as you move toward the south.—The power of the magistrate then becomes greater; that of the voter smaller.—Administration passes from the town to the county.—State of New York, Ohio, Pennsylvania.—Administrative principles applicable to all the Union.—Election of public officials or fixed term of their offices.—Absence of hierarchy.—Introduction of judicial means into the administration.

I previously announced that, after having examined in detail the constitution of the town and county in New England, I would cast a general glance over the rest of the Union.

There are towns and town life in each state; but in none of the confederated states do you find a town identical to the New England town.

As you move toward the south, you notice that town life becomes less active; the town has fewer magistrates, rights and duties; the population there does not exercise so direct an influence on town affairs; town meetings are less frequent and involve fewer matters. The power of the elected magistrate is therefore comparatively greater and that of the voter, smaller; town spirit there is less awake and less powerful. 37

You begin to see these differences in the state of New York; they are already very apparent in Pennsylvania; but they become less striking when you move toward the Northwest. Most of the emigrants who go to establish the states of the Northwest come from New England, and they bring the administrative habits of their mother land to their adopted country. The Ohio town has much in common with the Massachusetts town.

We have seen that in Massachusetts the principle of public administration is found in the town. The town is the center where the interests and affections of men converge. But it ceases to be so the more you move toward the states where enlightenment is less universally spread and where, consequently, the town offers fewer guarantees of wisdom and fewer elements of administration. So as you move away from New England, town life passes in a way to the county. The county becomes the great administrative center and forms the intermediate power between the [central] government and the ordinary citizens.

I said that in Massachusetts county matters were directed by the court of sessions. The court of sessions is made up of a certain number of magistrates appointed by the Governor and his council. The county has no representation, and its budget is voted by the national [sic: state] legislature.

In the large state of New York, on the contrary, in the state of Ohio and in Pennsylvania, the inhabitants of each county elect a certain number of deputies; these deputies meet together to form a representative county assembly. 38

The county assembly possesses, within certain limits, the right to tax the inhabitants; in this regard, it constitutes a true legislature. It simultaneously administers the county, directs the administration of the towns in several instances, and limits their powers much more strictly than in Massachusetts. 39

These are the principal differences presented by the constitution of the town and county in the various confederated states. If I wanted to get into

37. See, for detail, The Revised Statutes of the State of New York, at part I, chap. XI, entitled: Of the Powers, Duties and Privileges of Towns, vol. I, pp. 356–64. See in the collection entitled: Digest of the Laws of Pennsylvania, the words Assessors, Collectors, Constables, Overseers of the Poor, Supervisors of highways. And in the collection entitled: Acts of a General Nature of the State of Ohio, the law of 23 February 1824, relating to the towns, p. 412. And next, the particular arrangements relative to the diverse town officers, such as: Township’s Clerks, Trustees, Overseers of the Poor, Fence Viewers, Appraisers of Property, Township’s Treasurers, Constables, Supervisors of Highways.


In the state of New York, each town elects a deputy, and this deputy participates at the same time in the county administration and in that of the town.

r. In the margin: "*Ask L[iouis (ed.)] and B[eaumont (ed.)] if it is necessary to support these generalities with notes. Here either very minutely detailed notes are needed or nothing. *"
the details of the means of execution, there are still many other dissimilarities that I could point out. But my goal is not to give a course in American administrative law.

I have said enough about it, I think, to make the general principles that administration in the United States rests upon understood. These principles are applied in different ways; they have more or less numerous consequences depending on the place; but fundamentally they are the same everywhere. The laws vary; their physiognomy changes; the same spirit animates them.

The town and county are not constituted in the same way everywhere; but you can say that everywhere in the United States the organization of the town and county rests on the same idea: that each person is the best judge of what concerns himself alone, and the one most able to provide for his individual needs. So the town and county are charged with looking after their special interests. The state governs and does not administer. Exceptions to this principle are found, but not a contrary principle.²

The first consequence of this doctrine has been to have all the administrators³ of the town and county chosen by the inhabitants themselves, or at least to choose these magistrates exclusively from among the inhabitants.⁴

[² The second, to put into their hands the administration [v. direction] of nearly all the interests of the town and county.

The state has retained the power to impose laws on all the towns and counties, but it has not put into the hands of any official the power to direct the administration in a general way.²]

---

3. "To place.

Jealousy of legislatures against intermediate bodies.

In New England the justice of the peace prepares the county budget; it is the legislature that votes on it. In the state of New York it is a representation of the county that votes on the tax, but its power is confined to very narrow limits" (YTC, CV, 5, p. 13).

3. Hévé de Tocqueville: "It seems to me that you cannot say as positively that these administrators are chosen by the inhabitants since you have taught us that the justices of the peace are chosen by the Governor" (YTC, CIHb, 2, p. 111). Cf. note 48.

[*]. I say this because in the laws of Tennessee, which are probably those found among all those of Virginian descent, the justices of the peace or magistrates composing the county court (who hold their offices during good behavior) are in charge of the entire administration. I believe that it is purely and simply the English system.

Since administrators everywhere are elected or at least irrevocable, the result has been that rules of hierarchy have not been able to be introduced anywhere. So there are nearly as many independent officials as offices. Administrative power finds itself scattered among a multitude of hands.

Since administrative hierarchy exists nowhere and administrators are elected and irrevocable until the end of their term, the obligation followed to introduce courts, more or less, into the administration. From that comes the system of fines, by means of which the secondary bodies and their representatives are forced to obey the law. This system is found from one end of the Union to the other.

The power of suppressing administrative crimes or of taking administrative actions as needed has not been granted, moreover, to the same judges in all the states.

The Anglo-Americans have drawn the institution of the justices of the peace from a common source; it is found in all the states. But they have not always taken advantage of it in the same way.

Everywhere the justices of the peace take part in the administration of the towns and counties,³⁹ either by administering them directly or by suppressing certain administrative crimes committed in them. But in most states, the most serious of these crimes are submitted to ordinary courts.

3. Election of administrative officials, or irremovability from office, lack of administrative hierarchy, and introduction of judicial measures into the government of society at the secondary level are, therefore, the principal

39. There are even states in the South where the magistrates⁴⁰ of the county courts are charged with all details of the administration. See The Statutes of the State of Tennessee, the art. Judiciary, Taxes . . .

u. Hévé de Tocqueville: "If there are states where the court of sessions is charged with all details of the administration, what becomes in these states of the town spirit so praised by the author?"

"It would seem, from the end of the chapter, that certain states are beginning to feel the disadvantage of excessive decentralization. This consideration must be weighed by the author in the following chapter" (YTC, CIHb, 2, p. 77).
characteristics by which American administration, from Maine to Florida, is recognized.  

There are some states where signs of administrative centralization begin to be seen. The state of New York is the most advanced along this path.

In the state of New York, officials of the central government exercise, in certain cases, a kind of supervision and control over the conduct of the secondary bodies. In certain other cases, they form a type of court of appeal for deciding matters. In the state of New York, judicial penalties are used less than elsewhere as an administrative measure. There, the right to bring proceedings against administrative crimes is also placed in fewer hands.  

The same tendency is slightly felt in several other states. But, in general, you can say that the salient characteristic of public administration in the United States is to be prodigiously decentralized.

Of the State

I have talked about the towns and about administration; I still have to talk about the state and about government.

Here, I can move faster without fear of being misunderstood; what I have to say is found all sketched out in written constitutions that anyone can easily obtain. These constitutions rest on a simple and rational theory.

Most of the forms that they prescribe have been adopted by all peoples who have constitutions; they have therefore become familiar to us.

So I have only to do a brief overview here. Later I will try to judge what I am about to describe.
Legislative Power of the State

Division of the legislative body into two houses.—

Senate.—House of representatives.—

Different attributions of these two bodies.

The legislative power of the state is entrusted to two assemblies; the first is generally called the senate.

The senate is normally a legislative body; but sometimes it becomes an administrative and judicial body.

It takes part in administration in several ways depending on the different constitutions;^45 but ordinarily it enters into the sphere of executive power by taking part in the choice of officials.

It participates in judicial power by judging certain political crimes and sometimes as well by ruling on certain civil actions.^46

Its members are always few in number.

The other branch of the legislature, usually called the house of representatives, participates in nothing related to administrative power, and takes part in judicial power only when accusing public officials before the senate.

The members of the two houses are subject almost everywhere to the same conditions of eligibility. Both are elected in the same way and by the same citizens.

The only difference that exists between them is due to the fact that the mandate of senators is generally longer than that of representatives. The second rarely remain in office more than a year; the first ordinarily hold their seats two or three years.

By granting senators the privilege of being named for several years, and by replacing them by cohort, the law has taken care to maintain, among the legislators, a nucleus of men, already used to public affairs, who can exercise a useful influence over the newcomers.

---

^45. In Massachusetts, the Senate is vested with no administrative function.

^46. As in the state of New York.

---

So by the division of the legislative body into two branches, the Americans did not want to create one hereditary assembly and another elective one; they did not intend to make one into an aristocratic body, and the other into a representative of the democracy. Nor was their goal to make the first into a support for the governing power, while leaving the interests and passions of the people to the second.\(^7\)

To divide legislative power, to slow in this way the movement of political assemblies, and to create a court of appeal for the revision of laws, such are the only advantages that result from the current constitution of the two houses in the United States.

Time and experience have shown the Americans that, reduced to these advantages, the division of legislative powers is still a necessity of the first order.

Pennsylvania alone, among all the united republics, tried at first to establish a single assembly. Franklin himself, carried away by the logical consequences of the dogma of sovereignty of the people, had worked toward this measure. The law soon had to be changed and two houses established. The principle of the division of legislative power thus received its final consecration; henceforth then, the necessity to divide legislative activity among several bodies can be considered a demonstrated truth. This theory, more or less unknown in the ancient republics, introduced into the world almost by chance, like most great truths, misunderstood among several modern peoples, has finally passed as an axiom into the political science of today.\(^z\)

---

\(^7\). Division of administrative power, concentration of legislative power. American principle (important).

The legislature most often appoints special agents to enforce its will. Thus, power not even regular or necessary executor of the laws.

The Governor's veto is not a barrier to the democracy, the Governor emanating entirely from it. Only the judges are a real barrier.

Not only is power divided among several hands, but the exercise of power is divided. The Governor cannot appoint the official and direct him at the same time. Subtle and dubious.

The institution of the senate is a barrier to the democracy because named for a longer time; they [sic] are not as immediately subject to the fear of not being reelected (YTC, CVb, pp. 15-16).

\(^z\). Tocqueville, it must be remembered, was part of the commission charged with
drafting the constitution of 1848. There, he defended the division of legislative power into two branches. This idea came to nothing. In his Souvenirs (OC, XII, pp. 148–87), he gives some details about it. The notes taken by Beaumont during the work of the commission offer in this regard some interesting, previously unpublished details (YTC, DIVk). Beaumont notes as follows, in a rapid and necessarily schematic fashion, Tocqueville’s answers to the proposal of Marrast concerning the creation of a single chamber (25 May 1848):

Tocqueville.—Recognizes that the cause of two chambers is lost. The state of minds is such that it would be almost dangerous to insist upon a system that [illegible word] in itself is bad only in the circumstances.

—But, necessary to show how two chambers are the only institution that can perhaps make the republic viable.

—History!

—The United States. The Constitution of the United States must be set aside; take the thirty democratic constitutions of the United States that have same social and political state as we.

—Now, in these 30 states the question of two chambers is an accomplished fact and an uncontested truth.

—Is it (that this (ed.)!) historical tradition is English?

—No. Instead of following the English tradition, they broke with it. Congress began with a single assembly. Those of Massachusetts and Pennsylvania in the same way (for thirteen years in Pennsylvania); and at the end of thirteen years with a single assembly, Pennsylvania changed the system of a single assembly and adopted two chambers.

—So in France what made opinion so hostile to single chambers?

—It is a misunderstanding. Until now in Europe the system of two chambers was to give a special expression to two different elements, the aristocrat and the democrat; from that it was concluded that the establishment of two chambers was an aristocratic principle. This natural conclusion is correct, if it was a question of introducing the slightest element of aristocracy into the government.

—But is the existence of two chambers in itself a fact aristocratic by nature?

—How so! The two chambers in America are from the aristocracy!! What is it then? The two chambers are chosen by the same electors, for the same time, in the same conditions, more or less.

—Objection that if the second chamber has no use as a counterbalance to the democracy, what purpose does it serve? Then it is a superfluity.

—No.

—Even logically, it can be sustained. What is logical is that the nation be all powerful; but what [more (ed.)] contrary to logic than that the sovereignty of the nation have one or two agents.

—Now logically what purpose do two chambers serve?

Of the Executive Power of the State

What the Governor is in an American state.—What position he occupies vis-à-vis the legislature.—What his rights and duties are.—His dependency on the people.

The executive power of the state is represented by the Governor.[4] Not only is the Governor of each state an elected magistrate, but also he is generally elected only for a year; in this way he is tied by the shortest possible chain to the body from which he emanates. #]

Three principal uses.

1. Necessity in France of giving the executive power great force. But, certain considerable matters cannot be absolutely conducted by the executive power without any everyday control. In the United States, the Senate assists the President in certain acts, or rather controls him; treaties, choice of high officials. Body small enough to be able to act in concert with the executive power and strong because it comes from the people. This could be done, it is true, by [the (ed.)] Conseil d’Etat.

2. Driving impulses of democracies. Perilous and untenable situation of the executive power, in the eternal head to head of this one man and this single assembly; eternal conflict between two wills face to face. — The only means for no conflict is that the man always gives way to the assembly. Then no struggle.

3. The great disease of democracies is legislative intemperance, violence in proceedings, rapidity in actions. The advantage of two chambers is not to prevent violent revolutions, but to prevent the bad government that ends up leading to revolution.

—What means to combat the inherent vices of this single body? It is to divide it.

—Two chambers drawn from the same elements can have different thoughts however.

—Difficulty for two or three men to dominate a country when there are two chambers. Very easy when there is only one chamber.

—Utility of two considerations of a question. But there are two considerations only when there are two assemblies. Two readings do not mean two considerations. It is resubmitting a judgment to those who have made it, and who will only repeat what they judged (YTC, DIVk).

The papers of Beaumont, which contain innumerable notes on the American constitutions, are there to witness to the importance given to American constitutional history during the discussions of the constitutional commission of 1848.

It is not by chance that I have used the word *represents*. The Governor of the state in effect represents the executive power; but he exercises only some of its rights.

The supreme magistrate, who is called the Governor, is placed alongside the legislature as a moderator and adviser. He is armed with a qualified veto that allows him to stop or at least to slow the legislature's movements as he wishes. To the legislative body, he sets forth the needs of the country and makes known the means that he judges useful to provide for those needs; for all enterprises that interest the entire nation [sic: state], he is the natural executor of its will. In the absence of the legislature, he must take all proper measures to protect the state from violent shocks and unforeseen dangers.

The Governor combines in his hands all of the military power of the state. He is the commander of the militia and chief of the armed forces.

When the power of opinion, which men have agreed to grant to the law, is not recognized, the Governor advances at the head of the physical force of the state; he breaks down resistance and reestablishes customary order.

The Governor, moreover, does not get involved in the administration of the towns and counties, or at least he participates only very indirectly by the appointment of the justices of the peace whom he cannot thereafter remove.

The Governor is an elected magistrate. Care is even taken, generally, to elect him only for one or two years; in this way, he always remains narrowly dependent on the majority that created him.

47. In practice, it is not always the Governor who carries out the enterprises conceived by the legislature; often, at the same time that the latter votes a principle, it names special agents to oversee its execution.

48. In several states, the justices of the peace are not appointed by the Governor.

a. The manuscript says: "... he is tied by the shortest possible chain to the body from which he emanates."

Édouard de Toqueville: "This sentence is absolutely unintelligible. Why? What do you mean by *the body from which he emanates*? From what body does he emanate? And how is he tied to this body by the shortest possible chain by the fact that he is named for only two years? I repeat, I do not understand this paragraph at all" (YTC, CIIIb, 2 p. 112).

b. In the manuscript, at the end of the first chapter, is a cover sheet with the title:

Of the real influence that the President exercises in the conduct of public affairs [in the margin: Real and habitual influence in foreign affairs, almost entirely personal influence in domestic affairs./Study to do.]; in it, the following fragment on the Governor is found:

[The beginning is missing] The first of these two obligations is marked out in a clear and precise manner. The second depends essentially on the circumstances that give it birth. Among most nations, the same man or at least the same authority is charged with fulfilling these two obligations. He sees to it by himself or through his agents that order reigne, and when order begins to be disturbed, by some violent shock, some unforeseen event, he is still the one who temporarily takes the place of the missing national will and takes charge of remedying the evil.

In America, it is rarely so; the Governor is only occasionally charged with the peaceful execution of the laws. His functions consist, above all, of overseeing in a general manner the state of society, of enlightening the legislative body with his advice and of providing for the accidental needs of the state.

In the margin: in a way, the Governor participates in legislative power by the veto. In executive power by the administrative council. In France it is the same man who is charged. Start with the extreme concentration of powers. There are some countries where the legislative, administrative and judicial powers are united. There are some others where the legislative power is separate from the other two. There are still others.

Thus, it is not the Governor who is charged with using his authority to see that the towns execute their duties faithfully and punctually. If the legislature orders the opening of a canal or road, it is not generally the Governor who is charged with supervising the projects. The legislative power, at the same time it votes the principle, appoints special agents to supervise the execution.

But if an unforeseen danger emerges, if an enemy appears, if an armed revolt breaks out, then the Governor truly represents the executive power of the State. He commands and directs the police force.

In the accidental cases that I have just enumerated, the concentration of power on a single head is an indispensable condition for the existence of societies; thus the Governor of a state in America is the sole and absolute leader of the armed force. But as for the daily, peaceful execution of the laws, powers are still divided to a degree that our imagination can scarcely conceive.

In the margin: Only it is not judicial strength that comes to add to administrative strength. It is administrative strength that comes to join with judicial strength; now, liberty never has to fear judicial strength."

*Concentration of powers and administrative hierarchy* are two synonymous words, for where there is hierarchy you necessarily arrive at unity by moving upward. Concentration of power is not a necessity so absolute.