ALEXIS DE TOCQUEVILLE

Democracy in America

and Two Essays on America

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Contents

Contents

VOLUME 1

VOLUME 2

PART 1
THE INFLUENCE OF DEMOCRACY UPON THE INTELLECTUAL MOVEMENT IN THE UNITED STATES

tyranny of the legislators is the most formidable dread at present, and will be for long years. That of the executive will come in its turn, but it will be at a remote period."[7]

In this matter I prefer to quote Jefferson to anyone else because I regard him as the most powerful apostle democracy has ever had.

CHAPTER 8

WHAT MODERATES THE TYRANNY OF THE MAJORITY IN THE UNITED STATES

ABSENCE OF ADMINISTRATIVE CENTRALIZATION

The majority does not intend to do everything—It is obliged to use the magistrates of the townships and counties to execute its sovereign wishes.

I have previously made a distinction between two types of centralization; the one called governmental, the other administrative.

The first exists solely in America; the second is almost unknown.

If the directing authority in American societies had both these means of government available and combined the right of total command with the capacity and habit of total execution; if, after establishing the principles of government on a general level, it descended to the very details of application, and, after regulating the country's affairs on a grand scale, it could extend even to the affairs of individuals, freedom would soon be obliterated from the New World.

But, in the United States, the majority, which often has

7. Letter from Jefferson to Madison, 15 March 1789.

THE ATTITUDE OF THE AMERICAN LEGAL PROFESSION AND HOW IT ACTS AS A COUNTERBALANCE TO DEMOCRACY

The usefulness of examining what are the natural tendencies of the legal mind—The lawyers summoned to play an important role in a society struggling into existence—How the type of work undertaken by lawyers gives an aristocratic turn to their ideas—Chance circumstances which may block the development of these ideas—The ease with which the aristocracy unites with the lawyers—The use a despot could make of lawyers—How lawyers are the only aristocratic element which is naturally able to combine with elements natural to democracy—Particular causes which tend to give an aristocratic turn to the English and American legal mind—American aristocracy sits at the bar and on the bench—Lawyers' influence on American society—How their attitudes penetrate the legislature and administration ending up by giving the nation itself something of the instincts of magistrates.

On visiting Americans and studying their laws, one realizes that the power given to lawyers and the influence permitted to them in government today form the most potent barrier against the excesses of democracy. This result seems to stem from a general cause which it is worth examining for it may recur elsewhere.

Lawyers have been involved in all the movements in European society for five hundred years, now as tools of the political authorities, now using the political authorities as tools. In the Middle Ages, lawyers offered wonderful cooperation to kings in the development of their authority which, since that time, they have worked powerfully to restrict. In England they were seen in close union with the aristocracy; in France, they have proved its most dangerous enemies. Do lawyers, therefore, yield only to sudden and temporary impulses or do they obey, more or less according to circumstances, constantly recurring instincts which are natural to them? I should like to clarify this issue for

perhaps lawyers are called upon to play the leading part in a political society struggling into existence.

Men who have made the law their special study have learned habits of orderliness from this legal work, a certain taste for formalities, a sort of instinctive love for a logical sequence of ideas, all of which make them naturally opposed to the revolutionary turn of mind and the ill-considered passions of democracy.

The specialized knowledge and study of the law acquired by lawyers guarantee them a position apart in society and make them into a sort of privileged intellectual class. In the exercise of their profession, they daily encounter the idea of superiority; they are experts in a vital area of knowledge which is not widely available; they arbitrate between citizens and the habit of guiding the blind passions of litigants toward an outcome gives them a certain scorn for the judgment of the crowd. In addition to that, they make up a natural professional body. Not that they all agree with each other or direct their combined energies toward the same point but that their shared studies and like methods link their minds together as their common interests link their desires.

Thus, in the depths of lawyers' souls a part of the tastes and practices of the aristocracy is found and they share the latter's instinctive liking for order, its natural love of formality and similarly conceive a deep distaste for the activities of the crowd and secretly despise the government of the people.

I do not imply that these natural tendencies of lawyers are strong enough to bind them in any irresistible fashion. What dominates lawyers, as all men, is individual self-interest and, above all, the concerns of the passing moment.

There are societies where lawyers cannot hold in the political world the same rank they occupy in their private life; in a society so ordered you may be certain that lawyers will be very active agents of revolution. But we must inquire whether it is a permanent feature of their character or accidental circumstances which lead them to destroy or to change. It is true that lawyers contributed to an unusual degree to the overthrow of the French monarchy in 1789. It remains to be seen whether they acted

because they had studied law or because they could not share in making it.

Five hundred years ago, the English aristocracy placed itself at the head of the people and spoke in its name; today it supports the throne and stands as the champion of royal authority. But aristocracy has instincts and leanings which are peculiar to itself.

It is also necessary to be careful not to confuse isolated members of that body with the body itself.

In all free governments, whatever their make-up, lawyers will appear in the leading ranks of all parties. This same observation is true of the aristocracy. Almost all democratic movements which have troubled the world have been led by the nobility.

An elite body can never satisfy the ambitions of all its members; there are always more talents and passions than tasks to deploy and there are bound to be a great number of men who, being unable to rise quickly enough by exploiting the privileges of the group, seek fast promotion by attacking those very privileges.

Therefore I am not claiming that *all* lawyers will ever, or that most of them will *always*, prove supporters of order and enemies of change.

I am saying that in a society where lawyers unquestionably hold the high rank which naturally belongs to them, their attitude will be dominantly conservative and will prove anti-democratic.

When the aristocrats close their ranks to lawyers, they find the latter to be all the more dangerous as enemies because, although inferior to them in wealth and power, they are independent of them through their work and feel on a similar level through their intelligence.

But whenever the nobility has decided to share some of their privileges with the lawyers, these two classes have found many things which make it easy for them to join forces and have found that they belong to the same family, as it were.

Equally, I am inclined to believe that it will always be easy for a king to turn lawyers into the most useful instruments of his power.

There is immeasurably more natural sympathy between men

of the law and the executive officials than between the former and the people, even though lawyers often have to topple the executive; similarly, more natural sympathy exists between the nobility and the king than between the former and the people even though the upper social classes have been known to unite with others to fight against the power of the king.

What lawyers love above all is order and the greatest safeguard of order is authority. However, we must not forget that, valuing liberty as they might, they generally rate legality as much more precious. They fear tyranny less than arbitrary power and they are more or less content provided that it is the legislator himself who is responsible for removing men's independence.

I therefore think that the prince who sought, in the face of an encroaching democracy, to destroy the power of the judges in his states and to lessen the political influence of lawyers would be committing a great mistake. He would let go the substance of power to lay his hands on merely its shadow.

I am quite clear that he would find it better to bring the lawyers into the government. Having entrusted to them a violently achieved despotism, he might have received it back from them looking like justice and law.

Democratic government favors the political power of lawyers. When the wealthy, the nobles, and the prince are excluded from government, the lawyers come, as it were, into their own for they alone become the only enlightened and skilled men for a nation to choose outside its own ranks.

If lawyers are naturally drawn by their inclinations toward the aristocracy and the prince, their self-interest draws them just as naturally toward the people.

Thus lawyers like democratic government without sharing its inclinations or imitating its weaknesses; thus they derive a twin power from it and over it.

The people in a democracy are not suspicious of lawyers because they know that it is in their interest to serve the democratic cause; they listen to them without getting angry for they do not imagine that they have any ulterior motive. In fact, lawyers have no wish to overturn democracy's given government but they do strive endlessly to guide it along paths and by

methods which are alien to its own. The lawyer belongs to the people out of self-interest and birth but to the aristocracy by customs and tastes; he is virtually the natural liaison officer between these two and the link which unites them.

The legal body represents the sole aristocratic element to mix effortlessly with the natural features of democracy and to combine with them in a happy and lasting way. I am aware of the inherent defects in the attitude of lawyers; nevertheless, without this combination of the legal with the democratic mind, I doubt whether democracy could govern society for long and I hardly believe that nowadays a republic could hope to survive, if the influence of lawyers in its affairs did not grow in proportion to the power of the people.

The aristocratic character which I detect in the legal mind is much more pronounced still in the United States and England than in any other country. This is due not only to English and American legal studies but to the very nature of the legislation and the position of lawyers as its interpreters in these two nations.

Both English and Americans have kept the law of precedent which means that they still draw their opinions in legal matters and the decisions they have to pronounce from the legal opinions and decisions of their fathers.

An English or American lawyer almost always, therefore, combines his taste and respect for what is old with his love for regularity and legality.

This has yet another influence over the way lawyers think and consequently over the course of society.

The English or American lawyer seeks out what has been done before, whereas the French lawyer inquires what he ought to do; the former looks for judgments, the latter, reasons.

Listening to an English or American lawyer, you are surprised to hear him citing so often others' opinions and talking so little of his own, while the opposite subsists in France.

The French lawyer will introduce his own system of ideas in however small a case he agrees to conduct and he will take the discussion back to the constituent principles of the law with a view to persuading the court to move the boundary of the contested inheritance back by a couple of yards.

This sort of denial of their own opinion in favor of the opinions of their fathers and this type of forced subjugation of their own thought must give the English and American legal minds more timid habits and cause them to adopt more static attitudes in their country than their colleagues in France.

Our written laws are often difficult to understand but everyone can read them, whereas nothing could be more obscure and less within the reach of the common man than legislation based on precedents. The necessity for lawyers in England and the United States and the elevated opinion one has for their learning separate them increasingly from the people and end up by placing them in a class apart. The French lawyer is only a man of learning but the English or American lawyers resemble somewhat Egyptian priests and are, like them, the sole interpreters of an obscure science.

The social position of English and American lawyers exerts no less great an influence on their habits and opinions. The English aristocracy which took care to draw into itself everything bearing any likeness to itself afforded lawyers a very large share of consideration and power. In English society, lawyers do not occupy the top position but are content with the one they have. They form, as it were, the younger branch of the English aristocracy and love and respect their elder counterparts without sharing their privileges. English lawyers, therefore, unite the aristocratic interests of their profession with the aristocratic ideas and tastes of the society in which they live.

Thus it is in England, above all, that we see the most striking portrait of the type of lawyer I am attempting to depict; the English lawyer values the laws not so much because they are good but because they are old; if he is reduced to modifying them in some particular to adapt them to the changes wrought by time on society, he has recourse to the most incredible subtleties in order to be persuaded that any addition to the work of his fathers has only developed and amplified their efforts. Do not hope to make him acknowledge that he is an innovator; he will consent to go to absurd lengths before confessing to such an enormous crime. It is in England that was born this legal attitude, which seems indifferent to the essence of things, paying attention

only to the letter of the law and preferring to part company with reason and humanity rather than with the law.

English legislation is like an ancient tree on to which lawyers have grafted an endless series of the oddest shoots in the hope that, though the fruits are different, the leaves at least will match those of the venerable stem which supports them.

In America, there are neither nobles nor men of letters and the people distrust the wealthy. Lawyers, therefore, form the political upper class and the most intellectual section of society. Thus innovation can only damage them, which adds an interest in conservation to the natural liking for order.

If you ask me where American aristocracy is found, my reply would be that it would not be among the wealthy who have no common link uniting them. American aristocracy is found at the bar and on the bench.

The more one reflects on what is happening in the United States, the more one feels convinced that the legal body in this country forms the most power and, so to say, the only counterbalance to democracy.

In the United States, one has no difficulty in discovering the degree to which the legal mind is, both by its qualities and, I would even say, its defects, adapted to neutralize the inherent deficiencies in popular government.

When the American people become intoxicated by their enthusiasms or carried away by their ideas, lawyers apply an almost invisible brake to slow down and halt them. Their aristocratic leanings are secretly opposed to the instincts of democracy; their superstitious respect for what is old, to its love of novelty; their narrow views, to its grandiose plans; their taste for formality, to its scorn for rules; their habit of proceeding slowly, to its impetuosity.

The law courts are the most obvious institutions used by the legal fraternity to influence democracy.

The judge is a lawyer who, apart from his liking for order and rules learned from his legal studies, also imbibes a love of stability from the permanence of his office. His legal knowledge had already guaranteed him a high rank among his equals; his political power completes the task of placing him in a rank

apart and of giving him the instincts of the privileged classes.

Armed with the right of declaring laws unconstitutional, the American magistrate intrudes constantly upon political matters.[1] He cannot compel the people to make laws but, at least, he puts pressure upon them not to be unfaithful to their own laws and to remain in harmony with themselves.

I am aware that in the United States a *tendency* exists which leads the people to reduce the power of the judiciary; in most individual state constitutions, the government can remove judges from office at the request of both houses. Certain constitutions have the court judges *elected* and subject to frequent re-election. I venture to predict that these innovations will have, sooner or later, disastrous results and it will be seen that an attack has been directed against not only the power of judges but against the democratic republic itself.

Besides, one should not think that in the United States the legalistic attitude stays solely within the enclosed world of the courts; it stretches well beyond that.

Since lawyers form the only enlightened class not distrusted by the people, they are naturally summoned to hold most public offices. They fill the ranks of the legislature and head the administrations; they exercise, therefore, a great influence over the shaping of the law and its execution. Although lawyers are obliged to yield to the public opinion which draws them along, it is easy to see signs of what they would do, if they were free. Americans who have *introduced* so many innovations in their political laws have made only slight changes, and those with some reluctance, in their civil laws, although several of these laws are flagrantly repugnant to their social state. That is because the majority always has to turn to lawyers in matters of civil law and American lawyers do not introduce innovation, if the choice is left to them.

For a Frenchman, it is very strange to hear the complaint among Americans against the obstructive spirit and prejudices of lawyers in favor of everything established.

1. See what I have to say about judicial power in the first volume.

The influence of the legalistic attitude spreads yet further than the exact boundaries just indicated.

There is hardly a political question in the United States which does not sooner or later turn into a judicial one. From that comes the consequence that parties feel obliged to borrow legal ideas and language when conducting their own daily controversies. Since most men in public life are, or have been, lawyers, they apply their own habits and turn of mind to the handling of affairs. Jury service familiarizes all classes with this. Judicial language thus becomes pretty well the language of common speech; the spirit of the law starts its life inside schools and courtrooms only to spread gradually beyond their narrow confines; it insinuates itself, so to speak, into the whole of society right down to the lowest ranks until, finally, the entire nation has caught some of the ways and tastes of the magistrate.

Lawyers in the United States constitute a power which is little feared and hardly noticed; it carries no banner of its own and adapts flexibly to the demands of the time, flowing along unresistingly with all the movements of society. Nevertheless it wraps itself around society as a whole, is felt in all social classes, constantly continues to work in secret upon them without their knowing until it has shaped them to its own desires.

THE JURY IN THE UNITED STATES SEEN AS A POLITICAL INSTITUTION

The jury being one of the instruments of the sovereignty of the people must be closely related to the other laws which establish this sovereignty—Composition of American juries—Effects of juries on the national character—Education it gives to the people—How it tends to establish magistrates' influence and to spread legalistic attitudes.

Since my subject has naturally led me to talk of American justice, I shall not leave it without considering the jury.

One must make a distinction between the jury as a judicial institution and as a political one.

If it were a question of knowing how far the jury, especially in civil cases, serves the good administration of justice, I would admit that its usefulness could be challenged.

The jury system began in the early stages of society when only a few simple questions of fact were submitted to the courts; it is no easy task to adapt it to the needs of a very civilized nation when the relations between men have multiplied to an unusual extent and have assumed an intellectual and expert character.[2]

My main aim, at the moment, is to concern myself with the political aspect of juries; any other course would divert me from my theme. Seeing the jury as a judicial instrument, I will say a couple of words. When the English adopted the jury system, they were a semi-barbarian nation; since then, they have turned into one of the most enlightened nations on earth and their attachment to the jury system has appeared to grow along with their enlightenment. They have left their own country, some to found colonies, others independent states. The main body of the nation has retained a king; several groups of settlers have founded powerful republics; but, everywhere, the English have uniformly advocated the jury system.[3] They set it up everywhere

2. Already it would be a useful and curious thing to consider trial by jury as a judicial institution, to weigh up the effects it produces in the United States and to inquire into the way in which the Americans have made use of it. The examination of this question alone could well furnish the subject of a whole book and one that was interesting for the French. For example, we might research what share of American institutions relating to trial by jury could be introduced into France and the steps we would need to take. The American state which would throw the most light upon the subject would be the state of Louisiana which has a population of both French and English. The two systems of law as well as the two nations are there found side by side, gradually combining with each other. The most useful books to consult would be the two-volume collection of the laws of Louisiana, entitled: *Digeste des Lois de la Louisiane*; and perhaps even more so a treatise of civil procedure written in both languages and entitled: *Traité sur les Règles des Actions civiles*, printed in 1830 in New Orleans by Buisson. This work has a special advantage: it supplies the French with an exact and authentic explanation of English legal terms. Legal language is almost a separate language among all nations and among the English more than anyone else.

3. All the English and American legal minds agree on this point. Mr Story, Justice of the Supreme Court of the United States, speaks, in his *Commentaries on the Constitution*, on the excellence of the institution of trial by

or have hastened to re-establish it. A judicial institution which has thus commanded the approval of a great nation over centuries and has been copied enthusiastically in every stage of civilization, in every climate and under every form of government, cannot possibly be contrary to the spirit of justice.[4]

But let us leave that subject. Merely to see the jury as a judicial institution would be to narrow my viewpoint to an unusual degree, for, if it is very influential in the outcome of lawsuits, it is all the more so on the very destinies of society. The jury is, therefore, first and foremost, a political institution and must always be judged from that point of view.

By "jury" I mean a certain number of citizens chosen randomly and entrusted temporarily with the right to judge.

Using juries for the suppression of crime appears to me the

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jury in civil cases. "The inestimable privilege of a trial by jury in civil cases," he says, "a privilege scarcely inferior to that in criminal cases, which is counted by all persons to be essential to political and civil liberty" (Story, bk 3, ch. 38).

4. If we intended to establish the usefulness of jury service as a judicial institution, many other arguments might be presented and among others the following:

As you gradually introduce the jury into public business, you are able with some ease to cut down the number of judges, which is a great advantage. When judges are very numerous, death takes a daily toll of the ranks of judicial officers and leaves vacant places for those still alive. The ambition of magistrates is, therefore, constantly captivated and they are naturally made dependent upon the majority or upon the man who fills vacant posts; advancement in the courts, therefore, is similar to promotion in the army. This state of things is entirely contrary to the sound administration of justice and to the intentions of the legislator. The intention behind making judges inalienable is for them to remain free; but how can it matter that no one can remove their independence, if they themselves sacrifice it of their own accord?

When judges are very numerous, it is impossible for you not to find many who are incompetent; for a great magistrate is not an ordinary man. Now, I do not know whether a half-enlightened court of law is not the worst of all combinations for attaining those ends which underlie the establishment of courts of justice.

As for me, I would prefer to hand over the decision of a case to ignorant jurors directed by a skillful magistrate than to entrust it to judges, the majority of whom have only an imperfect knowledge of jurisprudence and law.

introduction of a predominantly republican institution into government. Let me explain.

The jury system may be aristocratic or democratic according to the class which supplies the juries; but it always retains a republican character in that it entrusts the actual control of society into the hands of the ruled, or some of them, rather than into those of the rulers.

Force is only ever a passing element in success; immediately in its wake comes the idea of right. A government reduced to reaching its enemies only on the battlefield would soon be destroyed. The real sanction of political laws is placed, therefore, in the penal code and where this sanction fails to exist the law loses its power sooner or later. Thus the man who judges in a *criminal* trial is the real master of society. Now, the jury puts the people themselves, or at least one class of citizens, upon the judge's bench. The jury system, therefore, places the actual control of society in the hands of the people or of that class.[5]

In England, the jury is recruited from the aristocratic section of the nation. The aristocracy makes the laws, applies them and judges breaches of them. (See Appendix B, p. 848.) All is agreed: thus England is, in reality, an aristocratic republic. In the United States, the same system is associated with the nation as a whole. Each citizen is a voter, can be voted for and may be a juror. (See Appendix C, p. 849.) The jury system, as understood in America, seems to me as direct and as extreme a consequence of the doctrine of the sovereignty of the people as universal suffrage. They are both equally potent means of preserving the power of the majority.

All sovereigns who have wished to draw the sources of their power from themselves and to control society instead of letting

5. An important note must, however, be made.

Trial by jury certainly does give to the people a general control over the actions of citizens, but it does not grant the means of exercising this control in all cases or with an absolute authority.

When an absolute monarch has the right of trying crimes by his own representatives, the destiny of the accused is, so to speak, decided beforehand. But if the people were set upon conviction, the composition and non-accountability of the jury would still afford opportunities which are favorable to the innocent.

it control them, have destroyed or weakened the jury system. The Tudors used to imprison jurors who decided not to convict and Napoleon[a] had them chosen by his agents.

However obvious the majority of the above truths may be, the point of them does not strike everyone's mind and often the French still seem to have only a muddled idea of the jury system. If one wishes to know what elements should make up the list of jurors, discussion is limited to the education and competence of those called to be members of it as if it were a question of forming purely a judicial institution. In actual fact that would mean to be concerned with the least important aspect of the matter; the jury is above all a political institution; it must be considered as one form of the sovereignty of the people; it has to be entirely rejected were the sovereignty of the people to be discarded; otherwise it should be made to harmonize with those other laws which establish that sovereignty. The jury is the section of the nation responsible for the execution of the laws, just as the legislative assemblies are the section responsible for making them. For society to be governed in a settled and uniform way, the list of jurors must expand or contract with the lists of voters. My view is that the major preoccupation of the legislator should always be centered on this aspect of the matter. The rest is, so to speak, a side issue.

I am so convinced that the jury is primarily a political institution that I still see it as such when it is used in civil cases.

Laws are always unsteady when unsupported by custom which is the only tough and lasting power in a nation.

When juries are restricted to criminal cases, people see them in action only now and again and in special cases; they become accustomed to do without them in the ordinary course of events and look upon them as just a means, although not the only means, of obtaining justice.[6]

On the other hand, when the jury is extended to civil cases, this usage attracts everyone's attention all the time; it then impinges on the interests of all; everyone comes to help in its

6. This is all the more true since the jury is used only in certain criminal cases.

work. In this way, it enters the very business of life; it molds the human mind to its procedures and becomes bound up, as it were, with the very conception of justice.

The jury system, if limited to criminal cases, is therefore always under threat; once introduced into civil cases, it can face up to the passing of time and the assaults of men. If juries could have been removed from the customs of the English as easily as from their laws, they would have collapsed altogether under the Tudors. It is, therefore, civil juries which really did save the liberties of England.

However the jury system is adopted, it cannot fail to exert a great influence upon the character of a nation but such an influence increases immeasurably the more it is used in civil cases.

Juries, especially civil juries, help to instill into the minds of all the citizens something of the mental habits of judges, which are exactly those which best prepare the people to be free.

They spread respect for the courts' decisions and the concept of right throughout all classes. Remove these two ideas and the love of independence will merely be a destructive passion.

They teach men the practice of equity. Each man, in judging his neighbor, believes he may be judged in his turn. That is especially true of juries in civil cases: almost no one fears that one day he will be the subject of a criminal hearing but everyone might suffer a lawsuit.

Juries teach all men not to shirk responsibility for their own actions; without that manly attitude no political virtue can exist.

They invest each citizen with a sort of magistracy; they make all men feel that they have duties toward society and that they are part of their government. By forcing men to concern themselves with something outside their own affairs, they challenge that personal selfishness which rusts the workings of societies.

Juries have an exceptional success in shaping people's judgment and improving their natural wisdom. That, in my view, is their main advantage. They must be looked upon as a free and ever-open classroom in which each juror learns his rights, enters into daily communication with the most learned and enlightened members of the upper classes and is taught the law in a manner

both practical and within his intellectual grasp by the efforts of advocates, the opinions of judges and the very passions of the litigants. I believe one must attribute the practical intelligence and good political sense of Americans primarily to their long experience of jury service in civil cases.

I do not know whether juries are much use to litigants but I am sure that they are of great use to those who judge the case. They are, in my view, one of the most effective means available to society for educating the people.

The above applies to all nations; but what follows is of special concern to Americans and to democratic nations in general.

I have said above that, in democracies, lawyers, and among them magistrates, constitute the only aristocratic body capable of moderating the people's emotions. This aristocracy is not invested with any physical power but exerts its conservative influence on men's minds. Now, it is in the institution of civil juries that it finds the main sources of its power.

In criminal trials, when society is in conflict with one man, juries are inclined to look upon the judge as a passive instrument of society's power and they distrust his opinions. In addition, criminal cases rest entirely upon simple facts easily appreciated by common sense. On such ground, judge and juries are equal.

Such is not at all the case in civil suits; then the judge appears like an impartial arbitrator of the passions of the litigants. The jurors regard him with confidence and listen to him with respect, for this is a place where his intelligence is wholly superior to theirs. He is the one to unravel for them the various arguments which they find difficult to recall; he is the one to take them by the hand to direct them through the twists and turns of the hearing; he is the one to limit them to questions of fact and to tell them the response they should make to any question of law. His influence over them is almost boundless.

Finally, is it necessary to explain why I feel unmoved by the arguments based on the incompetence of juries in civil suits?

In civil cases, at least when questions of fact are not at issue, the jury only looks like a judicial body.

Juries pronounce the decision given by the judge. They invest this decision with the stamp of the society they represent, while

he adds the stamp of reason and the law. (See Appendix D, p. 851.)

In England and America judges exercise an influence over the outcome in criminal trials which the French judge has never known. The reason for this difference is easy to understand: the English or American magistrate, having established his authority in civil courts, simply transfers it after that to tribunals of another *kind*, where it was not first acquired.

There are cases, and often they are the most important, when the American judge has the right to pronounce alone.[7] He then finds himself by chance in the position normal for a French judge but with much greater moral authority: memories of the jury still follow him around and his voice assumes almost as much force as that of the society represented by those juries.

His influence spreads even well beyond the enclosed world of the courts—whether in the relaxed atmosphere of private life or in the work of political life, whether in the marketplace or in one of the legislatures, the American judge constantly sees around him men who are accustomed to view his intelligence as something superior to their own. And well after his power has been exercised in deciding cases, it influences the habits of mind and even the very soul of all those who have cooperated with him in judging them.

Thus the jury, which seems to be reducing the rights of the magistracy, in effect is founding its sway and there is not a single country where judges are as powerful as in those where the people take a share in their privileges.

It is especially with the help of juries in civil cases that American judges promote what I have called the legalistic attitude, even down to the *lowest* of the social classes.

Thus the jury, the most energetic method of asserting the people's rule, is also the most effective method of teaching them how to rule.

7. Federal judges almost always decide upon only those questions which touch closely upon the government of the country.