

ALEXIS  
DE TOCQUEVILLE

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DEMOCRACY IN AMERICA

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Here civilized men would attempt to build society on new foundations. Applying for the first time theories either previously unknown or deemed inapplicable, they would stage for the world a spectacle for which nothing in the history of the past had prepared it.

## Chapter 2

### ON THE POINT OF DEPARTURE AND ITS IMPORTANCE FOR THE FUTURE OF THE ANGLO-AMERICANS

*Usefulness of knowing a people's point of departure in order to understand its social state and laws. — America is the only country in which it has been possible to perceive clearly the point of departure of a great people. — In what respects all the people who came to English America were similar. — In what respects they differed. — Remark applicable to all the Europeans who settled on the shores of the New World. — Colonization of Virginia. — Colonization of New England. — Original character of the early inhabitants of New England. — Their arrival. — Their first laws. — Social contract. — Penal code borrowed from the Law of Moses. — Religious ardor. — Republican spirit. — Intimate union of spirit of religion and spirit of liberty.*

**A**MAN is born. His first years pass unnoticed in the pleasures and travails of childhood. He grows up. Manhood begins. At last the doors of the world open to receive him. He enters into contact with his fellow man. People begin to study him, and think they can perceive the seeds that will develop into the vices and virtues of maturity.

This, if I am not mistaken, is a great error.

Go back in time. Examine the babe when still in its mother's arms. See the external world reflected for the first time in the still-dark mirror of his intelligence. Contemplate the first models to make an impression on him. Listen to the words that first awaken his dormant powers of thought. Take note, finally, of the first battles he is obliged to fight. Only then will you understand where the prejudices, habits, and passions that will dominate his life come from. In a manner of speaking, the whole man already lies swaddled in his cradle.

Something analogous happens with nations. Every people bears the mark of its origins. The circumstances that surround its birth and aid its development also influence the subsequent course of its existence.

If we could trace societies back to their elements and examine the earliest records of their history, I have no doubt that we would discover the first cause of their prejudices, habits, and dominant passions, indeed, of every aspect of what has been called the national character. We would discover explanations for customs that today seem at odds with prevailing mores; for laws that seem to clash with accepted principles; and for the inconsistent opinions that one occasionally encounters in a society — opinions reminiscent of the fragments of broken chain that one sometimes finds dangling from the vaults of an old building, no longer supporting anything. This might explain the destiny of certain peoples, who seem propelled by an unknown force toward an end undivined even by themselves. Until now, however, the facts needed for such a study have been lacking. Nations developed an analytic spirit only as they grew old, and before it occurred to them to reflect on their beginnings, time had already shrouded the moment of their inception in fog, and ignorance and pride had surrounded it with fables behind which the truth lay hidden.

America is the only country in which it has been possible to witness the natural and tranquil course of a society's development and to pinpoint the influence of a state's point of departure on its future.

By the time the peoples of Europe landed on the shores of the New World, the traits of their national characters were already fully formed. Each of them had a distinct physiognomy. Having already achieved that degree of civilization which inclines men to study themselves, they left us a faithful portrait of their opinions, mores, and laws. We know the men of the fifteenth century almost as well as we know ourselves. America therefore exposes to the light of day what the ignorance and barbarity of the earliest times conceal.

Close enough to the time when the societies of America were founded to be acquainted in detail with their elements, yet far enough away to form a judgment of what those seeds have produced, we seem destined to see further into human events than our predecessors did. Providence has placed within our reach a torch our fathers lacked, a torch that allows us, when examining the destiny of nations, to make out first causes that the obscurity of the past hid from our forebears.

If, after attentively studying the history of America, one carefully examines its political and social state, one becomes firmly convinced of the following truth: that there is not a single opinion, habit, or law, I might almost say not a single event, which the point of departure cannot readily explain. Hence anyone who reads this book will find in the present chapter the germ of what follows and the key to virtually the entire work.

The immigrants who came at various times to occupy the territory of what is now the American Union differed from one another in many respects. Their goals were not the same, and they governed themselves according to a variety of principles.

Nevertheless, those men shared certain traits in common, and all found themselves in a similar situation.

The bond of language is perhaps the strongest and most durable that exists among men. All the immigrants spoke the same language; all were children of the same people. Born in a country riven by centuries of partisan strife, in which one faction after another had been obliged to seek the protection of the law, their political education had been conducted in this harsh school, and they shared more notions of rights and more principles of true liberty than most other European peoples. By the time of the earliest immigrations, local government, that prolific seed of free institutions, was already deeply ingrained in English habits, and the dogma of popular sovereignty thereby implanted itself at the very heart of the Tudor monarchy.

At that time the Christian world was agitated by religious controversy. With a kind of frenzy, England had plunged headlong into the fray. A people whose character had always been grave and deliberate now became austere and argumentative. Education improved greatly in the course of these intellectual struggles; the cultivation of the intellect achieved a new depth. At a time when religion was on everyone's lips, morals grew purer. All of these general national features were reflected to one degree or another in the physiognomies of those sons of England who arrived on the opposite shore of the Atlantic in search of a new future.

A further remark, to which I shall have occasion to return later, applies not only to the English but also to the French,

the Spanish, and all the other Europeans who settled one after another on the shores of the New World. All the new European colonies invariably contained at least the germ, if not the mature form, of a complete democracy. There were two reasons for this: it is fair to say that, on the whole when emigrants left the mother country, they had no notion of any kind of superiority of some over others. It was scarcely the happy and powerful who chose exile, and poverty, together with misfortune, is the best guarantee we know of equality among men. On occasion, however, a great lord might flee to America in the wake of a political or religious quarrel. Although laws establishing a hierarchy of ranks were adopted there, it soon became clear that American soil was implacably hostile to landed aristocracy. People realized that if this refractory soil was to be cultivated, it would take nothing less than the constant and self-interested effort of those who owned the land. When the ground was tilled, its fruits proved insufficient to enrich both a master and a farmer. It was therefore natural for the land to be divided into small holdings, each just large enough to be farmed by its owner without assistance. But aristocracy is rooted in the soil; it is attached to, and dependent on, land. It is not just privilege that establishes an aristocracy and not just birth that constitutes it; it is property in land, passed on from generation to generation. A nation may engender both vast wealth and grinding poverty, but if that wealth is not territorial, one finds only rich or poor among its people, not aristocrats in the true sense of the word.

Hence there was a marked family resemblance among the various English colonies at their inception. From the first, all seemed destined to encourage the growth of liberty: not the aristocratic liberty of the mother country but bourgeois and democratic liberty, of which history as yet offered no fully developed model.

Such was the general complexion of things, but we must also pay careful attention to any number of distinct variations.

Within the great Anglo-American family we find two main branches, which have thus far matured without altogether losing their identity, one in the south, the other in the north.

Virginia was home to the first English colony. Immigrants arrived there in 1607. Europe at that time was still singularly preoccupied by the idea that gold and silver mines constitute the wealth of nations: a disastrous idea that did more to impoverish the European nations that embraced it, and destroyed more men in America, than war and iniquitous laws combined. It was therefore gold-seekers who were sent to Virginia,<sup>1</sup> men without resources or discipline whose restless, turbulent spirit caused trouble for the colony in its early days<sup>2</sup> and rendered its progress uncertain. Then came working men and farmers, a more moral and tranquil breed but not much above the lower classes of England in any respect.<sup>3</sup> No noble thought or immaterial contrivance presided over the foundation of these new settlements. No sooner was the colony created than slavery was introduced.<sup>4</sup> This capital fact was to exert an immense influence on the character, laws, and entire future of the South.

Slavery, as I will explain later, dishonors labor. It introduces idleness into society and, with it, ignorance and pride, poverty and luxury. It saps the powers of the mind and lulls human activity to sleep. The influence of slavery, combined with the English character, explains the mores and social state of the South.

In the North, the English background was the same, but the foreground was painted in very different shades. I beg the reader's indulgence while I fill in a few details.

<sup>1</sup>The charter granted by the English crown in 1609 stipulated that the colonists were to pay the crown one-fifth of what their mines yielded in gold and silver. See Marshall, *Vie de Washington*, vol. 1, pp. 18-66.

<sup>2</sup>According to Stith (*History of Virginia*), many of the new colonists were young people from troubled families whose parents had shipped them off to thwart some ignominious fate; the rest were former servants, bankrupt swindlers, debauchees, and other people of the sort, more likely to pillage and destroy than to consolidate the new settlement. Seditious leaders found it easy to enlist support for all sorts of extravagant adventures. On the history of Virginia, see Smith, *History of Virginia from the First Settlements to the Year 1624*; William Stith, *History of Virginia*; and Beverley, *History of Virginia from the Earliest Period*, translated into French in 1807.

<sup>3</sup>It was only later that a certain number of wealthy English landowners settled in the colony.

<sup>4</sup>Slavery was introduced in 1620 by a Dutch vessel that landed twenty Negroes on the banks of the James River. See Chalmer.

It was in the English colonies of the North, better known as the New England states,<sup>5</sup> that the two or three principal ideas which today form the basis of the social theory of the United States were first combined.

The principles of New England spread initially to nearby states. Little by little they made their way to the farthest reaches of the confederation until ultimately they had, if I may put it this way, *penetrated* throughout. Their influence extended beyond New England's borders, to the entire American continent. The civilization of New England was like a bonfire on a hilltop, which, having spread its warmth to its immediate vicinity, tinged even the distant horizon with its glow.

The founding of New England presented a novel spectacle: everything about it was singular and original.

The first inhabitants of most other colonies were men with neither education nor means, men driven from the land of their birth by poverty or misconduct; or else they were greedy speculators and industrial entrepreneurs. Some colonies could not claim even that much about their origins: Santo Domingo was founded by pirates, and even now the courts of England are making it their mission to populate Australia.

The immigrants who settled on the shores of New England all belonged to the well-to-do classes of the mother country. From the first, what was striking about their gathering on American soil was that here was a society with neither great lords nor commoners, indeed, one might almost say with neither rich nor poor. These people possessed a proportionately greater quantity of enlightenment than any European nation today. All, virtually without exception, had received a reasonably advanced education, and any number were renowned in Europe for their talents and learning. Other colonies had been founded by adventurers without families. The people who immigrated to New England brought with them admirable elements of order and morality. They went into the wilderness with their wives and children. But what distinguished them most of all from other colonizers was the very

<sup>5</sup>The New England states are those situated east of the Hudson. Today there are six: Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

purpose of their enterprise. It was by no means necessity that forced them to leave their native land. They left behind enviable social positions and secure incomes. They did not travel to the New World in the hope of improving their situation or enhancing their wealth. They tore themselves away from the pleasures of home in obedience to a purely intellectual need. They braved the inevitable miseries of exile because they wished to ensure the victory of *an idea*.

These immigrants, or, as they so aptly styled themselves, "pilgrims," belonged to that English sect whose austere principles had earned it the name "Puritan." Puritanism was not just a religious doctrine. In several respects it coincided with the most absolute democratic and republican theories. It was this aspect of Puritanism that had aroused its most dangerous adversaries against it. Persecuted by the government of the mother country and offended by the routine ways of a society at odds with the rigorous principles by which they lived, the Puritans sought a land so barbarous and so neglected that they might still be allowed to live there as they wished and pray to God in liberty.

A few quotations will throw more light on the spirit of these pious adventurers than anything I might say.

Nathaniel Morton, the historian of New England's early years, broaches his subject thus:<sup>6</sup>

I have always thought that it was a sacred duty for us, whose fathers received so many and such memorable tokens of divine goodness in the establishment of this colony, to perpetuate the memory of it in writing. What we have seen, and what has been recounted to us by our fathers, we must make known to our children, so that the generations to come may learn to praise the Lord; so that the progeny of Abraham his servant, and the sons of Jacob his chosen, may always keep the memory of the miraculous works of God (Psalms CV:5-6). They must know how the Lord brought his vine into the desert; how he planted it and cast out the pagans; how he prepared a place for it, rooted it deeply, and then allowed it to spread and cover the land far and wide (Psalms LXXX:13-15); and not only that, but also how he guided his people toward his holy tabernacle, and established it on the mountain of his inheritance (Exodus XV:13). These facts should

<sup>6</sup>*New England's Memorial*, p. 14, Boston, 1826. See also Hutchinson, *History*, vol. II, p. 440.

be known, so that God may derive from them the honor that is due Him, and so that some rays of His glory may fall upon the venerable names of the saints that served him as instruments.

No reader of this opening passage can fail to be moved in spite of himself by its solemn religious feeling. It breathes the air of antiquity and is redolent of a kind of biblical fragrance.

The writer's conviction elevates his style. One begins to see with his eyes, not a small band of adventurers gone to seek their fortune across the sea but the seed of a great people set down in a promised land by the hand of God.

The author goes on to describe the departure of the first emigrants:<sup>7</sup>

So they left this city (Delft-Haleft), which had been for them a resting place. Meanwhile they were calm; they knew that they were pilgrims and strangers here below. They were not attached to the things of the earth but lifted their eyes to heaven, their cherished fatherland, where God had prepared for them his holy city. They finally reached the port where the vessel awaited them. A great many friends who could not depart with them had nevertheless wished to follow them that far. The night passed without sleep; it was spent in effusions of friendship, pious discourse, and expressions full of true Christian tenderness. The next day they went on board; their friends wanted to accompany them still. It was then that deep sighs were heard, and tears were seen to flow from all eyes, and even strangers were moved by the sound of long farewells and ardent prayers. When the departure signal was given, they fell to their knees, and their pastor, lifting eyes filled with tears up to heaven, commended them to the mercy of the Lord. At last they took leave of one another and uttered that farewell which, for many of them, was to be the last.

The emigrants, counting women and children as well as men, numbered about one hundred and fifty. Their purpose was to found a colony on the banks of the Hudson. But having roamed the ocean for quite some time, they were finally forced to land on the arid coast of New England, on the spot where the city of Plymouth now stands. The rock upon which the Pilgrims first set foot can still be seen.<sup>8</sup>

<sup>7</sup>*New England's Memorial*, p. 22.

<sup>8</sup>This rock has become an object of veneration in the United States. I have seen fragments of it preserved in any number of cities of the Union. Does this not clearly prove that man's power and grandeur lie entirely within his

"But before continuing," says the historian whom I have already cited,<sup>9</sup> "consider for a moment the present condition of these poor people, and admire the goodness of God, who saved them."

They had now crossed the vast ocean, they were coming to the end of their voyage, but they saw no friends to receive them, no dwelling to offer them shelter. It was the middle of winter, and those who know our climate know how harsh the winters are and what furious gales ravage our coasts. In this season, it is difficult to travel to known places, hence more difficult still to settle on new shores. Around them there was nothing to be seen but a hideous and desolate wilderness, full of wild animals and wild men, whose ferocity and number they could not gauge. The ground was frozen. The land was covered with forests and brush, all of barbarous aspect. Behind them they saw only the immense ocean that separated them from the civilized world. What little peace and hope was to be found could only be glimpsed by turning their eyes upward.

It must not be imagined that the piety of the Puritans was purely speculative, or that it took no notice of worldly affairs. Puritanism, as I have said, was almost as much a political theory as it was a religious doctrine. No sooner had the immigrants landed on the inhospitable shores described above by Nathaniel Morton than they set about organizing a society. They immediately adopted a covenant, which read:<sup>10</sup>

"We, whose names follow, who, for the glory of God, the development of the Christian faith, and the honor of our fatherland have undertaken to establish the first colony on these remote shores, we agree in the present document, by mutual and solemn consent, and before God, to form ourselves into a body of political society, for the purpose of governing ourselves and working toward the accomplishment

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soul? A rock is touched momentarily by the feet of a few wretched individuals, and that rock becomes famous. It draws the attention of a great people. Pieces of it are venerated, and its dust is distributed far and wide. What has become of the doorstep of many a palace? Does anyone care?

<sup>9</sup>*New England's Memorial*, p. 35.

<sup>10</sup>The immigrants who founded the state of Rhode Island in 1638, those who settled in New Haven in 1637, the first inhabitants of Connecticut in 1639, and the founders of Providence in 1640 also began by drafting a social contract, which was submitted to everyone concerned for their approval.

of these designs; and in virtue of this contract, we agree to promulgate laws, acts, and ordinances, and to institute as needed officials to whom we promise submission and obedience.”

This took place in 1620. From then on, emigration continued without letup. The religious and political passions that tore the British Empire apart throughout the reign of Charles I drove additional hordes of sectarians onto the coast of America every year. In England, the breeding ground of Puritanism remained among the middle classes. It was from those classes that most of the emigrants sprang. The population of New England increased rapidly, and while people in the mother country continued to be classified despotically according to the hierarchy of rank, the colony increasingly exhibited the new spectacle of a society homogeneous in all its parts. Democracy such as antiquity had never dared to dream of leapt full-grown and fully armed from the middle of the old feudal society.

Content to be rid of the seeds of fresh unrest and future revolutions, the English government was undismayed by the flood of emigrants. Indeed, it did what it could to encourage them and seemed little concerned by the fate of those who sought, on American soil, asylum from the harshness of its laws. It was as though it looked upon New England as a region best left to the imagination of dreamers and abandoned to innovators to experiment with at will.

The English colonies always enjoyed greater internal freedom and political independence than did the colonies of other peoples: this was one of the chief causes of their prosperity. But nowhere was this principle of liberty more comprehensively applied than in the states of New England.

At the time, it was generally agreed that the lands of the New World belonged to the European nation that was first to discover them.

Almost the entire coast of North America thus became an English possession toward the end of the sixteenth century. The British government employed a variety of means to populate these new dominions. In some cases, the king made a portion of the New World subject to a governor of his choosing, who was charged with administering the country in the

king's name and under his direct orders.<sup>11</sup> This was the colonial system adopted by the rest of Europe. In other cases, he awarded ownership of certain regions to an individual or company.<sup>12</sup> All civil and political powers were then concentrated in the hands of one or more individuals, who sold the land and governed its inhabitants under crown supervision and control. Finally, under a third system, the king granted a group of immigrants the right to form a political society under the patronage of the mother country and to govern themselves in any respect not contrary to its laws.

This mode of colonization, so propitious to liberty, was put into practice only in New England.<sup>13</sup>

In 1628, Charles I granted a charter of this kind to the founders of the Massachusetts colony.<sup>14</sup>

In general, however, charters were granted to the colonies of New England only long after their existence had become an accomplished fact. Plymouth, Providence, New Haven, and the states of Connecticut and Rhode Island<sup>15</sup> were founded without the cooperation and in a sense without the knowledge of the mother country. Although the new inhabitants did not deny the supremacy of the metropolis, neither did they look to it as the source of all power: they constituted themselves, and it was only thirty or forty years later, under

<sup>11</sup>This was the case with New York.

<sup>12</sup>Maryland, the Carolinas, Pennsylvania, and New Jersey were included in this group. See *Pitkin's History*, vol. 1, pp. 11-31.

<sup>13</sup>See, in the work entitled *Historical Collection of State Papers and Other Authentic Documents Intended as Materials for an History of the United States of America* by Ebenezer Hazard, printed in Philadelphia in 1792, innumerable documents precious for their content and authenticity concerning the early days of the colonies, including the various charters granted to them by the Crown of England, as well as the first acts of their governments.

See also the analysis of these various charters by Mr. Justice Story of the Supreme Court of the United States in the introduction to his *Commentary on the Constitution of the United States*.

From all these documents it emerges that the principles of representative government and the external forms of political freedom were introduced into all the colonies almost from their inception. These principles were more fully elaborated in the north than in the south, but they existed everywhere.

<sup>14</sup>See *Pitkin's History*, p. 35, vol. 1. See *The History of the Colony of Massachusetts* by Hutchinson, vol. 1, p. 9.

<sup>15</sup>*Ibid.*, pp. 42-47.

Charles II, that a royal charter was issued to legalize their existence.

Thus it is often difficult, in examining New England's earliest historical and legislative records, to perceive the bond between the immigrants and the land of their ancestors. We find them regularly exercising sovereign powers: they appoint magistrates, make peace and war, establish rules of order, and adopt laws as if answerable to God alone.<sup>16</sup>

Nothing is more curious and at the same time more instructive than the legislation of this period. Here above all lies the key to the great social enigma with which the United States confronts the world today.

As a characteristic example of that legislation, we may choose the code of laws adopted in 1650 by the small state of Connecticut.<sup>17</sup>

Connecticut's lawmakers first took up the question of penal laws.<sup>18</sup> In drafting those laws, they hit on the strange idea of drawing upon sacred texts:

"Whosoever shall worship any deity other than the Lord God," they began, "shall be put to death."

This was followed by ten or twelve similar provisions taken literally from Deuteronomy, Exodus, and Leviticus.

Blasphemy, witchcraft, adultery,<sup>19</sup> and rape were punishable by death. A son who failed to honor his father and mother was subject to the same penalty. Thus the laws of a rude and

<sup>16</sup>When the residents of Massachusetts established courts of law and adopted rules of civil and criminal procedure, they departed from English custom: in 1650 the king's name still did not appear at the head of judicial warrants. See Hutchinson, vol. 1, p. 452.

<sup>17</sup>*Code of 1650*, p. 28 (Hartford, 1830).

<sup>18</sup>See also, in Hutchinson's *History*, vol. 1, pp. 435-456, the analysis of the Penal Code adopted in 1648 by the Massachusetts Bay Colony. This code was based on principles similar to those on which the Connecticut code was based.

<sup>19</sup>Adultery was also punishable by death in Massachusetts, and Hutchinson, vol. 1, p. 441, says that several people were in fact executed for this crime. In this connection, he mentions a curious anecdote that dates back to 1663. A married woman had amorous relations with a young man. After being left a widow, she married him. Several years passed. People at last came to suspect that the couple had been intimate prior to their marriage, and criminal charges were brought. They were imprisoned and just barely escaped being put to death.

half-civilized people were carried over into a society of enlightened spirit and gentle mores. Never was the death penalty more frequently prescribed by statute or more seldom enforced.

The men who framed these penal codes were primarily concerned with maintaining the moral order and sound mores of their society. They therefore repeatedly intruded upon the realm of conscience, and virtually no sin was exempt from the scrutiny of the courts. The reader has seen how harshly these laws punished adultery and rape. Even social intercourse between unmarried individuals was subject to severe censure. Judges were permitted to impose one of three penalties: a fine, a whipping, or a wedding.<sup>20</sup> To judge by the records of the old courts of New Haven, moreover, prosecutions for such crimes were not infrequent. On May 1, 1660, for example, a young woman was fined and reprimanded after being accused of making indiscreet remarks and allowing herself to be kissed.<sup>21</sup> The Code of 1650 abounded with preventive measures. Sloth and drunkenness were severely punished.<sup>22</sup> Innkeepers were not permitted to serve more than a specified quantity of wine to each consumer. Fines and floggings were meted out for mere lies if likely to cause harm.<sup>23</sup> Elsewhere, legislators totally oblivious of the great principles of religious freedom that they had claimed for themselves in Europe imposed fines intended to frighten people into attending religious services<sup>24</sup> and often went so far as to mandate severe punishment<sup>25</sup> or

<sup>20</sup>*Code of 1650*, p. 48.

It appears that in some cases judges imposed all three penalties, as can be seen in a verdict of 1643 (p. 114, *New Haven Antiquities*, which indicates that one Margaret Bedford, convicted of having engaged in reprehensible acts, was to be punished by whipping and then obliged to marry Nicholas Jemmings, her accomplice).

<sup>21</sup>*New Haven Antiquities*, p. 104. See also Hutchinson's *History*, vol. 1, p. 436, for several equally extraordinary verdicts.

<sup>22</sup>*Ibid.*, 1650, pp. 50, 57.

<sup>23</sup>*Ibid.*, p. 64.

<sup>24</sup>*Ibid.*, p. 44.

<sup>25</sup>This was not peculiar to Connecticut. See, for example, the Massachusetts law of September 13, 1644, banishing Anabaptists: *Historical Collection of State Papers*, vol. 1, p. 538. See also the law published on October 14, 1656, against the Quakers: "Whereas there is a pernicious sect, commonly called Quakers, lately arisen . . ." Subsequent provisions of this law stipulate large



even death for Christians who wished to worship God in some way other than their own.<sup>26</sup> In their ardor to regulate, legislators sometimes stooped to consider matters unworthy of their august function. For instance, the previously mentioned code included a law prohibiting the use of tobacco.<sup>27</sup> However, we must not lose sight of the fact that these bizarre and even tyrannical laws were not imposed from above but freely approved by the votes of all affected by them, or that their mores were even more austere and puritanical than their laws. In 1649, an association was formed in Boston for the solemn purpose of stamping out the worldly luxury of long hair.<sup>28</sup>

Surely such lapses constitute a stain upon the human spirit. They attest to the inferiority of our nature, which, by virtue of our incapacity to maintain a firm grasp on truth and justice, is generally reduced to a choice between extremes.

Alongside these penal laws, so profoundly marked by narrow sectarian thinking as well as by religious passions warmed by persecution and still fermenting in the souls of men, there was also a body of political laws, in some ways closely linked to the former, and yet which, though drafted some two hundred years ago, still seems far in advance of the spirit of liberty of our own age.

The general principles upon which modern constitutions are based — principles that most Europeans barely comprehended in the seventeenth century and whose triumph in Great Britain was still incomplete — were all recognized and incorporated into the laws of New England: involvement of the people in public affairs, free voting on taxes, accountability of government officials, individual liberty, and trial by

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fines to be imposed on the captain of any vessel bringing Quakers into the region. Any Quaker found in the colony was subject to flogging and imprisonment in a workhouse. Any who continued to defend their views were subject first to fine, then imprisonment, and finally banishment. Same collection, vol. 1, p. 630.

<sup>26</sup>Under the penal code of Massachusetts, any Catholic priest who set foot in the colony after being expelled was subject to the death penalty.

<sup>27</sup>*Code of 1650*, p. 96.

<sup>28</sup>*New England's Memorial*, p. 316.

<sup>\*</sup>See Note V, page 839.

jury — all of these were adopted without debate and put into practice.

There, these fundamental principles were applied and elaborated to a degree that no European nation has yet dared to attempt.

In Connecticut, the electorate from the beginning comprised the totality of all citizens, and the reason for this is simple:<sup>29</sup> in that nascent community there prevailed an almost perfect equality of wealth and a still greater equality of intellect.<sup>30</sup>

In Connecticut at that time, all officials of the executive branch of government were elected, including the governor of the state.<sup>31</sup>

Citizens above the age of sixteen were required to bear arms. They formed a national militia, which chose its own officers and was required to maintain itself in a constant state of readiness to defend the country.<sup>32</sup>

In the laws of Connecticut and the other New England states we witness the inception and development of that local independence which is still today the wellspring and lifeblood of liberty in America.

In most European nations, political existence began in the upper reaches of society and was communicated, gradually and always incompletely, to other parts of the social body.

In America, by contrast, the local community was organized before the county, the county before the state, and the state before the Union.

In New England local governments were fully constituted and had achieved their mature form by 1650. Each individual locality became a focal point of passions and interests, duties and rights. A real and active, wholly democratic and republican political life flourished within each community. The colonies still acknowledged the supremacy of the metropolis.

<sup>29</sup>Constitution of 1638, p. 17.

<sup>30</sup>In 1641, the General Assembly of Rhode Island unanimously declared that the government of the state was a democracy and that power was vested in the body of free men, who alone had the right to make the laws and see to it that they were carried out. *Code of 1650*, p. 70.

<sup>31</sup>*Pitkin's History*, p. 47.

<sup>32</sup>Constitution of 1638, p. 12.

Monarchy was the law of the state, but already the republic was alive in local government.

Local governments appointed all of their own magistrates. They assessed property and apportioned and levied taxes.<sup>33</sup> New England's towns did not adopt a representative form of government. As in Athens, matters affecting everyone's interests were discussed in public places and in general assemblies of citizens.

When one studies closely the laws adopted in the early years of the American republics, one is struck by the lawmakers' knowledge of government as well as by their advanced theories.

It is clear that they had a loftier and more comprehensive idea of society's duties toward its members than did their European counterparts, and that they imposed on society obligations from which it was elsewhere exempt. In New England provision was made from the first for the care of the poor.<sup>34</sup> Strenuous efforts were made to maintain the roads, and officials were appointed to monitor their condition.<sup>35</sup> Town governments kept open records of deliberations at public meetings as well as of deaths, marriages, and births of their citizens.<sup>36</sup> Clerks were designated to maintain these records.<sup>37</sup> Officials were assigned to administer intestate property, others to establish the boundaries of inherited land, and still others whose principal function was to preserve the public tranquillity.<sup>38</sup>

Legislation concerned itself with a thousand details in order to anticipate and satisfy a host of social needs which even now are only dimly perceived in France.

But, from the beginning, the originality of American civilization was most clearly apparent in the provisions made for public education.

"Whereas," says the law, "Satan, the enemy of the human race, finds his most powerful weapons in the ignorance of men, and it is important that the enlightenment brought here

<sup>33</sup>*Code of 1650*, p. 80.

<sup>34</sup>*Ibid.*, p. 78.

<sup>35</sup>*Ibid.*, p. 49.

<sup>36</sup>See Hutchinson's *History*, vol. 1, p. 455.

<sup>37</sup>*Code of 1650*, p. 86

<sup>38</sup>*Ibid.*, p. 40

by our forefathers not remain buried in their graves; and whereas the education of children is one of the primary interests of the state, with the assistance of the Lord."<sup>39</sup> Subsequent clauses of the law established schools in every town and required citizens to pay taxes to support them or else face significant fines. In the most populous districts, high schools were established in the same way. Municipal magistrates were made responsible for seeing that parents sent their children to school. They were authorized to impose fines on any parent who refused to do so. If resistance continued, society, putting itself in the place of the family, might seize the child and deprive its father of natural rights so egregiously abused.<sup>40</sup> The reader will no doubt have been struck by the preamble to these statutes: in America, it was religion that showed the way to enlightenment; it was respect for divine law that showed man the way to freedom.

If, having made this rapid survey of American society as it was in 1650, we examine now the state of Europe, and, more particularly, continental Europe, at the same time, we are in for a rude shock: everywhere on the continent absolute monarchy stood in triumph upon the debris of the oligarchic and feudal liberty of the Middle Ages. Never, perhaps, was the idea of rights more completely neglected than in the midst of this brilliant and literary Europe. Never were people less involved in political life or less concerned with notions of true liberty. Yet even then the very principles ignored or despised by the nations of Europe were being proclaimed in the wilderness of the New World and held out as the future symbol of a great people. The boldest theories ever conceived by the mind of man were put into practice in a society in appearance quite humble, and with which perhaps no statesman of the day deigned to concern himself. Left to its own devices, the human imagination improvised an unprecedented body of laws. From the bosom of this obscure democracy, which had yet to produce a single general or philosopher or great writer, a man could step forth to address a free people and give, to the acclamation of all, this beautiful definition of liberty:

<sup>39</sup>*Ibid.*, p. 90.

<sup>40</sup>*Ibid.*, p. 83.

Make no mistake about what we ought to understand by our independence. There is in fact a corrupt sort of liberty, the use of which is common to animals and men, and which consists in doing whatever they like. This liberty is the enemy of all authority; it is impatient of all rules. With it, we become inferior to ourselves. It is the enemy of truth and peace, and God believed it his duty to rise against it! But there is a civil and moral liberty that finds its strength in union, and which it is the mission of power itself to protect: this is the liberty to do what is just and good without fear. This sacred liberty we must defend in all circumstances and if necessary risk our life for it.<sup>41</sup>

I have already said enough to put the character of Anglo-American civilization in its true light. It is the result (and this point of departure should be constantly kept in mind) of two quite distinct elements, which elsewhere have often been at war but in America have somehow been incorporated into one another and marvelously combined. I allude to the *spirit of religion* and the *spirit of liberty*.

The founders of New England were at once ardent sectarians and impassioned innovators. Strictly bound by certain religious beliefs, they were free from all political prejudice.

Accordingly, two distinct though not contradictory tendencies are apparent everywhere, in mores as well as laws.

Some men are willing to sacrifice friends, family, and country for the sake of a religious opinion. We may assume that if they are willing to pay so high a price for an intellectual prize, they must be totally absorbed by its pursuit. Yet we find these same men seeking, with almost equal ardor, material wealth and moral gratifications, heaven in the other world and prosperity and freedom in this.

In their hands, political principles, laws, and human institutions seem to be malleable things, capable of being shaped and combined at will.

The walls that imprisoned the society into which they were born fall before them. Old opinions, which ruled the world for centuries, vanish. Limitless opportunities, fields without

<sup>41</sup>*Mather's Magnalia Christi Americana*, vol. 2, p. 13. The speech is that of Winthrop, who was accused of having acted arbitrarily as a judge. After he made the speech from which I have taken this excerpt, however, he was acquitted amidst applause, and he was still reelected as governor of the state. See Marshall, vol. 1, p. 166.

horizon, open up before them. The human spirit hastens to explore these and sets out in every conceivable direction. When it reaches the limits of the political world, however, it stops of its own accord. In trepidation it forgoes the use of its most redoubtable faculties. It forswears doubt. It renounces the need to innovate. It refrains from even lifting the veil of the sanctuary. It bows respectfully before truths it accepts without argument.

Thus, in the moral world, everything is arranged, coordinated, anticipated, and decided in advance. In the political world, everything is agitated, contested, and uncertain. On the one hand, passive albeit voluntary obedience; on the other, independence, contempt for experience, and jealousy of all authority.

Far from clashing, these two tendencies, in appearance so contradictory, advance in harmony and seem to support each other.

Religion looks upon civil liberty as a noble exercise of man's faculties, and on the world of politics as a realm intended by the Creator for the application of man's intelligence. Free and powerful in its own sphere and satisfied with the place ascribed to it, religion knows that its empire is more secure when it reigns through its own intrinsic strength and dominates the hearts of men without assistance.

Liberty looks upon religion as its comrade in battle and victory, as the cradle of its infancy and divine source of its rights. It regards religion as the safeguard of mores, and mores as the guarantee of law and surety for its own duration.\*

#### REASONS FOR CERTAIN PECULIAR FEATURES OF THE LAWS AND CUSTOMS OF THE ANGLO-AMERICANS

*Some relics of aristocratic institutions amid the most complete democracy. — Why? — Need to distinguish carefully between that which is Puritan in origin and that which is English.*

The reader must not draw unduly general or absolute conclusions from what has just been said. The social condition,

\*See Note VI, page 842.

though they had but one day to make their fortune and enjoy its fruits.

VI, PAGE 49

Needless to say, I do not pretend that the chapter you have just read is a history of America. In writing it, my only purpose was to allow the reader to appreciate how the opinions and mores of the first immigrants influenced the fate of the various colonies and of the Union in general. I was therefore obliged to limit myself to a few unrelated fragments.

I may be mistaken, but it seems to me that, by pursuing the course that I have merely sketched out here, one could paint a portrait of the early days of the American republics that would not be unworthy of the public's attention and would no doubt provide statesmen with food for thought. Unable to undertake this work myself, I have tried at least to facilitate the task for others. To that end, I feel I ought to provide here a brief bibliography and concise analysis of the works I found most useful.

Foremost among the documents of a general nature that one might fruitfully consult I would place the *Historical Collection of State Papers and Other Authentic Documents, Intended as Materials for a History of the United States of America*, by Ebenezer Hazard.

The first volume of this compilation, which was printed in Philadelphia in 1792, contains the verbatim text of all the charters granted to immigrants by the Crown of England, along with the principal acts of the colonial governments during the earliest period of their existence. Among other things, one finds here a large number of authentic documents on the affairs of New England and Virginia during this period.

The second volume is almost entirely devoted to the acts of the confederation of 1643. This federal pact, which united the colonies of New England for the purpose of resisting the Indians, was the first example of a union among Anglo-Americans. There were several more confederations of a similar nature leading up to the one of 1776, which brought independence to the colonies.

There is a copy of this historical collection from Philadelphia in the Bibliothèque Royale.

In addition, each colony has its own historical records, several of which are invaluable. I shall begin by examining that of Virginia, which was the first state to be settled.

Virginia's first historian was its founder, Capt. John Smith. Captain Smith has left us a quarto volume entitled *The General History of Virginia and New England, by Captain John Smith, Sometime Governor in those Countries and Admiral of New England*, printed in London in 1627. (This volume can be found in the Bibliothèque Royale.) Embellishing Smith's work are some very interesting maps and engravings dating from the time it was printed. The historian's narrative covers the period from 1584 to 1626. Smith's book is well-respected, and deservedly so. The author was one of the most celebrated adventurers of the adventurous century in whose latter part he lived. The book itself breathes the ardor for discovery and spirit of enterprise characteristic of the men of that time. In it, one discovers that mix of chivalrous mores with the knack for trade that proved so useful in the acquisition of wealth.

What is most remarkable about Captain Smith, however, is that he combines the virtues of his contemporaries with qualities that remained foreign to most of them. His style is simple and clear, his stories all bear the hallmark of truth, and his descriptions are not ornate.

The author sheds valuable light on the state of the Indians at the time of North America's discovery.

The second historian to consult is Beverley. His work, in duodecimo, was translated into French and printed in Amsterdam in 1707. The author begins his narrative in 1585 and ends it in 1700. The first part of his book contains actual historical documents pertaining to the early days of the colony. The second part includes an interesting portrait of the state of the Indians in that remote period. The third part offers some very clear ideas about the mores, social state, laws, and political habits of the Virginians of the author's day.

Beverley was from Virginia, so that he begins by saying that he begs readers not to be too rigid in their criticism of

his work, because, having been born in India, he does not aspire to purity of language. Despite this colonial modesty, the author makes it clear throughout his book that he is impatient of the supremacy of the mother country. There is abundant evidence in Beverley's work of the spirit of civil liberty that animated the English colonies in America from that time on. There is also evidence of the divisions that separated them for so long and delayed their independence. Beverley detests his Catholic neighbors in Maryland even more than he does the English government. His style is simple; his narratives are often extremely interesting and inspire confidence. The French translation of Beverley's history can be found in the Bibliothèque Royale.

I saw in America, but have been unable to find in France, a work that might also be worth consulting, entitled *History of Virginia*, by William Stith. This book contains interesting details but seemed to me long and diffuse.

The oldest and best document on the history of the Carolinas is a small quarto volume entitled *The History of Carolina*, by John Lawson, printed in London in 1718.

Lawson's book begins with a journey of discovery in western Carolina, recounted in journal form. The author's narrative is confused, and his observations are quite superficial. The only items of importance are a rather striking portrait of the ravages done by small pox and whiskey to the Indians of the time and an interesting description of the corruption of their mores, which the presence of Europeans encouraged.

The second part of Lawson's work reports on Carolina's physical state and products.

In the third part, the author gives an interesting description of the mores, usages, and government of the Indians of the period.

This portion of the book shows frequent flashes of wit and originality.

Lawson's history ends with the charter granted to Carolina in the time of Charles II.

The overall tone of the work is light and often licentious and stands in stark contrast to the profoundly serious style of works published in New England in the same period.

Lawson's history is extremely rare in America and impos-

sible to obtain in Europe. There is, however, one copy in the Bibliothèque Royale.

From the extreme south of the United States I now turn directly to the extreme north. The intervening space was not settled until later.

I should first call attention to a very interesting compilation entitled *Collection of the Massachusetts Historical Society*, which was first printed in Boston in 1792 and reprinted in 1806. This work cannot be found in the Bibliothèque Royale or, I believe, in any other library.

This collection (which is still being added to) contains a wealth of very valuable documents pertaining to the history of the various states of New England. In it the reader will find unpublished correspondence and copies of documents that lay buried in local archives. The entirety of Gookin's work on the Indians has been included.

In the chapter to which this note refers, I mentioned several times the work of Nathaniel Morton entitled *New England's Memorial*. What I said about it should suffice to show that it merits the attention of anyone who would like to know more about the history of New England. Morton's book was reprinted in an octavo volume in Boston in 1826. It cannot be found in the Bibliothèque Royale.

The most respected and important document we have on the history of New England is the work of Rev. Cotton Mather entitled *Magnalia Christi Americana, or the Ecclesiastical History of New England, 1620-1698*, 2 vols. in octavo, reprinted in Harford in 1820. I do not believe that it can be found in the Bibliothèque Royale.

The author divided his work into seven books.

The first recounts the history of the events that laid the groundwork for and led up to the founding of New England.

The second contains lives of the first governors and of the region's most important officials.

The third is devoted to the lives and works of the ministers of the Gospel who tended to souls in the same period.

In the fourth, the author recounts the founding and development of the university in Cambridge (Massachusetts).

In the fifth, he sets forth the principles and discipline of the Church of New England.

The sixth is devoted to retracing certain events that, according to Mather, indicate the beneficent action of Providence on the inhabitants of New England.

In the seventh, finally, the author tells us of the heresies and troubles to which the Church of New England was exposed.

Cotton Mather was a minister of the Gospel who was born in Boston and spent his life there.

All the ardor and all the religious passions that led to the founding of New England animate and vivify his writing. His manner of writing reveals frequent traces of bad taste, yet he draws one in because his abundant enthusiasm is ultimately communicated to the reader. He is often intolerant and still more often credulous, but one never detects signs of an intent to deceive. There are even some beautiful passages in his work and some true and profound thoughts, such as these:

"Before the arrival of the Puritans," he says, "there were more than a few attempts of the *English* to people and improve the parts of *New England* . . . but the designs of those attempts being aimed no higher than the advancement of some *worldly interests*, a constant series of disasters has confounded them, until there was a plantation erected upon the nobler designs of *Christianity*; and that plantation, though it has had more adversaries than perhaps any one upon earth; yet, *having obtained help from God, it continues to this day.*"

Mather sometimes softens the austerity of his descriptions with images of kindness and tenderness: speaking of an English lady brought to America along with her husband by religious ardor only to succumb soon thereafter to the fatigue and misery of exile, he adds: "As for her virtuous spouse, Isaac Johnson, he tried to live without her, liked it not, and died" (vol. I, p. 71).

Mather's book paints an admirable picture of the time and country he sought to describe.

When he wants to tell us about the reasons that drove the Puritans to seek asylum across the seas, he says:

The God of Heaven served as it were, a *summons* upon the *spirits* of his people in the English nation; stirring up the spirits of thousands which never saw the *faces* of each other, with a most unanimous inclination to leave all the pleasant accommodations of their native country; and go over a terrible *ocean*, into a more terrible

*desert*, for the *pure enjoyment* of all his *ordinances*. It is now reasonable that before we pass any further, the *reasons* of this undertaking should be more exactly made known unto *posterity*, especially unto the *posterity* of those that were the undertakers, lest they come at length to forget and neglect the *true interest* of New England. Wherefore I shall now transcribe some of *them* from a manuscript, wherein they were then tendered unto consideration.

*First*, it will be a service unto the *Church* of great consequence, to carry the *Gospel* into *those* parts of the world (North America), and raise a bulwark against the kingdom of *antichrist*, which the Jesuits labor to rear up in all parts of the world.

*Secondly*, all other Churches of *Europe* have been brought under *desolations*; and it may be feared that the like judgments are coming upon *us*; and who knows but God hath provided this place (New England) to be a *refuge* for many, whom he means to save out of the *General Destruction*.

*Thirdly*, the land grows weary of her *inhabitants*, insomuch that *man*, which is the most precious of all creatures, is here more vile and base than the earth he treads upon: *children*, *neighbors*, and *friends*, especially the *poor*, are counted the greatest *burdens*, which if things were right would be the chiefest earthly  *blessings*.

*Fourthly*, we are grown to that intemperance in all *excess of riot*, as no mean estate almost will suffice a man to keep sail with his *equals*, and he that fails in it must live in scorn and contempt: hence it comes to pass that all *arts* and *trades* are carried in that deceitful manner, and unrighteous course, as it is almost impossible for a good upright man to maintain his constant charge, and live comfortably in them.

*Fifthly*, the *schools* of learning and religion are so corrupted, as . . . most children, even the best, wittiest, and of the fairest hopes, are perverted, corrupted, and utterly overthrown by the multitude of evil examples and licentious behaviors in these *seminaries*.

*Sixthly*, the *whole earth* is the *Lord's garden*, and he hath given it to the sons of *Adam*, to be tilled and improved by them: why then should we stand starving here for places of habitation and in the mean time suffer whole countries, as profitable for the use of man, to lie waste without any improvement?

*Seventhly*, what can be a better or nobler work, and more worthy of a *Christian*, than to erect and support a *reformed particular Church* in its infancy, and unite our forces with such a company of faithful people, as by a timely assistance may grow stronger and prosper; but for want of it may be put to great hazard, if not be wholly ruined.

*Eighthly*, if any such as are known to be godly, and live in wealth and prosperity here (in England), shall forsake all this to join with

this *reformed church*, and with it run the hazard of an hard and mean condition, it will be an example of great use, both for the removing of *scandal* and to give more *life* unto the *faith* of God's people in their prayers for the plantation, and also to encourage others to join the more willingly in it.

Later, in setting forth the principles of the Church of New England in regard to matters of morality, Mather vehemently denounces the custom of drinking toasts at the dinner table — a habit he calls pagan and abominable.

He is just as harsh in his condemnation of women who wear ornaments in their hair and mercilessly condemns those who he says have taken up the fashion of baring the neck and arms.

In another part of his work, he gives an extremely long account of several incidents of witchcraft that sowed terror in New England. To him, the visible action of the demon in the affairs of this world is clearly an incontrovertible and demonstrated truth.

The spirit of civil liberty and political independence that was characteristic of the author's contemporaries is apparent at any number of places in the book. Their principles in regard to government are constantly in evidence. Thus we discover, for example, that in 1630, ten years after the founding of Plymouth, the inhabitants of Massachusetts set aside 400 pounds sterling to establish the university in Cambridge.

Turning now from general documents concerning the history of New England to documents pertaining to the various states contained within that region's boundaries, I am bound to mention first the work entitled *History of the Colony of Massachusetts*, by Hutchinson, lieutenant-governor of the Massachusetts province, 2 vols. in octavo. A copy of this work can be found in the Bibliothèque Royale: it is a second edition, printed in London in 1765.

Hutchinson's history, from which I quoted several times in the chapter to which this note refers, begins in 1628 and ends in 1750. An air of great veracity prevails throughout; the style is simple and unadorned. This is a very detailed history.

The best document to consult on Connecticut is Benjamin Trumbull's history, entitled *A Complete History of Connecticut, Civil and Ecclesiastical, 1630-1764*, 2 vols. in octavo, printed in

1818 at New Haven. I do not believe that Trumbull's work can be found at the Bibliothèque Royale.

This history gives a clear, dispassionate account of all events occurring in Connecticut during the period indicated in the title. The author relied on the best sources, and his accounts bear the hallmark of truth. Everything that he has to say about the earliest period of Connecticut's history is extremely interesting. See, in particular, "The Constitution of 1639," vol. 1, chap. 6, p. 100, and "The Penal Laws of Connecticut," vol. 1, chap. 7, p. 123.

Jeremy Belknap's *History of New Hampshire*, 2 vols. in octavo, printed in Boston in 1792, is rightly held in high esteem. See, in particular, chapter 3 of the first volume of Belknap's work, in which the author gives extremely valuable details about the political and religious principles of the Puritans, the reasons for their emigration, and their laws. One also finds this interesting quote from a sermon delivered in 1663: "New England must constantly remember that it was founded for a religious purpose and not a commercial one. Its profession of purity in matters of doctrine and discipline can be read upon its forehead. Let merchants and others who are busy piling penny upon penny therefore recall that religion and not profit was the purpose for which these colonies were founded. If anyone among us ranks the world as thirteen and religion as only twelve, he is not animated by the sentiments of a true son of New England." Readers will find in Belknap more general ideas and more forceful thinking than in any other American historian to date.

I do not know if this book can be found in the Bibliothèque Royale.

Among the central states that have already been in existence for some time, New York and Pennsylvania have the greatest claim on our attention. The best history of the state of New York is William Smith's *History of New York*, printed in London in 1757. There is a French translation of this, also printed in London in 1767, in one duodecimo volume. Smith provides us with useful details on the wars between the French and the English in America. Of all American historians, he gives the best account of the famous Iroquois confederation.

As for Pennsylvania, I can do no better than to call the reader's attention to *The History of Pennsylvania, from the Original Institution and Settlement of that Province, under the First Proprietor and Governor William Penn, in 1681 till after the Year 1742*, by Robert Proud, 2 vols. in octavo, printed in Philadelphia in 1797.

This work is particularly worthy of the reader's attention. It contains a wealth of very interesting documents on Penn, the doctrine of the Quakers, and the character, mores, and usages of the first inhabitants of Pennsylvania. It cannot be found, so far as I am aware, in the Bibliothèque.

There is no need to add that the works of Penn himself and of Franklin are among the most important documents concerning Pennsylvania. These works are known to many readers.

I consulted most of the books cited here during my stay in America. The Bibliothèque Royale was kind enough to entrust me with a number of them. The rest were lent to me by Mr. Warden, the former consul general of the United States in Paris and the author of an excellent book on America. I do not want to end this note without expressing my gratitude to him.

## VII, PAGE 57

The following passage can be found in Jefferson's memoirs: "In the earlier times of the colony, when lands were to be obtained for little or nothing, some provident individuals procured large grants; and, desirous of founding great families for themselves, settled them on their descendants in fee tail. The transmission of this property from generation to generation, in the same name, raised up a distinct set of families, who, being privileged by law in the perpetuation of their wealth, were thus formed into a Patrician order, distinguished by the splendor and luxury of their establishments. From this order, too, the king habitually selected his councilors of state." (*Jefferson's Memoirs.*)

In the United States, the principal provisions of the English law of inheritance have been universally rejected.

"The first rule that we follow in regard to inheritance," says Mr. Kent, "is this: when a man dies intestate, his property passes to his direct lineal heirs. If there is only one heir or heiress, he or she alone receives the entire estate. If there are several heirs of the same degree, they divide the estate equally among themselves, without distinction as to sex."

This rule was prescribed for the first time in the state of New York by a statute of February 23, 1786 (see *Revised Statutes*, vol. 3, Appendix, p. 48). It has since been adopted in the revised statutes of the same state. It is now in force throughout the United States, with the sole exception of Vermont, where the male heir claims a double share. Kent, *Commentaries*, vol. 4, p. 370.

In the same work (vol. 4, pp. 1-22), Mr. Kent traces the history of American legislation concerning entails. It turns out that before the American Revolution, the English law of entail was accepted as common law in the colonies. Entailed estates per se were abolished in Virginia in 1776 (on a motion by Jefferson; see his memoirs) and in New York in 1786. Subsequently, North Carolina, Kentucky, Tennessee, Georgia, and Missouri followed suit. Entails were never in common use in Vermont, Indiana, Illinois, South Carolina, or Louisiana. Those states that felt obliged to preserve the English law of entail modified it so as to remove its most salient aristocratic features. "Our general principles in matters of government tend," says Mr. Kent, "to favor free circulation of property."

What is particularly striking to the French student of American estate law is that our laws in this area are infinitely more democratic than theirs.

American laws divide a father's property equally, but only when his wishes are unknown, for the law of New York (*Revised Statutes*, vol. 3, Appendix, p. 51) states that "every person shall have full and free liberty, power, and authority to give, dispose, will, or devise to any person or persons" (except bodies politic or corporate) "by his last will and testament."

Under French law, the rule is that the testator must divide his estate into equal or almost equal shares.

Most of the American republics still permit entails and limit themselves to restricting their effects.