

Chapter Seven

Race and Freedom in Tocqueville

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That a reading of Tocqueville's *Democracy in America* might teach Americans much about the political theory of their Constitution might seem a dubious proposition.¹ As everyone knows, Tocqueville was neither an American nor a philosopher but a French statesman, man of letters, and commentator on political affairs. Even more disputable is my contention that we might learn most about the political theory of our Constitution from Tocqueville's analysis of race relations in the United States. Tocqueville observed and wrote about American democracy in the 1830s, and our Constitution then said very little about the questions of race that would eventually become so important in our constitutional and political history. Although Tocqueville could well imagine a war over the issue of slavery (p. 360), the war he imagined was of a different sort from our Civil War, and its outcome probably would not have been the Thirteenth, Fourteenth, and Fifteenth Amendments. Finally, Tocqueville admits that his discussion of race is tangential to his main subject, American democracy. Why, then, look to his one-hundred-page chapter "Some Considerations Concerning the Present State and Probable Future of the Three Races That Inhabit the Territory of the United States" to shed light on American constitutionalism?

First, the fact that Tocqueville announces his subject as tangential to the study of American political institutions does not mean that it has nothing to do with democracy or a democratic constitution. Arguably, no single set of problems has placed a greater strain on our Constitution, not to mention the Union itself, than that arising from relations between blacks and whites. Perhaps no part of the Constitution has seen more use and abuse than the equal protection clause of the Fourteenth Amendment. If Tocqueville did not anticipate the Fourteenth Amendment, he did consider that a democracy might try to legislate racial discrimination and inequalities out of existence, and he rejected this as an impossibility. For Tocqueville, the causes of which America's racial antagonisms are symptoms are in large part beyond the reach of law and will remain so. But for this very reason an appreciation of these causes and their persistence can provide the deepest understanding of constitutionalism and its limits. Without this appreciation we can hardly hope to solve our racial problems. More important, we cannot understand what our Constitution is all about. Why do we have a Constitution? What ought our attitude to it be today? These questions, Tocqueville shows us, cannot be answered by a study of documents alone.

Tocqueville's famous discussion of America's three races, red, black, and white, is in the very long last chapter of the first volume of *Democracy in America*. It is presented as the first sustained treatment of things specifically American rather than universally democratic. Moreover, his consideration of the three races goes beyond "the laws and mores of American democracy" itself—that is, beyond its forms—to examine the matter on which those forms are impressed.² They flesh in the portrait of "the inhabitants of the New World [who] may be considered from more than one point of view." In raising these avowedly tangential considerations Tocqueville offers the apology that his reader might "feel that [he] had not satisfied his expectations" (p. 316). Yet at the beginning of the book Tocqueville characterized his reader as so partisan, so pro- or antidemocratic, that he would fault the book even for its fairness (I, I, p. 20). Either this reader is now presumed to have become dispassionate enough to indulge idle curiosity about things foreign and new, or a resolution of partisan disputes requires an awareness of matters which, in the heat of partisan anger, do not seem directly relevant. Indeed, readers' expectations notwithstanding, Tocqueville says that the topics of this chapter *must* now be treated (p. 316). Does an examination of these specifically American topics convey a lesson no less fundamental than the analysis of democracy proper?

The chapter treats the three races not only in their problematic relations with one another but each in itself. Hence three of the five topics appear to have nothing to do with race, but have everything to do with the white race: the chances for the Union's survival (independent of laws and mores), the permanence of republican forms or institutions, and the Americans as a trading people. The chapter or volume as a whole concludes with Tocqueville's predictions for the Anglo-American race.³ As is suggested in the untitled introductory section of the chapter, what links these themes is what separates the race: the willful pride that is universally characteristic of human nature.

Among the three races the white man comes to sight as "man par excellence."⁴ It could almost be said that "the European is to men of other races what man himself is to the animals." Yet the black man and the red differ from the white not by nature but by the effects of the tyranny they have suffered.⁵ As Tocqueville will show us, the proudest boast of the man of "the New World"—modern man—is that he is subject to the rule of no one or no thing. He rules himself, and in cooperation with his fellows he would rule over nature as a whole. Man par excellence is a natural ruler, or such is his claim. Tocqueville, who suggests that his primary concern in writing *Democracy in America* is to determine how liberty and human dignity might best be secured in the modern world (2, 4, 7, pp. 695, 699), must evaluate this claim.

From the failings of the black and Indian as described we might begin to discern the characteristics that would make the white man par excellence. "The Negro has reached the ultimate limits of slavery, whereas the Indian lives on the extreme edge of freedom," and both have been dehumanized. The slave has neither the pride befitting a human being nor much reason for pride. He has been deprived of "almost all of the privileges of humanity"—family, homeland, language, religion, mores.⁶ He does not even have "ownership of his own body." He is accustomed to acting only at the command of others, so his own reason seems to him "an unprofitable gift of Providence," and he lacks the "energy" to obey it. His only uncoerced behavior is servile imitation of his master.⁷ If freed, he would give himself over entirely to his desires as new masters. Slavery has deprived the black of responsibility for his actions and of a suitable model of responsible behavior. Having lost almost all pride in himself, he has lost the ambition to acquire the skills and habits that would enable him to behave in ways in which he might justly take pride. His servitude has deprived him of the moral and intellectual faculties that justify humanity's privileged status.

Before the arrival of the European the Indian could enjoy the "privileges of humanity" to the fullest: he lived by "opinions and mores alone." But he had no law. Lacking law and the habit of obeying it, he had come to regard obedience as dishonorable and to "delight in his barbarous independence." His proud dreams of "the pretended nobility of his origin" served to confirm his pride in his ways. Yet by Tocqueville's time the Indian had been allowed to taste the European's pleasures. His mores had been disordered, though not destroyed, while his desires had increased "beyond reason."⁸ Too proud to imitate the methodical and skillful ways in which the white man satisfied his desires, the Indian would literally rather die. His compromised independence and uncompromising pride had become fatal to him.

The white man, if he is indeed man par excellence, is superior to the black and red in the ways suggested. Unlike the slave, he takes responsibility for and pride in his own being. Unlike the Indian, he has no illusions about the nobility of his origin. He condemns neither reason nor law. He can live between the extremes of slavery and freedom. Lest he find himself enslaved to his own needs and desires, as do both freedman and corrupted savage, he must either moderate his own desires or tyrannize over nature and its beings in an attempt to fulfill these desires. He must acknowledge the necessity of his rule, through reason and law, over himself, over others, or over nature, and against this necessity measure his mores.⁹ Whether and how the man of the New World can maintain his humanity so understood is the problem of Tocqueville's chapter.

Elaboration on "the present state and probable future of the Indians" is meant to shed as much light on the white inhabitant of the New World as on the red.¹⁰ The Indian, like the feudal lord and the aristocratic southerner, is doomed to extinction because he would continue to live by principles that can no longer prevail in the New World. The white man's ways, his moral and political principles, his cosmic view, whether sound or unsound, now dominate all. Tocqueville's Indians are not so much victims of racism as of the Anglo-American's attempted reconstruction of the world in accordance with his principles.¹¹ For Tocqueville, the white man in the "New World" is modern man. The plight of the Indian and the promise of the European must be judged insofar as possible by the standards of this New World.¹²

The Indian Tocqueville observed could not live as an equal in the New World. He did not make war immediately on the European colonists' arrival, when he could have done so successfully. Then he failed to adopt the Europeans' civilization, though he was not incapable of doing so.¹³ Why

did he neither anticipate the necessity of expelling or subjugating the European, rather than befriending and assisting him, nor condescend to imitate his ways?

The Indian was a hunter. Before the European arrived and made game scarce, the Indian managed to find enough to meet his needs. He derived not only indolent pleasure but pride from his way of life: he found agricultural labor distasteful and contemptible. Later, having been corrupted by the European, his desires come to exceed the needs for which he was able to provide. Had he been willing to farm, to cultivate nature, that is, to tame her for his purposes, he might have been able to secure not only the necessities of survival but the superfluities he had come to desire. Even when virtually compelled to settle down and take up agriculture to survive, he remained unwilling to learn the European's arts or unable to do so rapidly enough. No people, Tocqueville contends, will permit itself to suffer both military and intellectual defeat at once. And if intellectual defeat is to be anything but demoralizing and dehumanizing, it must be perceived as, and hence be, a freely chosen appreciation and imitation of excellence. People who will not learn cannot be taught. A necessity grave enough to break the excessive though characteristic human pride exhibited by the Indian would have to have been very grave indeed.

The very grave necessity unanticipated by the Indian was imposed not by nature but by the white man's greed and tyranny. We drove away his game, then bought his land for a pittance when it was no longer of any value to him. When the Indians petitioned Congress for relief, they invoked, to no avail, "the common Father, who is in Heaven" as the guarantor of European gratitude and justice. The Indian apparently placed too much trust in God or nature, and therefore in other men. His misfortune was caused as much by his conviction that "natural right and reason" were on his side as by pride. Indeed, his proud ways accorded with his belief in nature's beneficence.¹⁴ He had not realized that in the New World one acts with pride, or at least moral self-confidence, on a very different understanding of natural right and reason.

In contrast to the Spaniards, who tried (unsuccessfully) to exterminate the Indians by the most atrocious means, the Anglo-Americans came close to succeeding in doing so "without violating a single one of the great principles of morality in the eyes of the world." They rejected the "noble and virtuous" policy of George Washington, who advised that "it is to the honor [of those who are more enlightened and more powerful] to treat [the Indian tribes] with kindness and even generosity." They found no place for generosity or even justice.¹⁵ They contemptuously dis-

missed as "abstract and theoretical principles" arguments "founded on natural right and reason" to the effect that the Indians had some "rights by virtue of their ancient possession either of soil or sovereignty." To use the more respected terms of John Locke, these modern casuists could dismiss appeals to inherited right as mere sophistry because the title to property is acquired only by labor and punishments for infringements of right are executed by man as he is able. In a world in which men have learned well to anticipate necessity and to hope thereby to overcome it, the European does not hesitate "to make [others] serve his convenience, and when he cannot bend them to his will [to destroy] them" (p. 317). His dominion is facilitated by fraud rather than force (p. 339), but it is no less tyrannical. As Tocqueville presents it, even the rejection of Indian, that is, traditional, principles of right amounts not to a reasoned refutation but to a willful, self-serving repudiation.

Whether there might not be some difficulties with the tyranny over nature and its beings that passes for natural right and reason in the New World is taken up in Tocqueville's consideration of "the situation of the black race in the United States."¹⁶ Here Tocqueville's concern is not so much with slavery as with its consequences for the white race. He feared that these would be dire:

The most formidable evil threatening the future of the United States is born of the presence of blacks on their soil. (P. 340)

Once one admits that whites and emancipated Negroes face each other like two foreign peoples on the same soil, it can easily be understood that there are only two possibilities for the future: the Negroes and the whites must either mingle completely or they must part. . . . I do not think that the white and black races will ever be brought anywhere to live on a footing of equality. (Pp. 355-56)

The institution of slavery, although an "evil," is neither unintelligible nor indefensible: it can be in the interest, well or poorly understood, of the master and is not always greatly harmful to the slave.¹⁷ Because it is intelligible and sometimes defensible, it might also be shown to be indefensible by means of an argument about the master's true interest. But one consequence of slavery, the master's prejudice against the freedman, has become a part of mores and can only rarely be eradicated by rational persuasion. Nor do other consequences easily admit of rational alteration.

Ancient, as distinguished from modern, slavery rested on fortune and law. Although the ancients never granted that all human beings are naturally equal, they had to concede that the enslavement (not mere disfranchisement) of some had ultimately to rest on nothing more than positive

law.¹⁸ positive law can, with difficulty, be changed. Thus, inherent inferiority in the slave need not be supposed; and fetters on his body notwithstanding, the slave was left free in spirit and never denied the right to educate himself. He could actually make himself worthy of acceptance as his master's equal. Once freed, he would not forever be recognized and remembered as an inferior.

"In the modern world the hard thing is to alter mores." For modern emancipation has to overcome not only "the prejudice of the master, [but] the prejudice of race, and the prejudice of the white" as well. Neither the ancient slave nor the ancient freedman appeared different from his master, or his appearance was not important. But when the moderns reintroduced slavery, they limited it to one race, and a despised race at that. They attached a presumption of inferiority precisely to appearance, to a superficial, albeit permanent, physical difference. "Memories of slavery disgrace the race, and race perpetuates memories of slavery." Discrimination against the black race in the New World is indissolubly mixed with the prejudice of the master, the unwillingness to mingle with those who have been universally regarded as inferiors. The very visage of the freedman would always be the most visible badge of former servitude.

By "the prejudice of the white" Tocqueville seems to mean the mores that form the perception of his interest, however reasonable. Thinking himself to be moved by rational self-interest is the distinctive opinion of the white, or modern man. The abolition of slavery in the North and its persistence in the South show how this opinion is and is not a mere "prejudice." In the North slavery was retreating in the face of a more "perfect understanding of the effect of slavery on the production of wealth" and of an interest in that production. The true New Worlder, the northerner, associated work with well-being and deemed it honorable.¹⁹ He had "made material well-being the main object of his existence." One could find "something wonderful in his resourcefulness and a sort of heroism in his greed for gain." Having always been confronted with "the idea of necessity," he had learned "to recognize for himself the natural limits of his power," especially his power over other human beings. He was "patient, calculating, tolerant, slow to act, but persevering in his desires." The northerner, Tocqueville judged, "admirably understands how to take advantage of nature and of man so as to gain wealth; he is also wonderfully skilled in the art of making society advance the prosperity of each of its members and of extracting the happiness of all from the selfishness of each." Slave labor was neither conducive to his end nor compatible with his means. His end, conquest of nature, was to be effected by cooperation

with, not tyranny over, other men. Moreover, and more important, emancipation was feasible because in the North blacks were few and becoming fewer. Thus, by "abolishing the principle of servitude, the [northerners] do not make the slaves free." Freedmen could be given their legal rights and informally prohibited from exercising them. The freed blacks would be too few effectively to protest a "burden of eternal infamy and hereditary wretchedness." Even then, the interest served by emancipation in the North apparently did not require an end to racial prejudice, or the interest was not great enough to overcome it. The freer the black was by law, the further he was separated from the white by mores.

In the South, the perceived and actual interest of the white recommended retention of legal slavery for as long as possible. Slave labor was better suited to southern conditions and modes of cultivation than to northern. But the southerner was not excited by the promise of a cooperative conquest of nature. The aristocrat whom Tocqueville encountered there "scorns not only work itself, but also enterprises in which work is necessary to success; . . . money has lost some of its value in his eyes; he is less interested in wealth than in excitement and pleasure."²⁰ More important, the South, unlike the North, could not free itself of both slavery and slaves simultaneously. The southern white reasonably feared and resisted living amid a large populace of black freedmen who had had no preparation for freedom. He could well suppose that either he would have to degrade himself and his civilization by bringing all down to whatever level the brutalized former slave could attain equally or face a real threat to his survival in a racial war motivated by black resentment at enduring second-class citizenship.²¹ Pride in himself and his civilization and fear for their preservation—motives stronger than any interest in wealth—made a desperate and ultimately futile attempt to perpetuate slavery intelligible, if not justifiable. At the same time, mores could be less rigidly segregating because laws enforcing slavery were increasingly harsh.

Eventually the white southerner would be made to pay a very high price for a kind of slavery he did not institute and could not easily terminate. Not all of nature's beings can easily be bent to the white man's convenience or destroyed by him. The costs of a tyranny that effects a "profound disturbance in humanity's laws" and overthrows "the order of nature" might have been foreseen. Modern slavery had always been inconsistent with Christian morality and was increasingly viewed as incompatible with the interest fostered by "political economy." It violated the spirit of the age, that of "democratic liberty and enlightenment." Nonetheless, the prejudice resulting from it remained strong enough to contravene even the most natural human passion.²²

Prejudice against the black is sustained even more effectively by mores than by laws precisely because it "abandons nature and humanity." The founders of modern slavery attempted to establish a permanent hierarchy based on physical, not to say superficial, difference rather than on spiritual or intellectual inequality. In general, the moderns, who have "made material well-being the main object of [their] existence," have made the body unnaturally preeminent. They must violate the laws of humanity, under which slavery might be justified as preparation for, or part of, freedom, not despite but because of their democratic principles. Asserting that all human beings are born free and equal, they can escape the most profound self-contradiction only by keeping their slaves "as close to the beasts as possible," neither regarding them as entitled to the privileges of humanity nor permitting them to become so entitled. Modern prejudice against the black race is sustained by mores, not laws, because only the European's pride, his refusal to see himself reduced to brute nature, enables him to look at himself and oppose the debasement or destruction of all humanity. Tocqueville's account of blacks and whites leads us to wonder whether either the interest or the principles of the New Worlder encourage a coherent, hence proper pride in his own being.

Tocqueville's pessimism about successful integration of the races in the North, where slavery never existed or was never important, requires further consideration. The situation of Americans today is obviously more like that of northerners than that of antebellum southerners. In the North obstacles to a full mingling of the races are said to be not only the Anglo-American's "pride of origin" but "the personal pride derived from democratic liberty. The white man in the United States is proud of his race and proud of himself" (p. 357). Why does not "the personal pride derived from democratic liberty" discourage "pride of origin" when we know that race alone is no obstacle to the exercise of democratic liberty?²³ Furthermore, Tocqueville's northerner, who takes pride in his democratic liberty, has used it to make "material well-being the main object of his existence." This object recommended to him the abolition of slavery. Although racial discrimination is less of an obstacle to the production of wealth than is slavery, it is hardly the most economical practice. Thus there seems to be no good reason for the perpetuation of racial prejudice.

The democratic liberty on which Americans pride themselves rests fundamentally on the principle or dogma of popular sovereignty and all that it entails.²⁴

The Anglo-Americans regard universal reason as the source of moral authority, just as the universality of the citizens is the source of political power, and they

consider that one must refer to the understanding of everybody in order to discover what is permitted or forbidden, true or false. Most of them think that knowledge of his own interest properly understood is enough to lead a man to what is just and honest. They believe that each man at birth receives the faculty to rule himself and that nobody has the right to force his fellow man to be happy. All have a lively faith in human perfectibility. . . . While the Americans are thus united together by common ideas they are separated from everybody else by one sentiment, namely, pride.

For fifty years the inhabitants of the United States have been repeatedly and constantly told that they are the only religious, enlightened, and free people. They see that democratic institutions flourish among them, whereas they come to grief in the rest of the world; consequently they have an immensely high opinion of themselves and are not far from believing that they form a species apart from the rest of the human race. (P. 374)

"I do not assert that all these opinions are correct, but they are American." Tocqueville has said that the reason for the superiority of American democracy is its federal Constitution.²⁵ The *raison d'être* of the Constitution is the Union. It was in conceding to the Union its necessary powers that "the American people had in a sense risen above themselves" (p. 386). Earlier Tocqueville compared the forms of the state and federal governments;²⁶ now he contrasts their purposes and modes. The state governments purport to be concerned with the whole human good, or the happiness of individuals. They attach the heart not only through hopes and fears but through custom and unreflective patriotism. They speak in imperative language, as if commanding men in pursuit of the good, and they themselves act in its pursuit. The Union has a different object, namely that of "providing for certain great general needs" (I, I, 8, p. 114). Its acts are of the greatest necessity, but they are rare, and their connection to individual happiness is not immediately apparent. The Union explains its motives and justifies itself, but it does not command.

By the time Tocqueville had reached America in 1831, the people seemed to have returned to their customary level of passion, no longer above themselves, and the Union was becoming weaker. Should the Union consequently be resolved into its components, it would not be because the states or sections had differing and incompatible interests, either material or "immaterial." They did not. Rather, the difficulty was in the differing mores of North and South and the lack of mores in the West. Or, in truth, the proud, unreasonable passions of imperfect human beings would have been fueled by the Union's rapid but uneven economic

growth. States, like men, are prone either to intoxication with sudden success or to envy, distrust, and discontent with slow progress that looks, in comparison, like regress. In particular, the South's discomfiture was attributable to her anger at losing her place; she was a fallen or failing aristocracy.

Tocqueville thought it more likely that the Union would be weakened by the government's being deprived of its prerogatives than by secession. The great political controversies of the day were over the National Bank and tariffs. The National Bank was, in Tocqueville's opinion, manifestly beneficial. Opposition to it, as to Congress, was supported by "a blind democratic instinct." The accusation made against the Bank was that its directors were aristocratic, and the root of the complaint was that the Bank imposed a "salutary control" over state banks. This battle was only a skirmish in "the great American fight . . . between the spirit of independence and democracy, and the spirit of hierarchy and subordination." America's democratic liberty seems more securely rooted in universal willfulness than in universal reason.

In the great tariff controversy the South first propounded the infamous doctrine of nullification. Although the doctrine was put forth by South Carolina to justify her intransigent refusal to submit to the will of the majority, that principle is no less a justification for the majority's demand that its will be obeyed.²⁷ If the doctrine of the sovereignty of the people means anything, then each of the signatories to the contract that constitutes the people as a whole retains the right of judgment that enabled it to have been a signatory. In America the principle of right from which majority rule is deduced is the presumption of an equal ability to judge. If each man's ability is presumed equal, then no one has a right to pass judgment on judgments, or to arbitrate. Among them no judgment can be better or worse; it can only be more or less willfully insisted on. The mere fact that a majority subscribes to one opinion should not, strictly speaking, affect the question of its superiority as judgment (I, 2, 7, p. 251). Yet majority rules seems necessary in practice. A willful majority, no more or less than a willful minority, could refuse to concede the wisdom of free trade — or the incorrectness and injustice of racism.

Tocqueville's conclusion about the prospects for the Union is that the central power will be weak because men in their daily lives do not take their bearings by the grave necessities the federal government was designed to meet. Men's lives are shaped not so much by material interests as by mores, the forms assumed by the characteristic human passion of pride. Mores cause men to perceive and define their interests as they do;

they enable them to have an opinion about their needs and to dissociate themselves from their needs so as to take a critical view of them. Only in the North have mores been given material prosperity as their content. Tocqueville is sympathetic to states' rights insofar as the states can be understood as powers that might preserve our diversities and willingness to acknowledge them and thus our distance from the universal necessities of human bodies.

In constituting the Union the Founders tried to impose their forms on the states to form a new whole. But "all bodies, of whatever sort, have a secret instinct leading them toward independence." In the states the particularities of bodies are manifest. Yet notwithstanding their heterogeneity, all have in common not only necessities but willful pride, the "decentralizing passion" asserted in opposition to the whole. Willfulness in itself is not much to be proud of. But human body is unique in believing its secret instinct to be guided by universal reason and directed toward human perfection. The distinctiveness of the human body, with its possibility of rebelling against natural necessity and its proud pretension of making reasoned judgments, is the basis of the New World's republican or democratic liberty. The pretension must be maintained, dogmatically if necessary.²⁸ For man is the part of nature who stands in proud partisan opposition to the rest of nature, resisting his reduction from a being with habits and choices and therefore politics to a mere body with necessities. Hence the American "immaterial interest" that locates "universal reason" in "the universality of the citizens."

"A change of opinion" might reverse the tendency toward weakening the Union. Even by 1831 "the Union [had become] a part of American mores and [was] desired." Men have centralizing as well as decentralizing passions, and it was to them that the federal legislator intended the Union to appeal. As constituted, the Union was "an incomplete national government," exercising its sovereignty directly over individual citizens without the agency of the states, but only in its well-defined sphere of authority. In addition to conducting foreign affairs, the Union's domestic responsibilities were "to regulate everything relating to the value of money," to establish internal communications, and to intervene in the internal affairs of the states should they do anything so imprudent as to establishing an aristocracy (1, 1, 8, p. 116). Individuals were expected to invoke their federally protected rights in federal courts, giving federal judges who might well be partial to the Union an opportunity to vitiate state laws. They would create the Union's authority by asserting it. The examples of law-

suits that "make the legislator's thought perfectly understood" (1, 1, 8, p. 144) and are "in perfect accord with the bases adopted for the constitution" (1, 1, 8, p. 145) are cases involving constitutional prohibitions of state interference with the monetary system and import taxation. The simple and easily defined duties and rights granted the national government included supervision of an economic system that facilitates the pursuit of material well-being and enforcement of a guarantee of de jure equality. Provision for these general interests could be seen as including provision of the means to whatever particular ends are desired. In theory the ends would be determined by individuals or the states. But this view is naive, for men often fail to distinguish between means and ends, especially when the means are wealth and the end is material well-being. As anticipated, money, the universal means of satisfying almost every desire, has acquired tremendous importance in the New World (2, 3, 17, pp. 614-15). The national government was intended to become as preponderant in the American polity as its bases were to become decisive in men's cares.

The Americans' love of material well-being is reflected above all in the commercial spirit of the United States, especially its flourishing maritime commerce.²⁹ Yet, although the purpose of commerce is to satisfy the desire for material well-being, neither the desire nor the end desired can fully account for the way in which Americans conduct their commerce. They have a "taste" and a "genius" for maritime commerce; they seem "called" to dominate the seas. Their commercial success can only be explained by certain "intellectual and moral qualities," which Tocqueville compares to those exhibited by France during the wars of Revolution. Both could forego necessities previously thought indispensable and exert themselves in ways thought impossible. "The Americans put something heroic into their way of trading." "What the French did for the sake of victory, they are doing for the sake of economy." Commerce is the locus of American virtue and economic success the source of honor.³⁰ The courage of virtue that is honored in America is the kind that "makes a man brave the fury of the ocean to reach port more quickly" (2, 3, 18, p. 622). It is, at the same time, the kind that enables the American community to maintain itself and prosper. In the New World commercial success is not simply a matter of individual material interest; it is a matter of national interest and honor and thereby of individual pride and honor. As Tocqueville describes it, its impetus is far closer to the aristocrat's love of sport than to what we usually mean by self-interest.

The American lives in a land of wonders; everything around him is in constant movement, and every movement seems an advance. Consequently, in his mind the idea of newness is closely linked with that of improvement. Nowhere does he see any limit placed by nature to human endeavor. . . .

The universal movement prevailing in the United States . . . [keeps] the mind in a sort of feverish agitation which wonderfully disposes it toward every type of exertion and keeps it, so to say, above the common level of humanity. For an American the whole of life is treated like a game of chance, a time of revolution, a day of battle. (P. 404)

In contrasting the white to the black and the Indian Tocqueville suggested that the white might preserve himself in freedom if he had proper pride in himself and no illusions about the nobility of his origins. The Anglo-American rightly takes pride in his commercial virtues, but it is not clear that he can give an account of himself or his origin that can sustain these virtues. The American understands himself to risk his material well-being, if not his life, on the gamble that he will thereby secure more at some unspecified future time in his mortal life. When, if ever, will he enjoy his wealth? As Tocqueville foresaw, the desire for material well-being alone cannot continue to animate heroics. In fact, by making material well-being the main object of his existence, by taking the body and its demands so seriously, the American risks not just the loss of his present fortune but his permanent brutalization (2, 2, 16, pp. 546–47). Thus his anticipated conquest of nature will not assure his rule over all of nature, especially not his own self-rule.³¹ Nor is it inappropriate to remark that all the attention paid to the body cannot help but strengthen the natural tendency to attach significance to visible differences as well as to similarities of body among human beings. One can forget to move beyond them.

Tocqueville's chapter title and his conclusion emphasizing the physical aspects of race and demography and geography over politics remind us of these difficulties.³² In commercial endeavors the Americans act as if all things were body in flux and consequently, as if there were no natural limit to man's conquest of nature. Nor, however, does there seem to be any natural guarantee (or guarantor) for man's humanity. The Indian's claim of right by virtue of inheritance is simply dismissed. The black, as visibly different, is arbitrarily ranked as inferior. By his own exertions the Anglo-American would impose his own order on a seemingly chaotic New World. He does not reflect on his being "called" to the sea, or on his having a "taste" and "genius" for its navigation. Nor does he appreciate that the sea's constant flux is a regular one, in which he might find solace

as well as challenge. He cannot sustain behavior of which he might be proud in part because he has lost all awareness of an economy of nature in which he might have a proud place.

If nature is thought to be mere body in flux, it cannot be the source of stable principles of political justice or nobility. Justice might mean either the greater right of the biggest, fastest, or most industrious body to what it is going after, or the equal right of every body merely to be preserved. Neither meaning grounds arguments against the most objectionable political consequences of prejudice, against denial to all citizens of legal equality, and against an ignoble contempt for their immaterial well-being.

Fortunately the inhabitants of the New World (as if taking Tocqueville's advice to his reader) consider themselves from more than one point of view. They are not consistent materialists, for they hold that "Providence has given each individual the amount of reason necessary for him to look after himself in matters of his own exclusive concern. This is the great maxim on which civil and political society in the United States rests" (p. 397). As we have seen, it would be more reasonable to believe that Providence has given each individual the amount of willfulness necessary to act reasonably or unreasonably, as it is his wont or way. The American cannot quite convincingly defend his belief in a Providence that donates reason to all, nor can he demonstrate from its unfailing benefits that the donation has been made. The white man that Tocqueville found in the New World also had some confusions, if not illusions, about the nobility of his origin. He had become accustomed to seeing himself from two partial and inconsistent points of view: he is one part of a nature consisting of bodies, all of which desire to maintain their own motion, or to preserve themselves and to secure their material well-being. He is also the recipient of Providence's gift of reason to the whole human species and to it alone. He does not seem to have reflected on nature's dubious gift of willful pride. It is this gift, which might be used nobly or ignobly, that is the origin of whatever nobility human beings can fairly claim.

Virtually all present-day remedies for racial discrimination are rooted, in one way or another, in the incoherent self-understanding of the New Worlder, and all fail to look critically at their root. When conservatives contend that racism is an economic problem, in cause and consequence, and the prosperity of a free market economy the best solution to it, they assume that both racial discrimination and economic acquisitiveness are essentially matters of interest. Economic prosperity is an interest. But, as we have seen, there may be good reasons for not encouraging any American, of whatever race, to engage in ardent pursuit of material wealth as if it

were a panacea. In any case, in the New World commercial endeavor was meant to be an outlet for ambition and a matter of pride, not just a means of securing needs. As a matter of pride it is less surely affected by the consideration that prejudice is inefficient. Moreover, if discrimination has independent roots in the prejudice of the master and the prejudice of race, achievement of economic equality will not necessarily bring an end to it.³³ If racial discrimination is a matter of pride, not necessity or rationality, any attempt to eliminate or minimize it must begin with an appreciation of how human beings can take pride in themselves and their actions. This appreciation is essentially political, not economic.

Liberals recommend that the willfulness of the (white) majority be checked while government acts in its name but not on its say-so. Undeniably, more reasonable and equitable ways of conducting our public affairs can be found, but we must insist that these ways would not be democratic.³⁴ At the same time that liberals want to check the majority, they continue to hope that the will of the guilt-ridden majority might be moralized and thereby rationalized. Whatever actions are necessary to end racial inequality do not need its consent because they embody its compassion. Either way, pride is to be circumvented, not edified. No contemporary liberal appeals, as did George Washington, to the honor of the more enlightened and powerful.³⁵ Similarly, the hopes of radicals for a final end to racial discrimination rest on whites' suffering a humiliating defeat at the hands of ethnic politicians or preachers or a combination thereof.

At their best the democratic mores of Tocqueville's Americans sustain a virile self-assertiveness that activates the faculties human beings were given to perfect. There is no guarantee that thoughtless desire or sheer willfulness will in fact bow to "universal reason," and only so far does "knowledge of his own interest properly understood . . . lead a man to what is just and honorable." One does learn the necessity of tempering and thus rationalizing selfish desire. Democratic liberty makes each citizen a proud "individual," preoccupied with himself and his own interest. But the "equality, which makes men feel their freedom also shows them their weakness. They are free, but liable to a thousand accidents, and experience is not slow to teach them that although they may not usually need the help of others, a moment will always arrive when they cannot do without it."³⁶ The American can be decent and even compassionate because when he "casts a rapid glance at himself" he sees his weakness and vulnerability. He feels the suffering of another who is similar and presumed equal because he can readily imagine himself in a similar situation, in his turn needing and desiring the pity and assistance of another. This com-

passion is indeed the core of the democrat's justice and decency. The self-knowledge applied is knowledge of one's own neediness, not of one's strength. The compassion born of this knowledge will extend only to those perceived as similar and equal because it depends on a fancied identity. Tocqueville observed that the same Americans who treated one another kindly treated their slaves with great cruelty. If the Anglo-American has ever treated the less enlightened and powerful of other races with "kindness and even generosity," he has not done so out of compassion or fear.

Americans have always avowed a faith in human perfectibility, or in "the idea of the indefinite perfectibility of man" (2, 1, 8, pp. 452-54). For this reason one might hope they would become more "enlightened," more rational, more tolerant, and less racist. Since their notions of human perfection are "indefinite," whites might begin to take the mores of other races more seriously, looking to them for new models of human perfection and ways of achieving it. Or at the very least they might begin to regard the races they have long thought naturally inferior or barbaric as merely less developed members of the species with as much potential for perfectibility as themselves. Tocqueville, I believe, would deem these manifestations of the American faith in perfectibility misguided.³⁷ Whatever human perfection might mean to an American, it is unlikely to be envisioned by the majority as being very different from the virtues (and vices) of the man who makes his way in the modern democratic, commercial world. "Enlightenment" of the majority amounts to their acquisition of the wisdom of practical experience (1, 2, 9, pp. 301-5), which cannot outpace or direct fundamental changes in that experience and perception of it. And in the determination of mores especially, "trust in common opinion . . . becomes a sort of religion, with the majority as its prophet" (2, 1, 2, p. 436). "Even the very crudest of prejudices take an unconscionable time to efface in spite of all the froth and stir of men and things" (2, 3, 21, p. 640). The majority of Americans are not plagued by self-doubt and are, on the whole, quite intolerant of critics.³⁸ They are as obstinately proud of their mores as are racial minorities of theirs. Acceptance by the majority of any genuine cultural *laissez-faire* is far less likely than toleration of individuals who assimilate themselves to the model of the northerner, whose "civilization . . . appears destined to be the norm to which all the rest must one day conform" (p. 385).

More perfect human beings could conceivably be purged of racial prejudice by extinguishing their pride. But it is not clear that this is any more desirable than possible. Tocqueville's black and Indian are tragic figures.

The black slave or freedman has no pride to speak of, nor has he cause for pride. He is incapable of subordinating his desires to the direction of his own reason because he lacks mores of which he can be proud. He is almost subhuman because he does not impose upon himself the combination of natural necessity and rational self-determination that is characteristically human. It is precisely this imposition that mores accomplish, more or less successfully. The Indian, in contrast to the black, proudly holds to ways that are noble and in some respects superior to New World norms but by which he can no longer survive in that world. Perhaps it is necessary for white liberals and ethnic radicals to acknowledge what today's conservatives take too readily for granted: that, imperfection notwithstanding, the mores that happen to be Anglo-American may be the ones best suited to enable us to confront our necessities with dignity in the New World.

That people tend to confuse customary ways with natural characteristics should not be surprising. Only by obfuscating convention and nature, by becoming, as it were, second nature, can mores be efficacious. In the modern world especially, in which nature is taken to mean body in motion, the identification of mores with racial character is made all the easier. Nonetheless, it is surprising that appeals to the New World's principle of universal and equal rationality, which is also held to be natural,³⁹ have done so little to undermine racial particularity. Modern principles are either too low or too high to comprehend humanity. Nor do they encourage us to ponder the truth reflected in racial discrimination or to appreciate how this same truth requires recognition of similarities among the races and differences within them: all human beings take pride in asserting and distinguishing themselves. They do this in different ways and to different degrees.

For Tocqueville, nature is neither the Anglo-American's chaotic flux nor the Indian's beneficent guarantor of justice. Providence is a reliable source of proud assertiveness, but nature distributes human excellence unequally.⁴⁰ Tocqueville does not propose that the politics of the New World be explicitly reconstituted on a new ground. Rather, he suggests that our politics take its present constitution more seriously and that we ponder its significance. Nature leaves human beings free to constitute their own political order, and she gives them the will to do it.⁴¹ She gives them pride, but what they take pride in is a matter of habit and choice. Were the American to take more pride in his democratic constitution, he might find his exercise of democratic liberty more worthy of respect.

When Tocqueville says "it is not possible for a whole people to rise . . .

above itself" (p. 356) he means that a democracy will not reform its own mores by democratic means. Yet he concedes that the American people once did rise above itself in adopting its new Constitution. This Constitution, "which at first was the child of [its] imagination, is now a part of its habits" (p. 385). A people therefore can elevate itself out of respect for or in respecting its constitution. Tocqueville gives little reason to hope that any law or constitution that directly opposes prevailing mores can, under ordinary circumstances, overcome those mores. But he does set for us the very difficult though not impossible task of inculcating into democratic mores a respect for legal and constitutional forms and the principles they embody.

Tocqueville's analysis of American constitutional forms in Part 1 of Volume 1 (chapter 8) sheds little direct light on the meaning of a constitution. In that chapter he is primarily, though not exclusively, concerned with using an account of America's novel conception of federalism to describe modernity's most exemplary "imaginary republic" and to indicate its strengths and weaknesses.⁴² While praising federal institutions as superior in design, he contends that their principles were actually embodied in the townships and county and state governments of which the Union was composed (1, 1, 5, p. 61). Most fundamental was the principle of popular sovereignty by which "the people reign over the American political world as God reigns over the universe" (1, 1, 4, p. 60). As we have seen, the sovereignty of the people, that is, of human beings, requires faith in human reason, reliance on human willfulness, and an opinion that there are no natural or divine limits on that willfulness. The chapter on the races suggests that there is one inherent limit: when human beings will so as to disregard, deny, or destroy the distinctively human pride in a capacity for rational self-determination, then that will becomes destructive of itself. Within this limit, the forms through which will is exercised, laws and mores, are human creations.⁴³ Tocqueville's discussion of local and state institutions in chapter 5 is meant to show how American political institutions arouse, sustain, and regulate wills, thereby constituting a popular will out of individual willfulness.

For Tocqueville, we rightly take pride in human will when we exercise it in the way that best realizes the boast of human sovereignty. The American people can be said to have risen above itself in adopting its federal Constitution because in that willful act it affirmed a lengthy and careful deliberation on how the American people as a whole might best preserve itself in liberty and dignity (1, 1, 8, pp. 113-14). The liberty and dignity of each of the people were to be preserved with the creation of the forms

through which passion is moderated and will is joined to law and reason (I, I, 5, pp. 61, 70; I, I, 8, p. 155; 2, 4, 7, pp. 698–99).

It is because we cannot always or even usually rely on our ascendancy over ourselves that we need to elevate and venerate the consequence of this extraordinary act of popular will. Constitutional forms and legal formalities cannot be disregarded or deformed in the name of protecting rights any more than they should be overridden in violating rights. Seen in this light, the impatience of good intentions is indistinguishable from the despotism of bigotry. From this it would follow that, at least for now, neither more nor less can be done to eliminate racial discrimination and inequalities than our Constitution can fairly be read to require or permit.⁴⁴

Tocqueville's thoughts on how democratic willfulness might be ennobled in affirming its constitutional principles are nowhere more eloquently or fully stated than in his writings on behalf of abolition in the French colonies.⁴⁵ Emancipation of the slaves and creation of a prosperous multiracial society were no less in the interest of the French colonies than of the United States, and slavery no less antithetical to the principles of '89 than to those of '76. Tocqueville was nonetheless convinced that the parties whose interests were most directly at stake, white colonists and black slaves, would never perceive the coincidence of their self-interests with the common interest or act upon the perception. Rather, France had to be shown that emancipation was in her interest. It was above all for the soul of France, to avert a decline into decadence, that she could not afford to forsake the cause of liberty and equality anywhere, much less in her own colonies. Liberty and equality were the "symbols of the new politics," for which she claimed responsibility.

The idea of abolition had the same origin as the very spirit of modern France, and the intensity of the passion with which the cause was pressed could be taken as a measure of the vitality of liberalism in France.

*This grand idea . . . will always be greater than he, whoever he may be, who speaks of it. This grand idea is not only your property, it is not only among the mother ideas of your Revolution, but it lives or dies in your hearts according as one sees all elevated sentiments live or be reborn there, all the noble instincts your Revolution has developed, these noble instincts by which you have done all the great things you have accomplished in the world and without which, I do not fear to say, you will do nothing and be nothing.*⁴⁶

The honor of France properly derives from her devotion to a principle or an idea that finds support in the "elevated sentiments" or "noble instincts"

of her citizens. The origin of nobility is neither in race nor in universal reason, but rather in a natural gift characteristic of humanity only at its finest. It is in giving substance to these elevated sentiments or noble instincts that human beings can take proper pride: nobility consists in the conscious affirmation of these sentiments. They are affirmed and given as much universality and permanence as is possible in a republican constitution and in mores that demand respect for it. It is not so much a noble instinct as an appreciation of its significance that is lacking in virtually all contemporary solutions to our racial problems.

The principles of 1789 and 1776 are the foundation of modern republicanism, European and American. They ground a democratic politics that may or may not sustain in its citizens the sublime sentiments and instinct that gave birth to it. Tocqueville does not stress this difficulty, perhaps because he saw no satisfactory theoretical resolution of it and therefore no advantage in elaborating it. His actions suggest that he did not therefore abandon the attempt at practical amelioration. In his writings and speeches on emancipation in the French colonies he appeals to both the interest and the honor of France. His rhetoric reflects his estimation of the limits human nature imposes on him and the opportunities it affords him. In *Democracy in America* he reminds Americans that not merely our interest but above all our pride and glory are invested in a constitution that protects the rights of all citizens equally. Tocqueville leaves us with the thought that it is as impossible for a republic founded in the New World not to strive to solve its racial problems as it is to "solve" them.