symbols of solidarity, membership, and

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[10] Tocqueville 1968, pp. 100–1.
[11] See also Tocqueville's "Report on Abolition"; Tocqueville 1968, pp. 98–136.
[12] Douglass [1845] 1982, p. 135. Tocqueville references South Carolina's prohibition, which dated to 1740; see DA, pp. 580–1.
[13] For example, Bonilla-Silva 1996, p. 475.
[14] Jefferson [1785] 1984, p. 288.
[15] Indeed, in their denial of the universal applicability of the Declaration of Independence's "fundamental truths" —as seen, for example, in Mississippi Senator Albert G. Brown's 1854 speech, asserting that "In the South all men are equal. I mean, of course, white men; negroes are not men, within the meaning of the Declaration"; Brown 1859, p. 336.
[16] Letter to Gobineau, 17 Nov. 1853; Tocqueville 1985, p. 297. For a contrary interpretation of Tocqueville's position, which seems tacitly to endorse black abolitionist James McCune Smith's charge that Tocqueville aided "the perpetuation of American slavery," see Reinhart 1997, p. 65.

exclusion, created in order to differentiate between insiders and outsiders.[17] Examples within *Democracy in America*, such as the white man whose pride stems from his belief in his own racial purity (*DA*, p. 573) and the imperious young white girl (*DA*, p. 521) capture these aspects of race, racial identity, and racial prejudice.[18] As Jack Turner has observed, "One of the functions of anti-black racism in Tocqueville's America was to assure the white individualist that he was not a slave, that he was indeed free, independent, and self-sufficient."[19]

Tocqueville's analysis of race also anticipates contemporary discourse in its willingness to acknowledge the centrality of color—of blackness—as a barrier to inclusion and equality. Tocqueville was prescient in recognizing something not commonly perceived in 1835: the fact that slavery had both "acquired a color"[20] and a justificatory ideology would be damaging—indeed, "fatal" (*DA*, p. 551)—to the prospects of legal remedies alone to correct its evils. If, in the ancient world, "liberty alone separated" master and slave and "once liberty was granted, they easily blended" (*DA*, p. 550), the modern situation was different, for although legal emancipation could free the black slave from bondage, it could not alter the ideology that had legitimized the institution. Moreover, because the black body could not be changed in ways to make it intermingle smoothly with the majority white population, color would continue to serve as a reminder of the ideology of inferiority that had justified chattel slavery even after legal reform, thus complicating more substantive efforts of integration and inclusion. Tocqueville captures the unhappy stand-off between majority prejudice and color, observing that "For whites to abandon the opinion that they have conceived of the intellectual and moral inferiority of their former slaves, it would be necessary for Negroes to change, and they cannot change as long as this opinion persists" (*DA*, p. 551).

As a reminder to both races of historical exclusion and the discourse of inferiority that had legitimized it, Tocqueville recognized color as a "durable inequality"[21] that cannot be eliminated. He also understood that racial difference simultaneously posed a challenge to the solidarity and consent required for democratic self-government and hindered the overcoming of that challenge. This is what James Baldwin called the "conundrum of color" inherited by every American.[22] Juliet Hooker captures the Tocquevillian perspective: "Understanding the racialized contours of the politics of solidarity is therefore central to the project of establishing genuine democracy."[23] While racial justice is not itself a Tocquevillian concept, the expansion of political and civil rights and even the extension of a more meaningful equality to greater numbers of people certainly are, given the importance of rights in his thought (*DA,* p. 389), his belief that the spread of equality of conditions was providential (*DA*, p. 10), and his expressed hope that he would "see the day when the law will grant equal civil liberty to all" — with "all" specifically referring to African-Americans.[24] His analysis of race pushes us to conder the deeper challenges to expanding inclusion within democracy—and American democracy in particular.

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[17] Schaub 1998; Tillery 2009; Turner 2012. As Ta-Nehisi Coates puts it, race is "the child of racism, not the father"; Coates 2015, p. 7. The literature here is vast—e.g., Roediger (1999) on the construction of the category of "white" as an expression of group solidarity, primarily in comparison to blacks. For an earlier articulation, see Ellison 1970. The application of racial categories in the context of immigration also highlights the artificiality of such classifications. Consider, for example, the US government's official classification of Syrians as "Mongolian" in the early 20th century, as a means of categorizing them as non-white and thus not eligible for US citizenship; Los Angeles Herald 1909.

[18] When read with his disagreement with Gobineau in mind, and when put into context with the rest of the passage in which it appears, even Tocqueville's own comment that the slave's "face appears hideous to us" (DA, p. 551)—often cited as evidence of subconscious racism on his own part—is clearly a recognition of a white interpretation of black features, developed in response to the damage and brutalization caused by slavery.

[19] Turner 2012, p. 21.

[20] The phrase is Charles W. Mills's; Mills 1997, p. 57.

[21] Tilly 1998.

[22] Baldwin [1955] 2012, p. xii.

[23] Hooker 2009, p. 5. Hooker continues, "and achieve racial justice." Mills is even more direct on this point, asserting that the "color-coded morality of the Racial Contract restricts the possession of this natural freedom and equality to white men" by creating a racialized classification of sub-persons who are "biologically destined never to penetrate the normative rights ceiling established for them below white persons"; Mills 1997, pp. 16–17.

[24] Tocqueville made this statement in an 1855 letter to abolitionist newspaper The Liberty Bell; Tocqueville 2009, p. 169. Drescher notes that Tocqueville's "Testimony against Slavery" in The Liberty Bell is one of his "most assured" works on social issues; Drescher 1968, p. 189.

II. MORES, LAW, AND DE FACTO EQUALITY

Although Tocqueville advocated abolition and emancipation—albeit with qualification—in both the American and French contexts,[25] he also recognized their insufficiency, for while a change in legal status could remove formal barriers and establish de jure equality, it could not establish the de facto and more substantive equality associated with full membership, inclusion, and participation in democracy's political and cultural associations. Tocqueville observed with dismay that prejudice against blacks was strongest in those states that had abolished slavery, commenting on the continued exclusion of Northern blacks from full membership in political and civil society:

> "the Negro has been given electoral rights; but if he presents himself to vote, he risks his life. Oppressed, he can make a complaint, but he finds only whites among his judges. The law opens a juror's seat to him, but pushes him away from it … The Black is allowed to beseech the same God as the whites, but not to pray to him at the same altar. (*DA*, p. 555)."

He concludes, "Thus the Negro is free, but he is not able to share either in the rights or the pleasures or the labors or the pains or even the tomb of the one whose equal he has been declared to be; he cannot meet him anywhere" (*DA*, p. 555).[26]

Tocqueville's analysis reveals that, because race-based exclusions are both color-coded and rooted in (white) majoritarian mores, they are categorically different from other modalities of exclusion and not responsive to the same solutions. Tocqueville's recognition of the inadequacy of legal reforms to address these types of exclusions thus challenges democratic theorists' optimism that institutional design can successfully moderate majoritarian power and that exclusions can be remedied if "democratic rights" are "extended to members of the excluded groups."[27] Similarly, Tocqueville is less hopeful than deliberative democrats that reformed deliberative processes can transform dominant group preferences and overcome exclusions of this nature; transformative deliberation involves mutual justification among citizens (and thus, of majority points of view to minority points of view), yet the example of race reveals a group omitted from the deliberative process itself.

While sympathetic to the cause of those "difference democrats" who emphasize the need to overcome structural inequalities by expanding the conditions and modes of deliberative processes and rendering them more inclusive, the Tocquevillian analysis also injects a cautionary note. Difference democrats focus on ensuring that a greater number of minority interests are given voice, so that the democratic decision-making processes can take their voices into account, but Tocqueville's racial analysis allows us to glimpse exclusions of a more extreme nature—those whose voices count neither in the majority nor the minority, for their otherness places them outside the democratic process itself. His analyses of the potency of mores and the psychology of equality allow us to see this last point more clearly. It ought, moreover, to be recognized that Tocqueville's analysis does not depend upon the dominant group being a *numerical* majority. Consider, for example, the case of South Africa under apartheid, in which the group excluded from the democratic process constituted the majority of the country's population.

Tocqueville understood that the ideology of inferiority that had been constructed for slavery's defense also explained the persistence of barriers to equality after the removal of legal barriers, and that this presented a particular challenge in the American context, given the importance he attributed to mores within democratic society. Characterized as "the whole moral and intellectual state of a people" (*DA*, pp. 466–7) and encompassing both formally and informally agreed-upon ideas and beliefs, Tocqueville thought mores served as freedom's primary armor against various encroachments. Thus, while law is

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[25] In addition to writing the French government's two official reports on abolition, Tocqueville penned anti-slavery pieces that appeared in both French and American newspapers. That said, Tocqueville's position on abolition in the American context was complicated: while never deviating from his opinion that slavery was morally wrong, he criticized the Abolitionist party for an extremism that threatened the Union. Near the end of his life, moreover, he described himself as one "who has never been an abolitionist in the usual sense of the word," and with a conservatism that belied some of his more youthful stances taken in Democracy in America and during his political career, expressed concerns about abolishing existing slavery in the "old states" of the South; see his letter to Theodore Sedgwick, 10 Jan. 1857; Tocqueville 2009, p. 195.

[26] Tocqueville was not the only French visitor struck by this aspect of the American North, and after visiting the US during this same era, both Lafayette and Michel Chevalier expressed shock that, despite the racial equality proclaimed by law, a rigid separation between black and white remained; Damrosch 2010, pp. 28–9.

[27] Dahl 2015, p. 45.

an important element in a free society, it figures as a secondary factor in *Democracy in America*'s analysis, with laws reflecting and arising out of a society's values or mores. Harmony between a society's laws and its mores is a requirement for stability, and Tocqueville's general position is that when laws and mores conflict, it is the laws that will be modified into conformity with mores. Of the causes he sees as contributing to American freedom, then, mores are by far the most important. Tocqueville's manuscript notes capture this:

> beyond all these laws, I find a power superior to them. It is the *spirit* and the *mores* of the people, their *character*. The best laws are not able to make a constitution work in spite of the mores; mores turn to good account the worst laws. (*DA*, p. 499)[28]

It is, then, the power of mores that explained why racial prejudice was "nowhere" stronger than in the North and why, despite the removal of formal barriers between the two races, segregation was actually more rigidly insisted upon in the North—where public opinion alone prohibited mingling of whites and blacks—than in the South. Because slavery's ideology of racial inferiority had become ingrained into American national character, Tocqueville was deeply pessimistic about the prospects for social integration: "This is … how inequality becomes imprinted in the mores as it fades from the laws" (*DA*, p. 555), and "I see slavery receding; the prejudice to which it gave birth is immovable" (*DA*, p. 553).

Contemporary race theorists share with Tocqueville a recognition of the concerted action of laws and mores in perpetuating racial inequality. Mills, for example, identifies the Racial Contract as "that set of formal or informal agreements or meta-agreements" made between the members of one subset of ["white"] humans possessing "the class of full persons, to categorize the remaining subset of humans as 'nonwhite' and of a different and inferior moral status, subpersons, so that they have a subordinate civil standing in the white or white-ruled polities."[29] Because the problem is not simply or even primarily a structural one, the solutions of legal and institutional reform are inadequate for addressing such mores-based exclusions from membership in the democratic body politic. Thus, while the US Supreme Court was able to bring an official end to the doctrine of "separate but equal" and to remove formal barriers to integration with the *Brown* v. *Board of Education* decision that racial segregation in public schools violated the Fourteenth Amendment's equal protection clause, the Court's decision in *Brown* was not sufficient for achieving the broader aims of establishing racial equality and bringing about an integrated society. Tocqueville would have been surprised neither at *Brown*'s failure nor at the need for—as well as the insufficiency of—*Brown* v. *Board of Education, II*.

III. EQUALS AND OTHERS

The problem of mores-based exclusions is further complicated by the broader democratic psychology Tocqueville finds at work among Northern and Southern whites. Two elements of that psychology, the love of equality and the relative weakness of the individual vis-à-vis the majority, especially merit attention, for they highlight race-based exclusions as a particular variant of tyrannical majoritarianism in which the outsider group is excluded from the set of people constituting the majority and minority within the polity. Seen from this perspective, it is clear that liberal theories advocating increased representation of minority groups or greater pluralism in modes of communication as strategies for enhancing inclusivity and participation (such as those advanced by Phillips and Weldon) fail to grasp— and thus to address—the real problem.[30] While these tactics can combat certain types of exclusions, the

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[28] In arguing that integration is an imperative of justice, Elizabeth Anderson picks up this theme, asserting that "Political equality in the realm of governance cannot be realized without a democratic culture pervading civil society. This is not a matter of legal equality, but of habits and sentiments of association on terms of equality"; Anderson 2010, p. 93. Yet while Anderson recognizes that political equality depends upon social equality in civil society, her proposed modes of achieving the integration necessary to transform civil society and—eventually—political society include policies such as housing vouchers and redistricting. Such measures depend upon majoritarian support for their implementation, however, and why a repressive and segregationist majority would wish to pass such legislative measures is unclear. Here, Tocqueville's analysis of equality's psychology offers insight into why dominant groups might be resistant to Anderson's recommendations, and why changing mores-based exclusions might prove especially difficult. Rothstein (2017) offers a similar analysis in a different context. See also Section III below.

[29] Mills 1997, p. 11.

[30] Phillips 1994; Weldon 2011.

Tocquevillian analysis of race highlights their inadequacy in the face of any majoritarianism that denies another group de facto membership in the democratic polity, treating its members as sub-persons and excluding them from the polity's sphere of operation and consideration.

In Tocquevillian psychology, the love of equality is the strongest force in the democratic heart, inspiring as its "first and most intense" passion a love of that equality, together with a corresponding hatred of all inequalities (*DA*, p. 873).[31] While it might appear that these passions would cut against racial prejudice and segregation, it is important to remember that the passion for equality applies only to members within a given group, and that it can translate pathologically into a desire to elevate one group—whose members all enjoy equal moral status—above another group as a confirmation of in-group identity and solidarity. Equality, then, is expressed as group solidarity in opposition to an identifiable group of non-equals. Because white identity is "intimately tied up with the repudiation of the black Other," separation between the groups becomes more important where law does not prevent their mingling.[32]

Not many years after Tocqueville's visit to America, John C. Calhoun's "Speech on the Oregon Bill" expressed precisely this idea of equality as "member v. other" in a racialized context. Calhoun asserted, "With us, the two great divisions of society are not rich and poor, but white and black, and the former, the poor as well as the rich, belong to the upper class, and are respected and treated as equals."[33] Commenting on this same speech, Coates observes,

> "And there it is—the right to break the black body as the meaning of their sacred equality. And that right has always given them meaning, has always meant there was someone down in the valley because a mountain is not a mountain if there is nothing below."[34]

As we have already noted, Tocqueville believed that mores were the greatest barrier to a fully integrated American society. Although mores are cast as the core beliefs and values "of a people," they are no more than the beliefs of the dominant group—in this case, whites overwhelmingly committed to the preservation of an exclusionary racial status quo. *Democracy in America* is especially illuminating about the repressive power of such majorities, both over dissenting individuals and over freedom of thought and opinion more generally. Tocqueville's analysis of tyrannical majoritarianism, then, underscores the fact that the difficulties in changing the racial status quo thus extend beyond the institutional.

Tocqueville observes that because democratic society places all individuals on the same plane, the ideas and opinions of no single individual are deferred to. In principle, this would increase individual liberty of thought and would encourage dissent from majority views, but the Tocquevillian analysis complicates the picture. Dubbing the phenomenon "the theory of equality applied to brains" (*DA*, p. 404), Tocqueville suggests that as the influence of single individuals decreases in democratic ages, majority opinion also gains in force, deriving its power from the principles that there is more wisdom in a large group than in any single individual, and that the interests of the greater number should be preferred to those of the few. Tocqueville finds America's relentless majoritarianism worrisome; it is "the very soul of tyranny under the forms of liberty" (*DA*, p. 414), and he expresses concern about the difficulties any minority faces in making its voice heard against the majority that "crushes" it. Elaborating his fears and deploying language strikingly similar to *Democracy in America*'s discussions of how majority opinion denies the free black meaningful equality, Tocqueville laments the minority's lack of recourse:

> "When a man or a party suffers from an injustice in the United States, to whom do you want them to appeal? To public opinion? That is what forms the majority … To the police? The police are nothing other than the majority under arms. To the jury? The jury is the majority

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[31] Interestingly, Tocqueville also believed that equality was liberty-neutral, which means that in the best articulation, equality and liberty are congruent; in the worst articulation, however, all are equal under despotism or servitude.
[32] Mills 1997, p. 59. See DA, pp. 553–5, for Tocqueville's repeated emphasis on the North's greater and the South's less rigid separation between races.
[33] Calhoun 2003, p. 679.
[34] Coates 2015, pp. 104–5.

vested with the right to deliver judgments. The judges themselves, in certain states, are elected by the majority." (*DA*, p. 414)

That Tocqueville sees the continued exclusion of free blacks as an instance of majority tyranny has been underappreciated by scholars, yet the connection between racial exclusions and tyrannical majoritarianism is explicit in the note Tocqueville appended to the end of this passage. There, he gives two examples of "the excesses to which the despotism of the majority can lead." While the first describes a mob attack against a newspaper that had expressed opposition to the war, the second is a direct account of Tocqueville's conversation with a Pennsylvanian, in which the Frenchman asked why "emancipated Negroes are not allowed to exercise the rights of citizens." After making the laughable suggestion that "they abstain voluntarily" from voting, the Pennsylvanian eventually acknowledges that fear is the real motive, and that "the law lacks force when the majority does not support it." He also comments that magistrates "do not feel they have the strength" to enforce laws that are unpopular with the majority—in this case, magistrates feel themselves unable to support blacks in the exercise of their rights as citizens (*DA*, p. 414).

As this second example suggests, the danger from majority tyranny extends beyond mob violence. Just as a despotic majority oppresses the direct targets of its exclusionary ideology (in this case, blacks), it also negatively affects in-group members who might disagree with the dominant ideas. Tocqueville suggests that, like the Pennsylvania magistrate who believes he cannot enforce an unpopular law, any individual confronting an opposing majority will feel weak in his/her isolation and will capitulate or defer to what they believe to be a superior power. Not only will such an individual fear opposing the majority directly, but there is a more insidious and potentially greater danger: that majority opinion will stifle the development of new ideas. This stifling, which Tocqueville sees as the explanation for why "there is no freedom of mind in America" (*DA*, p. 419), adds a dimension to the problem of tyranny of the majority, in that changing dominant ideas becomes still more difficult if the weight of the majority mindset stifles even private thought that might question or oppose its ideas. Calling such self-censorship the "perfection of despotism," Tocqueville comments that "the majority draws a formidable circle around thought. Within these limits, the writer is free; but woe to him if he dares go beyond them" (*DA*, p. 418).

IV. WHAT IS TO BE (DEMOCRATICALLY) DONE?

Tocqueville's framing of America's race problem as a particular variant of tyrannical majoritarianism highlights three issues. First, it underscores the fact that the problem needing to be addressed is not primarily a structural or legal one, for it is the (white) majority's mores that continue to exclude people from membership in political and civic life, even when legal barriers have been eliminated. That mores are "color-coded" makes them even more resistant to change. Secondly, this exclusion by the dominant group is a substantial one, insofar as black voices are given less weight in majoritarian political calculations and are all too often excluded from civil associative life as recognized by the white majority. Blacks remain, to a large extent, outside the political compact and have fewer places to make their voices heard; thus, exclusion and not domination is the real issue. Finally, because of the power Tocqueville ascribes to majority opinion, the prospects for change from within would appear dim, since dissent within the dominant group either will not arise or will completely lack outlets.

Consideration of the Tocquevillian perspective thus emphasizes a dimension to the problem that has been underappreciated by both aggregative and deliberative democratic theorists in their respective efforts to address domination and inequality via institutional reform or more robust deliberative opportunities. Similarly, Tocqueville's dissection of in-group solidarity suggests that even theorists of inclusion have perhaps underestimated the nature of the problem they seek to correct, insofar as they work to expand opportunities within the circle (composed of outsiders and insiders), whereas Tocqueville's racial analysis focuses on groups perceived as non-members and thus in effect excluded from the circle of decision-making itself. What remains to be seen, however, is whether the Tocquevillian analysis offers any insight for combatting race-based exclusions and widening the circle of democratic inclusion.

Within the context of the "Three Races" chapter, Tocqueville's own outlook is explicitly pessimistic, expressing concerns that an omnipotent majority could pose a special danger to the survival of American liberty, and fearing that if the majority deprived minorities of legal remedies as well as the right of moral appeal, it will "have brought minorities to despair and will have forced them to appeal to physical force" (*DA*, p. 425). His prognosis is bleak and anticipates the militant turn of Malcolm X or the Black Panthers: "If you refuse liberty to the Negroes of the south, they will end by seizing it violently themselves" (*DA*, p. 582). Short of racial violence, however, *Democracy in America* considers several other potential solutions to the problems of tyrannical majoritarianism in general, and American racial segregation in particular. As we will see, these suggestions focus on formal methods of preventing tyrannical majoritarianism and are thus subject to the critiques of liberal democratic theory implied by Tocqueville's own analysis of race-based exclusions, yet the race chapter itself hints at an intriguing possibility for expanding democratic inclusiveness.

Tocqueville's tyranny of the majority chapter proposes two possibilities for tempering majority power: jurists and the idea of rights. "The body of jurists," he asserts, "forms the most powerful and, so to speak, the sole counterweight of democracy" (*DA*, p. 439). This is because, in Tocqueville's assessment, jurists are "naturally" more enlightened or more attuned to the general good than are the people. In essence, Tocqueville imagines the judicial branch checking legislative excesses, as well as correcting injustices committed by juries whose members were drawn from tyrannical majorities. He also posits that appeals to justice, "which forms the limit of the right of each people [to command]" (*DA*, p. 410), might keep a potentially tyrannical majority in check. Yet both of these possibilities—as well as the constitutionalist and contractarian commitments they represent—seem idealistic hopes rather than workable solutions.

Indeed, Tocqueville's account of his conversation with the Pennsylvanian indicates his own awareness of this in a context in which the universal rights of the Declaration of Independence had been systematically (and legally) denied to one race, and in which neither a general, moral appeal to justice nor specific appeals to the judicial authorities entrusted with the protection of rights had produced any change of condition, either de jure or de facto. It seems, then, that the ability of judiciaries to oppose the interests and opinions of the majority (or dominant group)—while important and not to be discounted—is nonetheless more limited and fraught with more difficulties than democratic theory's partisans of judicial review[35] suggest.

Another potential protection might be found in local liberties, which Tocqueville believed to be a mode of preserving democratic freedom against various threats. In addition to describing local institutions as "the schools of liberty" instructing citizens in freedom's responsible and vigorous exercise,[36] Tocqueville thought local institutions provide citizens "*the true taste* for liberty" (*DA*, p. 162, italics original); both the desire to exercise freedom and the habit of doing so form an essential bulwark against liberty's loss. Within a racialized context, however, any hope that the local exercise of liberty would foster in citizens a deep attachment to the exercise of those liberties seems misplaced, for the problem is not that free African-Americans need to become more impassioned about exercising their liberty;[37] rather, the problem is that white majorities at both local and national levels have prevented minorities' incorporation into the de facto body politic. Similarly, the exercise of local liberties is unlikely to "school" white majorities into supporting a more inclusive polity as long as racial minorities are excluded from the exercise of those liberties. From this perspective, Tocqueville's own belief that the local practice of liberty would enhance freedom is also dashed—far from being the locus of freedom, the township merely confirms existing exclusions and inequalities.

The failure of local liberties to remedy certain types of exclusions brings Tocqueville into dialogue with deliberative democrats' hopes that deliberation can be transformative, and that by asking citizens to articulate reasons that are mutually acceptable to their fellow citizens, better decisions will be reached, and mutual respect among citizens will be either preserved or enhanced.[38] Tocqueville's

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[35] E.g., Brettschneider 2007; Eisgruber 2001; Weingast 1997; but also Tocqueville himself.

[36] See Section I, above.

[37] Were this the case, a solution might be to encourage the formation of black-majority townships, which would provide ex-slaves with a Tocquevillian "school" for freedom.

[38] Gutmann and Thompson 2004.

conceptualization of race-based exclusions highlights a gap in deliberative democratic theory: in emphasizing political legitimacy as derived through "conversation and (ideally) agreement with other citizens, based on reasons that they can all understand,"[39] deliberative democrats neglect the fact that certain forms of exclusion pertain to the exercise of deliberative citizenship itself. Thus, by focusing on increasing the deliberation within the democratic sphere—for example, through the creation of "mini-publics" —with the intention of stimulating more informed discussion among citizens, better decision-making, and increased political legitimacy,[40] deliberative democrats fail to address the more fundamental exclusion from the circle of democratic voice and contestation that is highlighted by Tocqueville's analysis of race.

Similarly, while "difference democrats" more correctly diagnose the problem as the reinforcement of structural inequalities through existing democratic processes, their faith that "the circles can be broken" via a democratic process that incorporates a greater range of voices[41] underestimates the nature of certain exclusions. Democratic institutions cannot be transformed via the engagement of a heterodox public, as long as membership in the democratic public itself remains confined to a homogenous (white) majority. To both deliberative and difference democrats, then, the Tocquevillian analysis counsels skepticism and caution, reminding us that the more difficult challenge may be expanding the sphere of membership itself rather than democratizing or transforming the decision-making processes within the existing sphere.

In majoritarian contexts that remove both non-member and in-group dissenters from the circle of those whose voices count in decision-making, more democracy—or smaller and more localized democracies—may simply help sustain existing pathologies and exclusions. Thus, while Tocqueville endorses local liberties as a safeguard against tyranny, his suggestion is that local liberties can effectively protect citizens against threats from the central authority that has become despotic. The tyranny upon which Tocqueville focuses in the context of relations between white and black Americans, however, is a tyranny of the white majority at every level: local, state, and even national. With racist attitudes to be found in the majorities at virtually all levels of government, neither institutional reform nor an expansion of democratic processes may be sufficient; in this sense, then, both aggregative and deliberative democrats overlook the fact that because their proposed solutions operate within the context of tyrannical and exclusionary majoritarianism, the prospects for developing a democratic politics that would transcend and transform structural inequalities are dim.

Similarly, although Tocqueville speaks approvingly of federalism as permitting legislation that responds to regional differences, its efficacy is dubious in the context of the kind of racial prejudice Tocqueville witnesses throughout the US. Federalism and other structural solutions that seek to minimize domination by expanding the points of democratic decision-making can do little to address the extreme exclusions Tocqueville's racial analysis allows us to glimpse. A series of questions from Tocqueville's notes captures the dilemma:

> In a law founded upon the will of the people, *the public* opinion secures the impartial execution of the laws?—How is it possible that the law is *impartially* executed in reference to black people when the public opinion is not *impartial itself*? (*DA*, p. 548, n. 30).[42]

That Tocqueville's own remedies for palliating tyrannical majoritarianism are inadequate in the context of the American race situation is not surprising, given that that they focus on structural and procedural means of protecting the rights of an in-group minority. His analysis of white prejudice against blacks, however, presents tyrannical majoritarianism in a starker light, insofar as the issue is less an institutional or procedural problem of how to moderate the power a majority is wielding against a minority in its midst, and more a question of how to change majority opinion that permits citizenship to a race but, because it views that race as sub-human, excludes it from the circle of decision-making and, thus, from meaningful membership in the polity itself. Deliberation can produce agreement, but when the agreement in question is in-group and directed toward out-group oppression, the issue is not to how to

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[39] Flanders 2007, p. 147.
[40] E.g, Dahl 1989; Fung 2007; Goodin and Dryzek 2006.
[41] Young 2000, p. 35.
[42] Although written in Beaumont's hand, the note is attributed to Tocqueville.

reform democratic deliberative processes. Rather, the question is how to expand the democratic circle, and whether *Democracy in America* offers any resources that could be deployed to reshape the racial landscape and rewrite the racial contract.

V. TEMPERING A TYRANNICAL MAJORITY?

Tocqueville cites Christianity (or religion, more generally) as capable of moderating some of democracy's more dangerous tendencies and, indeed, Christianity's belief in fundamental human equality does suggest that it could be a force in reforming the majority's view to a more inclusive one. History attests to the leading roles played by Quakerism and the Second Great Awakening in opposing slavery and in advocating the essential equality of all peoples; moreover, the connection between religion and abolition seen in activists such as George Cheever, the Grimké sisters, and William Wilberforce is well known. Yet, although Tocqueville recognized Christianity's vital role in the historical spread of equality, Christianity had also been complicit in the marginalization and dehumanization of blacks as a justification for their enslavement. His awareness of Christianity's compromised status with regard to having legitimized slavery might account for the fact that, although Tocqueville believed that, as a source of and inspiration for civil associations of various types, Christianity could play a central role in preserving democratic freedom, he does not mention it as a potential resource for expanding the democratic circle itself.

The "Three Races" chapter, however, does advance an interesting—and more controversial—possibility: the idea that race mixing might be able to help bridge the gap separating blacks from the majoritarian circle. Suggested by Tocqueville twice—once in the context of each non-white race—as a possible path forward for American race relations, the idea of race mixing as nature overcoming the conventions that required racial hierarchies and segregation (*DA*, p. 555) underscores both his own opposition to theorists of racial difference and his view of race's socially constructed nature. The reasons for which Tocqueville suggests race mixing merit unpacking, both because of what he does not say and because his intention in those two discussions of race mixing is, I would argue, different, with his discussion of race mixing between blacks and whites hinting at the transformations necessary to create a genuinely inclusive American democracy.

In the Native American context, the "half-breed" is cast as a bridging figure between cultures and is described as "sharing the enlightenment of his father without necessarily abandoning the savage customs of his maternal race" (*DA*, pp. 533–4). This "enlightenment" enables the "half-breed" to recognize that the Native American way of life cannot survive its interaction with the Anglo-Americans, and it presumably makes him able to persuade the Native American population that if the choice is between adaptation to the majority norms and annihilation at the hands of duplicitous and greedy whites, adaptation is preferable.[43] Tocqueville concludes, "Wherever half-breeds have multiplied, savages are seen to modify little by little their social state and change their mores" (*DA*, p. 534). Significantly, it is the "half-breed" herself/himself acting here, using reason to convince the minority group to modify its mores in ways that will facilitate its integration into (white) majority society.

In his discussion of slavery, Tocqueville also asserts that "the true transition between the white and the Negro is the mulatto" (*DA*, pp. 572–3). It is important to state explicitly that any discussion of sexual relations between slave owners and slaves that ignores the coercive dimension to those relations is problematic, and that Tocqueville's own views on miscegenation are complicated. Yet, as the discussion unfolds, it becomes clear that Tocqueville's primary reasons for suggesting race mixing in the context of black–white relations is neither the breaking down of prejudice because of the interracial relationships themselves, nor the idea of racial blending via the offspring of those relationships. Tocqueville alludes to both these possibilities, but quickly downplays their potential, noting that the (false) racial pride of white Anglo-Americans has made them least likely to mix with black slaves (*DA*, p. 573).

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[43] Tocqueville's moral outrage at the treatment of the Native Americans by the US government is clear, both in the texts and in his notes. For an account of Tocqueville's position, see Benoît 2014; Lieske 1999. For one analysis of the Native American response to cultural devastation at the hands of white Americans, see Lear 2006.

The discussion of race mixing to transform black–white relations also does not echo the discussion of the "half-breed," in which mixing with the majority population would lead to the development of enlightenment and sound mores within the minority group. Tocqueville's discussion of black–white mixing is striking because it suggests precisely the opposite: that *white* attitudes are unjust and require transformation, and that having mixed-race children would force the white parent to confront and change their opinions.[44] Race mixing among black and white populations could effect positive moral and intellectual changes, but those transformations would occur among members of the majority race.

The chapter offers a vivid example of this, by relating Tocqueville's encounter with a slaveholder who had "lived in illegitimate union with one of his Negro women" and had fathered several children by her. The white father had attempted to emancipate his children several times, but legally speaking, emancipation was no simple matter, and in the course of the process, his death approached. In one of *Democracy in America*'s most dramatic passages, Tocqueville describes the father's psychological torment as he envisioned his children—variants of himself—living as slaves.[45] He writes,

> He then imagined his sons led from market to market and passing from paternal authority to the rod of a stranger … I saw him prey to the agonies of despair and I then understood how nature knew how to avenge the wounds done to it by laws. (*DA*, p. 580)

In this context, "nature" is not the sexual or reproductive urge; rather, "nature" is the child as an extension of the self, and via the imagination of the child/self experiencing the horrors of slavery, comes the white slaveholder's first genuine recognition of slavery's injustice.[46] With this also comes awareness that the child/self has been excluded from the circle whose voices determine the majority; these shifts in understanding among white members of the democratic majority are steps both in expanding inclusion into the democratic circle, and in changing majority opinion within that circle itself.

Given the American context at the time of Tocqueville's writing, the barriers to any wide-scale race mixing would be insurmountable, and it is important to recognize that this is not what Tocqueville recommends. Rather, he sees in racial mixing the possibility for enlarging the majority's sympathetic circles and for thus reconstituting membership in the body politic to include the excluded. Via the imagination, then, the other can first be made present and given voice; only by internalizing the perspective of the other can that other be transformed from the alien to the familiar, and eventually, the included.

Literature might serve a similar purpose, particularly through its ability to humanize and thus to evoke a sympathetic response from the reader to the plight of someone who would otherwise have been considered as beyond the circle of sympathetic—and eventually, political—inclusion. *Uncle Tom's Cabin*, for example, is widely credited with galvanizing (white) public opinion against slavery, precisely because the novel's vivid depictions of slavery's horrors roused white readers' imaginations and sparked sympathetic reactions in them. Ralph Ellison's assertion that he believed *Invisible Man*'s "statement about human life transcends (and was meant to transcend) mere racial experience" and that "on the broader level of its meaning," the novel "says something about the experience of being an American and that this includes all Americans white or black" captures a similar hope.[47]

Although Tocqueville himself does not suggest literature as a tool for creating a more racially inclusive democratic circle, he did believe that a specifically democratic form of poetry could facilitate a broader

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[44] Here, there are intriguing connections to Anderson's analysis of segregation's undermining of democracy; see Anderson 2010, esp. ch. 2.

[45] For more on Tocqueville's intention in deploying these vivid vignettes, see Henderson, forthcoming. Welch observes that this anecdote is the second of two examples of "spontaneous feelings of sociability being denatured by artificial taboos" that bracket the "Three Races" chapter (the first example is the imperious young child alluded to in Section I, above); Welch 2006, p. 312.

[46] This accords with a Smithean view of sympathy, which asserts that sympathetic engagement is stronger when the object of sympathy is closest to the sympathizer (in this case, the sympathetic object is the child, the individual most closely identified with the self) and more attenuated as the distance between sympathizer and object increases. See Smith [1759] 1982, III.1, III.3.

[47] Ellison to Sydney Spiegel, 13 Dec. 1959; Callahan 1999, p. 40. Of course, not everyone was as optimistic as Ellison about these prospects. Some, like Baldwin, thought such optimism futile and saw no prospects for literature to produce recognition and inclusion: "Not once has the Civilized been able to honor, recognize, or describe the Savage"; Baldwin 2012, p. xxi.

view of "the human race" (*DA*, p. 838) that would transcend particular differences. And perhaps it is possible that via literature—understood broadly in the modern era to include film and television—American democracy might enlarge its circles of sympathetic identification to include racial minorities, thus expanding and eventually transcending the limits of its majoritarianism. Individual transformation must precede, or at least go hand-in-hand with, structural transformation. Like Robert Goodin, then, Tocqueville sees "empathetic imaginings as central" to democratic inclusion,[48] though while Goodin conceptualizes these empathetic imaginings primarily as a mode of bringing the interests of the socially excluded to bear on deliberative processes and, thus, of accommodating deliberation to mass society, the Tocquevillian analysis of empathetic imaginings focuses on the possibilities for including those who have been even more dramatically excluded from the sphere of democracy's normal operations.[49]

While it is true that Tocqueville offers no good solutions to the American racial situation he observed and that he saw it as the gravest threat to the American republic's survival, it is far from true that "About slavery, he had little of consequence to say."[50] *Democracy in America* does not provide a blueprint for overcoming racial exclusion within the US or any other democratic society, but Tocqueville's analysis of the legacies of American slavery presses us to recognize the intractability of extra-legal barriers to full membership and equality within a democratic polity. Moreover, by viewing the American racial situation through the lens of tyrannical majoritarianism, Tocqueville enables us to see race-based exclusions as a particular variant of majoritarianism that has successfully removed another group (and its viewpoints) from its circle of inclusion and decision-making. When democratic theory addresses issues of equality, rights, and justice, it typically speaks to those concepts within the context of membership in the political order. Tocqueville's examination of race relations in the US highlights the limitations inherent in any such theorization as neglecting the rights of those who are excluded from the polity, and his analysis also underscores the insufficiency of procedural, or more broadly institutional, remedies (necessary though they are) in addressing the problems of racial inequality within a democratic order.

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[48] Goodin 2003, p. 171.
[49] In Reflective Democracy's penultimate chapter, "Representing Mute Interests," Goodin briefly considers future generations and non-human interests—voices whose radical marginalization come closest to the type of exclusion highlighted by Tocqueville's racial analysis.
[50] Maçães 2020, p. 39.

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