

Constitutionalism: The Tyranny of the Majority

Part A.

Directions: Read the following excerpt from *Democracy in America* by Alexis de Tocqueville. Then write an analytical essay in which you identify the main thesis, explain why Tocqueville believed that this thesis applied to the United States, and explain how Tocqueville believed this situation affected the United States.

Unlimited Power of the Majority in the United States, and Its Consequences

The very essence of democratic government consists in the absolute sovereignty of the majority; for there is nothing in democratic states that is capable of resisting it. Most of the American constitutions have sought to increase this natural strength of the majority by artificial means.

Of all political institutions, the legislature is the one that is most easily swayed by the will of the majority. The Americans determined that the members of the legislature should be elected by the people *directly*, and for a *very brief term*, in order to subject them, not only to the general convictions, but even to the daily passions, of their constituents. The members of both houses are taken from the same classes in society and nominated in the same manner; so that the movements of the legislative bodies are almost as rapid, and quite as irresistible, as those of a single assembly. It is to a legislature thus constituted that almost all the authority of the government has been entrusted. . . .

Custom has done even more than law. A proceeding is becoming more and more general in the United States which will, in the end, do away with the guarantees of representative government: it frequently happens that the voters, in electing a delegate, point out a certain line of conduct to him and impose upon him certain positive obligations that he is pledged to fulfill. With the exception of the tumult, this comes to the same thing as if the majority itself held its deliberations in the market-place.

Several particular circumstances combine to render the power of the majority in America not only preponderant, but irresistible. The moral authority of the majority is partly based upon the notion that there is more intelligence and more wisdom in a number of men united than in a single individual, and that the number of legislators is more important than their quality. The theory of equality is thus applied to the intellects of men; and human pride is thus assailed in its last retreat by a doctrine which the minority hesitate to admit, and in which they will but slowly assent. Like all other powers, and perhaps more than any other, the authority of the majority requires the sanction of time in order to appear legitimate. At first it enforces obedience by constraint; and its laws are not *respected* until they have been long maintained. . . .

The moral power of the majority is founded upon yet another principle, which is that the interests of the many are to be preferred to those of the few. It will readily be perceived that the respect here professed for the rights of the greater number must naturally increase or diminish according to the state of parties. When a nation is divided into several great irreconcilable interests, the privilege of the majority is often overlooked, because it is intolerable to comply with its demands. . . .

In the United States . . . all parties are willing to recognize the rights of the majority, because they all hope at some time to be able to exercise them to their own advantage. The majority in that country, therefore, exercise a prodigious actual authority, and a power of opinion which is

nearly as great; no obstacles exist which can impede or even retard its progress, so as to make it heed the complaints of those whom it crushes upon its path. This state of things is fatal in itself and dangerous for the future. . . .

The omnipotence of the majority and the rapid as well as absolute manner in which its decisions are executed in the United States not only render the law unstable, but exercise the same influence upon the execution of the law and the conduct of the administration. As the majority is the only power that it is important to court, all its projects are taken up with the greatest ardor; but no sooner is its attention distracted than all this ardor ceases; while in the free states of Europe, where the administration is at once independent and secure, the projects of the legislature continue to be executed even when its attention is directed to other objects. . . .

A majority taken collectively is only an individual, whose opinions, and frequently whose interests, are opposed to those of another individual, who is styled a minority. If it be admitted that a man possessing absolute power may misuse that power by wronging his adversaries, why should not a majority be liable to the same reproach? Men do not change their characters by uniting with one another; nor does their patience in the presence of obstacles increase with their strength. For my own part, I cannot believe it; the power to do everything, which I should refuse to one of my equals, I will never grant to any number of them. . . .

I am therefore of the opinion that social power superior to all others must always be placed somewhere; but I think that liberty is endangered when this power finds no obstacle which can retard its course and give it time to moderate its own vehemence.

Unlimited power is in itself a bad and dangerous thing. Human beings are not competent to exercise it with discretion. God alone can be omnipotent, because his wisdom and his justice are always equal to his power. There is no power on earth so worthy of honor in itself or clothed with rights so sacred that I would admit its uncontrolled and all-predominant authority. When I see that the right and the means of absolute command are conferred on any power whatever, be it called a people or a king, an aristocracy or a democracy, a monarchy or a republic, I say there is the germ of tyranny, and I seek to live elsewhere, under other laws.

In my opinion, the main evil of the present democratic institutions of the United States does not arise, as is often asserted in Europe, from their weakness, but from their irresistible strength. I am not so much alarmed at the excessive liberty which reigns in that country as at the inadequate securities which one finds there against tyranny.

When an individual or a party is wronged in the United States, to whom can he apply for redress? If to public opinion, public opinion constitutes the majority; if to the legislature, it represents the majority and implicitly obeys it; if to the executive power, it is appointed by the majority, and serves as a passive tool in its hands. The public force consists of the majority under arms; the jury is the majority invested with the right of hearing judicial cases; and in certain states even the judges are elected by the majority. However iniquitous or absurd the measure of which you complain, you must submit to it as well as you can.

If, on the other hand, a legislative power could be so constituted as to represent the majority without necessarily being the slave of its passions, an executive so as to retain a proper share of authority, and a judiciary so as to remain independent of the two other powers, a government would

be formed which would still be democratic while incurring scarcely any risk of tyranny.

I do not say that there is a frequent use of tyranny in America at the present day; but I maintain that there is no sure barrier against it, and that the causes which mitigate the government there are to be found in the circumstances and the manners of the country more than in its laws. . . .

It is in the examination of the exercise of thought in the United States that we clearly perceive how far the power of the majority surpasses all the powers with which we are acquainted in Europe. Thought is an invisible and subtle power that mocks all the efforts of tyranny. At the present time the most absolute monarchs in Europe cannot prevent certain opinions hostile to their authority from circulating in secret throughout their dominions and even in their courts. It is not so in America; as long as the majority is still undecided, discussion is carried on; but as soon as its decision is irrevocably pronounced, everyone is silent, and the friends as well as the opponents of the measure unite in assenting to its propriety. The reason for this is perfectly clear: no monarch is so absolute as to combine all the powers of society in his own hands and to conquer all opposition, as a majority is able to do, which has the right both of making and of executing the laws.

The authority of a king is physical and controls the actions of men without subduing their will. But the majority possesses a power that is physical and moral at the same time, which acts upon the will as much as upon the actions and represses not only all contest, but all controversy.

I know of no country in which there is so little independence of mind and real freedom of discussion as in America. In any constitutional state in Europe every sort of religious and political theory may be freely preached and disseminated; for there is no country in Europe so subdued by any single authority as not to protect the man who raises his voice in the cause of truth from the consequences of his hardihood. If he is unfortunate enough to live under an absolute government, the people are often on his side; if he inhabits a free country, he can, if necessary, find a shelter behind the throne. The aristocratic part of society supports him in some countries, and the democracy in others. But in a nation where democratic institutions exist, organized like those of the United States, there is but one authority, one element of strength and success, with nothing beyond it.

In America the majority raises formidable barriers around the liberty of opinion; within these barriers an author may write what he pleases, but woe to him if he goes beyond them. Not that he is in danger of an auto-da-fé; but he is exposed to continued obloquy and persecution. His political career is closed forever, since he has offended the only authority that is able to open it. Every sort of compensation, even that of celebrity, is refused to him. Before making public his opinions he thought he had sympathizers; now it seems to him that he has none any more since he has revealed himself to everyone; then those who blame him criticize loudly and those who think as he does keep quiet and move away without courage. He yields at length, overcome by the daily effort which he has to make, and subsides into silence, as if he felt remorse for having spoken the truth.

Fetters and headsmen were the coarse instruments that tyranny formerly employed; but the civilization of our age has perfected despotism itself, though it seemed to have nothing to learn. Monarchs had, so to

speak, materialized oppression; the democratic republics of the present day have rendered it as entirely an affair of the mind as the will which it is intended to coerce. Under the absolute sway of one man the body was attacked in order to subdue the soul; but the soul escaped the blows which were directed against it and rose proudly superior. Such is not the course adopted by tyranny in democratic republics; there the body is left free, and the soul is enslaved. The master no longer says: "You shall think as I do or you shall die"; but he says: "You are free to think differently from me and to retain your life, your property, and all that you possess; but you are henceforth a stranger among your people. You may retain your civil rights, but they will be useless to you, for you will never be chosen by your fellow citizens if you solicit their votes; and they will affect to scorn you if you ask for their esteem. You will remain among men, but you will be deprived of the rights of mankind. Your fellow creatures will shun you like an impure being; and even those who believe in your innocence will abandon you, lest they should be shunned in their turn. Go in peace! I have given you your life, but it is an existence worse than death."

Absolute monarchies had dishonored despotism; let us beware lest democratic republics should reinstate it and render it less odious and degrading in the eyes of the many by making it still more onerous to the few.¹

Part B.

Directions: *Federalist* No. 10 was written by James Madison in 1787, some forty-seven years prior to the publication of *Democracy in America* by Alexis de Tocqueville. Nonetheless, read *Federalist* No. 10 selectively, not for its general content, but as a response to the excerpt from Tocqueville in part A. Then assume the role of Madison and write a letter to Tocqueville that discusses points of agreement and disagreement with his ideas.

¹Alexis de Tocqueville, *Democracy in America*, vol. 1, ed. Phillips Bradley (New York: Vintage Classics, 1990), 254-65.