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CIVIC RENEWAL AND THE REGULATION OF NON-PROFITS

Miriam Galston*

I. INTRODUCTION

The last decades of the twentieth century witnessed a renaissance of interest in civic life in the United States. In the view of many, civic life is an untapped, or insufficiently tapped, resource capable of addressing many of America's most serious ills, whether political, social, economic, or even medical.

If you were to ask these commentators about the current condition of civic life in America, you would get a wide assortment of views as to its strength or weakness.¹ If you were _____

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¹ The most well known argument in support of the view that civic life needs dramatic improvement because it has declined significantly in the last three decades is developed in ROBERT D. PUTNAM, *BOWLING ALONE: THE COLLAPSE AND REVIVAL OF COMMUNITY* (2000) (hereinafter *BOWLING ALONE*). See also CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL (Robert K. Fullinwider ed. 1999) (hereinafter *CIVIL SOCIETY*); DON E. EBERLY, *AMERICA'S PROMISE: CIVIL SOCIETY AND THE RENEWAL OF AMERICAN CULTURE* (1998) (hereinafter *AMERICA'S PROMISE*). The Putnam book is an expansion of a previous article with a similar name: Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 70 (1995) (hereinafter *Bowling Alone*). At the opposite end of the spectrum are MICHAEL SCHUDSON, *THE GOOD CITIZEN: A HISTORY OF AMERICAN CIVIC LIFE* 294 (1998) (concluding that citizenship in America has added new forms but has not declined); James A. Morone, *The Corrosive Politics of Virtue*, 26 AM. PROSPECT 30 (1996) (arguing that we do not have a moral crisis, a divorce culture, or a crime rate higher than it was in 1970); Michael Schudson, *What If Civic Life Didn't Die?* 25 AM. PROSPECT 17, 18 (1996) (arguing that "the decline of the civic in its conventional forms...does not demonstrate the decline of civic-mindedness"); Everett C. Ladd, *The Data Just Don't Show the Erosion of America's "Social Capital"*, 7 PUB. PERSP. 1 (1996) (hereinafter *Data Just Don't Show Erosion*) (arguing that the level of civic participation has actually increased).

research assistants Mayte Cabada, Allison Clements, Sharmese Hodge, Michelle Mattis, Gardner Miller, Mike Passey. to ask about the reasons for the current condition of civic life in America, you would also get a wide assortment of differing responses.²

If, however, you were to ask about the importance of participation in voluntary associations³ for producing, maintaining, or strengthening the quality of civic life, you would discover a substantial consensus that, for civic life to be strong, there must be an active citizenry, and that participation in “voluntary associations” is one of the principal methods for assuring an active citizenry. As a consequence, a significant part of the civic renewal debate revolves around issues such as the nature of voluntary associations, the reasons people join them, the bonds among members fostered by such associations, and the ways in which these entities promote the well-being of the communities within which they reside.

According to civic renewal advocates, the effects of broadening and deepening participation in voluntary associations would go beyond the immediate impact of the specific activities and purposes of individual associations. They reason that a person with (presumably positive) experiences in one association is likely to become disposed to involvement in other organizations and, as a result, to acquire over time an attitude of trust toward and ability to cooperate with people outside his or her circle of friends and acquaintances. However, the provisional empirical findings discussed in this Article suggest that the hoped-for ripple effects of participation in voluntary associations have

² See *infra* Part II.

³ For the meaning of this phrase, see *infra* Part III.A and note 302.

been greatly overstated. Although empirical research focusing specifically on comparisons between pre-joining self-selection by and post-joining transformative effects on association members is still in an embryonic state, the larger part of the available evidence suggests that attitudes, habits, and traits acquired prior to joining an association form the core of the *causal* explanation for many of the *correlations* documented between participation in voluntary associations and subsequent civic activities and civic activism.

This Article explores the implications of different perspectives on civic health for the regulation of voluntary associations as “exempt organizations” under the Internal Revenue Code (the “Code”).⁴ It analyzes how the different assumptions and purposes of different theories suggest different, sometimes incompatible, recommendations for civic reform. Based upon empirical data, the Article also seeks to clarify important limits to the fruitful uses of voluntary associations to achieve these goals. Finally, the Article applies this analysis to the Code’s regulation of voluntary associations, both to clarify the ways in which existing tax rules further or undermine one or more civic goals and to recommend changes to make tax law more effective in promoting the goals for which it is best suited.

Part II distinguishes and elaborates four perspectives on civic health that, alone or in combination, inspire most of the discussions about civic renewal. These perspectives emphasize the primacy of (1) cooperation and effective collective action, (2) self-governance (3) equality and representative institutions, or (4) the moral

⁴ All references to the Code are to the Internal Revenue Code of 1986, as amended.

character of the community as the core element of civic health. This Part elaborates the idea of civic health developed by each perspective and examines the claims made by each to have captured the critical element of any conception of a civic health. The analysis contrasts the four perspectives along several dimensions and identifies areas in which their priorities may be different or their policies in conflict. I argue that both the cooperation and representative institutions perspectives are consistent with political theories predicated upon the priority of the private and self-interested purposes of individuals of societal or communal claims. Both seek to invigorate civic life to promote such interests more accurately and effectively. However, the immediate agendas of the two perspectives are likely to differ because of the belief on the part of the representative institutions perspective that inequities in political influence have to be tackled directly and urgently rather than indirectly through the medium of greater participation.

In contrast, the self-governance and community character perspectives are each predicated upon substantive assumptions about the attributes of individual and societal well-being rather than individual, subjective preferences as the baseline for public policy decisions. For the self-governance perspective, individual autonomy and reasoned self governance are critical ingredients of civic health. For the community character perspective, a commitment to moral and public spirited civic norms and practices is a necessary, and often overlooked, prerequisite of civic health. Although many policies would be endorsed by proponents of both of these perspectives, the Article discusses potential conflicts between them traceable to the emphasis of the former on reasoned

decision making as contrasted with the emphasis of the latter on the moral character of individuals and communities.

Part III reviews the empirical findings of social scientists to assess the degree to which and ways in which voluntary associations may contribute to the goals of the four perspectives on civic health. In brief, active participation in them may well promote coordinated and effective collective action in the first instance and, under certain conditions, lead members to engage in additional participation in civic life. The reason is primarily because associations provide occasions for the recruitment and mobilization of like-minded individuals and are themselves vehicles that enable such groups to engage in effective group activity or influence others who can help them. Associations do not, however, as a rule seem to generate a norm of cooperation among their members that is generalized to persons outside the group, as civic renewal advocates hope and as some of their theories presuppose.

Part IV examines the current regulation of one important class of voluntary associations, namely, those that qualify as exempt organizations under the Code and the implementing Treasury regulations. This Part discusses the usefulness of a wide range of existing and proposed tax rules regulating the lobbying and electoral activities of exempt organizations for furthering the four versions of civic health discussed in Part II in light of the empirical findings explored in Part III. It also identifies tax law provisions likely to further the goals of one perspective while simultaneously posing a threat to the goals of one or more of the others. I argue that legislative and regulatory tax rules are best suited for supporting the cooperation and representative institutions perspectives,

whereas the objectives of the community character perspective are the least amenable to legislative or regulatory tax interventions.

The Article raises the question whether, given the empirical evidence in our possession, it is reasonable or useful for civic renewal advocates to continue to portray associational life as an important potential source of increased public spiritedness or the attributes necessary for reflective self-governance. The alternative is for those who emphasize the latter two aspects of civic health to recognize that certain substantive civic values must be nurtured in areas outside of civic life rather than as its automatic or likely outgrowth. Although laws can sometimes assist and accelerate this process, the potential for participation in associational life to further such values is extremely limited.

II. PERSPECTIVES ON CIVIC HEALTH

The expression “civic life” can be used in several ways. It can be defined narrowly to refer to direct involvement in politics (such as voting, working for political parties and committees, attending political rallies, and registering or leafleting voters) and indirect involvement (such as reading newspapers or having discussions about public issues). In this sense, “civic life” can be equated with engagement in the political process or political institutions, whether federal, state, or local. Construed in this fashion, “civic life” is distinct from “civil life,” which is commonly understood to include group activity, whether of *ad hoc* or informal associations, on the one hand, or formal and organized organizations, on the other. In general, authorities exclude commercial entities from the purview of civil society.⁵ In addition, some commentators consider the

⁵ See EBERLY, AMERICA’S PROMISE, *supra* note 1, at 22-23 (arguing that most economic entities lack the personal loyalty, spirit of cooperation, or capacity for self-

family as too private an association to be part of civil society.⁶ This exclusion, however, is controversial, especially among those who are concerned about the moral dimension of civic life.⁷

The term “civic” can also be used more broadly to include both the political and civil domains. The following discussion will use civic in this generic sense. The term “civil” will be used in contradistinction to both political and economic, but it will include family life. The phrases “civic decline,” “civic renewal,” “civic engagement,” and “civic disengagement” will thus be used with reference to the entire spectrum of moral, social, cultural, civil, and political aspects of communal life, without differentiating among the component parts.

A. The Cooperation Perspective

sacrifice associated with civil society). For the opposite view, see FRANCIS FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY* (1995).

⁶ See Jean Bethke Elshtain, *Not a Cure-All*, 15 *BROOKINGS REV.* 13, 14 (1997) (stating that the family fits “rather clumsily” in the idea of civil society).

⁷ For a review of the civil society literature that classifies the family as a voluntary association and part of civil society, see Jean Cohen, *Trust, Voluntary Association and Workable Democracy: the Contemporary American Discourse of Civil Society*, in *DEMOCRACY AND TRUST* 208, 232-33 (Mark E. Warren ed. 1999).

Several discussions of civic renewal converge in the view that many economic⁸ and social⁹ problems persist primarily due to the failure of individuals, groups, and communities to engage in cooperative and effective collective action to solve them, although the authors posit different foundational reasons for that failure. Robert Putnam, a champion of this view,¹⁰ attributes the failure to a decline in “social capital,”¹¹

⁸ The primary economic ills discussed are poverty, child poverty, unemployment, and underemployment. Although poverty and child poverty appeared to be at historic lows in the United States in 2000, there were still more than 30 million people, many of them children, still living in poverty. The downward trend was reversed in 2001. See U.S. DEPARTMENT OF COMMERCE, U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2001 (P60-219) (September 2002), *available at* <http://www.census.gov/hhes/www/poverty01/html> (last visited 6/1/03). For the view that the decline was overstated in the first place, see Robert Kuttner, *The Boom in Poverty*, BOSTON GLOBE, Mar. 21, 1999, at E7 (arguing that homelessness and hunger have increased and the real purchasing power of the poor was less in 1997 than in 1979 despite the improvement in poverty reported in the media).

⁹ Social problems range from the high rates of divorce and crime to the persistence of racial discrimination into the twentieth-first century. Although the rate of crime, including violent crime, improved in the 1990s, the absolute levels of crime are excessive even after the decline: between 1960 and 1998, the total crime index increased almost threefold and the violent crime rate increased 350%. See U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Percent Changes in Total Crime Index Rates and Violent Crime Rates*, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE 301 (2002) (hereafter FBI SOURCEBOOK), *available at* <http://www.albany.edu/sourcebook/1995/pdf/t3120.pdf>; *Estimated Number and Rate (Per 100,000 Inhabitants) of Offenses Known to Police*, FBI SOURCEBOOK, at 275, 276, *available at* <http://www.albany.edu/sourcebook/1995/pdf/t3109.pdf>. Despite the disappearance of legal obstacles to citizenship in the United States and the apparent nationwide consensus about the fundamental equality of races, minorities continue to experience discrimination daily, e.g., when they buy a home, purchase a car, drive a car, or try to hail a cab. For example, see Diana B. Henriques, *Review of Nissan Car Loans Finds that Blacks Pay More*, N.Y. TIMES, July 4, 2001; *Taxi Discrimination*, N.Y. TIMES, Nov. 12, 1999.

¹⁰ See Robert Putnam, *Bowling Alone*, *supra* note 1, at 67, *The Prosperous Community: Social Capital and Public Life*, 13 AM. PROSPECT 35, 35-37 (1993), *Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America*, 28 PS: POL. SCI. & POL. 664, 664-5 (1995) (hereinafter *Tuning In, Tuning Out*).

a term often used as a shorthand for a cluster of relationships among members of a community that motivate how they behave toward and with one another, the expectations they have of one another, and the range of feelings or bonds that account for these relationships, behaviors, and expectations.¹² Authors who believe in the importance of social capital for civic health argue that it makes collective action both more likely and more efficient because, in the presence of social capital, people

¹¹ The belief that social capital has declined is based largely on a comparison of national survey findings in the 1960s or 1970s with those in the 1990s. The measurement of social capital was based upon the General Social Survey question: "Generally speaking, would you say that most people can be trusted, or that you can't be too careful in dealing with people?" Putnam, *Tuning In, Tuning Out*, *supra* note 10, at 681, note 2. *But see* Dora L. Costa and Matthew E. Kahn, *Understanding the Decline in Social Capital, 1952-1998*, unpublished paper, May 9, 2001 (finding a minimal decrease in some measures of volunteering during the last three decades of the twentieth century, a slightly larger decrease in memberships in associations, and a large decline in those who entertained at home or ate dinner as a family); Pamela Paxton, *Is Social Capital Declining in the United States? A Multiple Indicator Assessment*, 105 *AM. J. SOC.* 88, 114-16 (1999) (hereinafter *Is Social Capital Declining?*) (arguing that social capital can be disaggregated into interpersonal trust and associational activity, that trust in specific institutions has declined but the general level of trust in institutions has not, and that the level of associations remains unchanged).

¹² On the meanings of social capital, see Dietlind Stolle and Jane Lewis, *Social Capital—An Emerging Concept*, in *KEY CONCEPTS IN GENDER AND EUROPEAN SOCIAL POLITICS* 195 (B. Hobson J. Lewis, and B. Siim, eds., 2002); Kenneth Newton, *Social Capital and Democracy in Modern Europe*, in *SOCIAL CAPITAL AND EUROPEAN DEMOCRACY* 3, 3-8 (Jan W. van Deth, Marco Maraffi, Kenneth Newton and Paul F. Whiteley eds., 1999) (hereinafter *Social Capital and Democracy*); Paxton, *Is Social Capital Declining?*, *supra* note 11, 12, at 90-97; Andrew Greeley, *Coleman Revisited: Religious Structures as a Source of Social Capital*, 40 *AM. BEH. SCI.* 587, 587-90 and sources cited (1997); JAMES S. COLEMAN, *FOUNDATIONS OF SOCIAL THEORY* 300-21 (1990); JANE JACOBS, *THE DEATH AND LIFE OF GREAT AMERICAN CITIES* 138 (1961) (stating that continuity in a neighborhood's networks is necessary because the "networks are a city's irreplaceable social capital"). For a critique of the use of the term by Putnam and certain other authors, see Michael W. Foley and Bob Edwards, *Editors' Introduction: Escape from Politics? Social Theory and the Social Capital Debate*, 40 *AM. BEHAV. SCI.* 550, 550-54 (1997).

cooperate with one another based upon trust rather than the threat of legal or other formal sanctions.¹³ The lack of social capital, in contrast, results in collective action and free rider problems and, relatedly, to excessive reliance on government and public entities to solve community problems.¹⁴ Taken together, this complex of conditions is to a large degree responsible for the persistence of economic and social ills.

¹³ See, e.g., Robert Wuthnow, *The Role of Trust in Civic Renewal*, in CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL, *supra* note 1, at 209-10.

¹⁴ See PUTNAM, BOWLING ALONE, *supra* note 1, at [288]; Edward L. Glaeser, *The Formation of Social Capital*, in THE CONTRIBUTION OF HUMAN AND SOCIAL CAPITAL TO SUSTAINED ECONOMIC GROWTH AND WELL-BEING 381, 383 (2001). See also James S. Coleman, *Social Capital in the Creation of Human Capital*, 94 AM. J. SOC. (Supplement) S95, S118 (1988) (arguing that because social capital is itself a public good, subject to free rider problems, it typically emerges as a “by-product of other activities”).

Some civic renewal advocates attribute an important part of the fragility and ineffectiveness of civic life in America today to the fact that large numbers of people do not participate in decisions that determine the conditions of their everyday lives, relying instead upon government officials, government institutions and government funded institutions, and other outsiders to provide for their well being. They trace this situation primarily to the expansion of the welfare state in the second half of the twentieth century. Not only has the welfare state, according to these authors, failed in its stated goal of wiping out poverty and its consequences such as hunger, bad or non-existent healthcare, inferior education, and substandard housing.¹⁵ More insidiously, these critics argue, it has altered the behavior and attitudes of welfare recipients in ways that reinforce a cycle of poverty, e.g., by creating expectations of entitlements and providing incentives for economic dependency and political passivity.¹⁶

¹⁵ See CHARLES MURRAY, *LOSING GROUND: AMERICAN SOCIAL POLICY 1950-1980* 135 (1984).

¹⁶ See Michael J. Horowitz, *Law and the Welfare State*, in *TO EMPOWER PEOPLE: FROM STATE TO CIVIL SOCIETY* 67, 68-71 (Peter Berger & Richard J. Neuhaus eds., 2d edition 1996) (hereinafter *TO EMPOWER PEOPLE*); MURRAY, *LOSING GROUND*, *supra* note

15, at 178-91. Some critics have also argued that welfare benefits encouraged the increase in unwed mothers and fatherless homes. Given the statistical predictions of impoverished life chances for children raised in single parent homes (all other things being equal), this ripple effect of welfare benefits, if true, would be among the most destructive consequences of the welfare state because of its intergenerational consequences. For the contrary view, namely that welfare benefits have not been shown to encourage illegitimacy, see Charles Murray, *Does Welfare Bring More Babies?*, 94 PUB. INT. 17 (1994).

Civic decline has also been traced to what some civic renewal advocates refer to as the “therapeutic state.” As it is used in the civic renewal literature,¹⁷ the term refers to the proliferation of therapeutic professionals and the increasing tendency to explain or justify behavior in psychological terms.¹⁸ Critics believe that these developments have contributed to a “culture of narcissism and self-indulgence”¹⁹ and that the medical metaphor which provides the conceptual foundation for the legitimacy of the therapeutic state undermines people’s sense of responsibility for their actions and even for their situation in life.²⁰ When used properly, therapeutic interventions and attitudes have the potential to motivate people to take control of and assume responsibility for their own behaviors. When therapeutic insights are misused, however, the result may be to

¹⁷ The phrase was initially coined in response to the growing practice of the medical and other professions to characterize socially undesirable or illegal behaviors as products of mental illnesses with organic (brain) causes. See THOMAS S. SZASZ, *THE THERAPEUTIC STATE: PSYCHIATRY IN THE MIRROR OF CURRENT EVENTS* (1984). For Szasz, this tendency arose, in part, to lessen the severity of criminal sanctions for such behaviors and “to expand the scope of noncriminal social controls (to compensate for the inadequacy of criminal sanctions as a means of controlling distressing conduct, such as depression).” See Thomas Szasz, *Myth of Mental Illness*, 2 *ENC. OF MENTAL HEALTH* 743, 745 (1998).

¹⁸ See Michael S. Joyce, *On Self-Government*, 90 *POL’Y REV.* 41, 44 (1998).

¹⁹ See JAMES L. NOLAN, *THE THERAPEUTIC STATE: JUSTIFYING GOVERNMENT AT CENTURY’S END* 1-21 (1998); CHRISTOPHER LASCH, *THE CULTURE OF NARCISSISM REVISITED* (1990).

²⁰ These critics single out members of the therapeutic professions who encourage their clients to see their situations or problems as caused by illegitimate familial, institutional, or moral authorities. See NOLAN, *THE THERAPEUTIC STATE*, *supra* note 19, at 2-4; see also *id.* at 15-17; William A. Schambra, *By the People* 69 *POL’Y REV.* 32 (1994) (deploring the assumption that people are “helpless, pathetic victims of social forces that are beyond their understanding or control”).

deprive people of a moral compass or erode their sense of personal responsibility for their actions or the quality of their lives.²¹

²¹ See Derek L. Phillips, *Authenticity or Morality?*, in *THE VIRTUES: CONTEMPORARY ESSAYS ON MORAL CHARACTER* 23 (Robert B. Kruschwitz & Robert C. Roberts, eds., 1987). In addition, when superficial versions of therapeutic concepts and strategies come to permeate popular culture, as they do in many parts of the U.S. today, the potential for their misuse is magnified because such concepts derives from and perpetrate a questionable theory of human identity.

Contemporary lack of civic engagement has also been linked by some civic renewal theorists to the excessive regard it is commonplace to have for the opinions of experts, even in situations where the judgments of citizens are more useful. Deference to experts dates to the Progressive era,²² when the judgements of experts who were informed by the sciences, especially the social sciences, came to be valued over judgments grounded in experience and common sense.²³ At the same time, the Progressives entertained the hope that experts would govern in the national interest, in contrast to ordinary citizens, the latter being too uninformed, disorganized, or selfish to govern properly or too timid to counter the influence and self-serving interests of others, particularly powerful corporations.²⁴ The theoretical ground for these developments has been attributed to contemporary expansion of rights doctrines,²⁵ the preference for

²² For the ideas expressed in this and the next paragraph, see Michael S. Joyce & William A. Schambra, *A New Civic Life*, in *TO EMPOWER PEOPLE* 11, 15-18 (Peter Berger & Richard J. Neuhaus eds., 1996). 15-18; William A. Schambra, *Progressive Liberalism and the National 'Community'*, 80 *PUB. INT.* 31, 36 (1985); William A. Schambra, *By the People*, *supra* note 20. See also THOMAS BENDER, *COMMUNITY AND SOCIAL CHANGE IN AMERICA* 35 (1978). For a concise description of the ascendancy of rule by experts as a public policy ideal and as a political reality, see SCHUDSON, *THE GOOD CITIZEN*, *supra* note 1, at 211-19; see also *id.* at 219-23 (describing the efforts made during the period between the two world wars to preserve face-to-face communities).

²³ See Joyce & Schambra, *A New Civic Life*, *supra* note 22, at 20.

²⁴ See Joyce & Schambra, *A New Civic Life*, *supra* note 22, at 11, 14, 16-17; see also RICHARD HOFSTADTER, *THE PROGRESSIVE MOVEMENT 1900-1915*, 11, 14 (1963). The national government was also expected to facilitate social justice, for example, by redistributing national wealth and income through a progressive tax system.

²⁵ See, e.g., FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY*, *supra* note 5, at 314-16 (arguing that American's uncompromising "rights-based individualism" and "rights" culture" are greater threats to a healthy civil society than is the welfare state); see also MARY ANN GLENDON, *RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE* 5 (1991) (asserting that the entrenchment of

solutions involving centralized, big government,²⁶ and the ascendancy of the idea of a national community that vies with local communities for citizens' loyalty.²⁷

rights doctrine in America is one reason for the weakening of local government, political parties, and political participation since World War II).

²⁶ See MICHAEL TANNER, *THE END OF WELFARE: FIGHTING POVERTY IN THE CIVIL SOCIETY* (1996); David Frum, *DEAD RIGHT* (1994).

²⁷ See William A. Schambra, *Is There Civic Life Beyond the Great National Community?*, in *CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY*, *infra* note 177; Joyce, *On Self-Government*, *supra* note 18, at 43 (quoting Herbert Croly's call for a genuine national community); Schambra, *Progressive Liberalism and the National Community*, *supra* note 22, at 33-34 (arguing that the idea of a national community also inspired the presidencies of Franklin Roosevelt and John F. Kennedy and reached its heyday with the programs proposed by Lyndon Johnson). By "national community," these two authors do not mean simply the existence of a strong national government. Rather, they are referring to the idea popularized by Progressives at the end of the nineteenth and beginning of the twentieth century in America of a community at the national level that mirrors--and rivals-- small, local communities in demanding citizens' sense of belonging, loyalty, and sacrifice.

Whatever their view of the cause, many civic renewal advocates concerned with civic apathy believe that increases in people's participation in voluntary associations will be useful, even critical, to counter the collective action problems America currently faces.²⁸ Viewed from this perspective, civic participation is sought instrumentally, for the sake of enabling private parties to work together to improve living conditions in their neighborhoods, cities, regions, and states.²⁹

Cooperation perspective authors have been at pains to explain how voluntary associations impact collective action problems. Putnam's account of the manner in which participation in voluntary associations contributes to the genesis of cooperation and well-being is instructive.

²⁸ See PUTNAM, *MAKING DEMOCRACY WORK*, *infra* note 190, AT 140-41, 148-49, *BOWLING ALONE*, *supra* note 1, at XXX.

²⁹ Not all analysts concerned with the impoverishment of civic life agree that the federal government and its policies are the primary cause of civic decline or that civic decline can be reversed by eliminating big government. See Don E. Eberly, *Building the Habitat of Character*, in *CONTENT OF AMERICA'S CHARACTER: RECOVERING CIVIC VIRTUE* 41 (Don E. Eberly ed., 1995); EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at 66-67; John Dilulio, *The Lord's Work: The Church and Civil Society*, in *COMMUNITY WORKS: THE REVIVAL OF CIVIL SOCIETY IN AMERICA*, 50, 52, 55, 56 (E.J. Dionne Jr., ed. 1998) (accord, and citing Lester M. Salaman, Sen. Dan Coats, and William Bennett, who argue that government and non-government sectors must work together).

[S]ocial capital undergirds good government and economic progress[.] First, networks of civic engagement foster sturdy norms of generalized reciprocity: I'll do this for you now, in the expectation that down the road you or someone else will return the favor. "Social capital" is akin to what Tom Wolfe called the "favor bank" in his book The Bonfire of the Vanities, notes economist Robert Frank.³⁰

For Putnam, then, participation in groups produces norms disposing people to repeated acts of working with others toward their mutual or respective goals. The bonds thus created and the networks of active citizens thus formed together comprise a collective resource—social capital.

Putnam's account also makes clear that the conditions of civic health are grounded in personal or mutual benefit, and to a community benefit insofar as it furthers personal or mutual benefit.³¹ An association member's expectation of a future benefit underlies the habit of cooperation ultimately formed, and it supplies the psychological basis for the habit to endure. The end result is a society characterized by generalized reciprocity or interpersonal trust, in which people associate their private interests with the private

³⁰ Putnam, *The Prosperous Community: Social Capital and Public Growth*, *supra* note 10, at 37, Putnam, *The Prosperous Community: Social Capital and Economic Growth*, 356 CURRENT 4, 5 (1993). See also COLEMAN, FOUNDATIONS OF SOCIAL THEORY 306-08 (1990) (describing reciprocity in terms of "credit slips" created by helping others and assumed to entitle the bearer to assistance in the future). In BOWLING ALONE, Putnam repeats most of the passage quoted from two of his earlier works, but he omits the adjective "generalized" and the phrase "down the road." This may mean that by 2000, he had come to believe that the dynamic described in the quotation accounts only for the specific form of reciprocity that anticipates a benefit in the short-term.

³¹ Putnam's earlier work emphasizes the importance of economic prosperity and governmental integrity as the primary goals of civil society. See Putnam, *The Prosperous Community: Social Capital and Economic Growth*, *supra* note 30, *The Prosperous Community: Social Capital and Public Growth*, *supra* note 10, and note 190. In BOWLING ALONE, *supra* note 1, Putnam discusses a broader range of individual and social goals, such as physical and mental health and stable families.

interests of others and with the interest of the community in cooperation among the various groups and individuals.

The portrait of civic life suggested by the passage from Thomas Wolfe may at first seem a somewhat crass formulation of the golden rule. At one level, there is an overarching sense of *quid pro quo*. Civil society theorist Robert Wuthnow, however, argues that the reciprocity-based sense of community common at earlier times in America's history was in fact superior to notions of sacrifice advanced by some today because it gave rise to a deep and natural sense of caring and comraderie.³² According to Wuthnow, people's willingness formerly to take time off from work to help a neighbor, attend weddings and funerals, and in general participate in small-town life was not only better because it was natural; it also had the effect of "restrain[ing] individual greed and ambition."³³ He argues that because caring was mutually beneficial, it was neither egoistic nor altruistic. In contrast, community activities and volunteering today have acquired a moral symbolism that, in Wuthnow's view, arose because of, and makes sense only against the backdrop of, a materialistic and individualistic baseline.³⁴ Thus, he argues that the generalized reciprocity of former times promoted a stronger, purer sense of

³² Robert Wuthnow, *Rediscovering Community*, 31 VA. SOC. SCI. J. 1 (1996).

³³ Wuthnow, *Rediscovering Community*, *supra* note 32, at 1-2.

³⁴ See Wuthnow, *Rediscovering Community*, *supra* note 32, at 2, 4-5, 7. In former times, caring was normal, something people did naturally; now, it is "intentional, deliberate, a matter of choice." *Id.* at 4. According to Wuthnow, "serving the community through volunteer work takes on added significance today because work itself is generally regarded as a place where caring is absent." *Id.* At 7.

community than do community activities today, which are tainted by their origins in a sense of emotional neediness and guilt.³⁵

³⁵ See Wuthnow, *Rediscovering Community*, *supra* note 32, at 7-8.

If Wuthnow is correct,³⁶ the reflexive sense of cooperation that Putnam applauds would be desirable because of its impact on people's character as well as for its economic and social consequences. As a conceptional matter, however, Wuthnow's conclusion is problematic because, to reach it, Wuthnow equates "self-interest rightly understood"³⁷ with "caring for others...[which is] valued just for its own sake."³⁸ However, the concept of self-interest rightly understood, like the concept of reciprocity, does not imply the desire to do something for its own sake, i.e., because it is the right thing to do. Wuthnow appears to base his equation of the two concepts on the naturalness or spontaneity of old-style

³⁶ Some aspects of Wuthnow's discussion raise questions. First, he frequently cites June Cleaver and at-home housewives in his anecdotes about people who used to be available to take care of neighbors' children, help the sick, and have personal knowledge of goings-on in the neighborhood (although he also mentions working activists and people who stay home from work to help others). See Wuthnow, *Rediscovering Community*, *supra* note 32, at 1-4. Cf. William Galston, *Won't You Be My Neighbor*, 26 AM. PROSPECT 16, 18 (1996) (observing that "I cannot help thinking that, as a matter of history, the term "social capital" refers in significant measure to the uncompensated work of women outside the domains of both home and market." Second, Wuthnow states that most people today "vehemently deny that guilt has anything to do with their community service activities." Wuthnow, *Rediscovering Community*, *supra* note 32, at 8. This statement seems to be contrary to the facts as I know them. Above all, Wuthnow's argument depends upon a preference for what is natural (understood as spontaneity) over what is chosen as the basis for behavior. See *id.* at 4. This is an important philosophical perspective; yet its superiority to philosophic perspectives ranking virtues that are chosen as superior to those that are natural is not self-evident. Without some justification (which Wuthnow does not provide), this part of his argument for a reciprocity-based sense of community is weak.

³⁷ Wuthnow, *Rediscovering Community*, *supra* note 32, at 1. The phrase originated with the French political and social theorist, Alexis de Tocqueville. See ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 500-03 (tr. & ed. Harvey C. Mansfield & Delba Winthrop 2000).

³⁸ Wuthnow, *Rediscovering Community*, *supra* note 32, at 5. Fukuyama, in contrast, argues that as a practical matter enlightened self-interest, which can be an important source of association, is not as effective a basis of association as mutual trust and shared ethical values. See FUKUYAMA, *TRUST: THE SOCIAL VIRTUES AND THE CREATION OF*

caring and community participation,³⁹ as contrasted with much new-style charitable and volunteer activity that, in his view, is calculated to counter our emotional voids or driven by guilt. Even if his assessment of the origin of contemporary volunteering is accurate, he may be wrong about the past. At least for some theorists, a habit of helping that originates in self-interest would fall short of the ethic of caring Wuthnow seems to attribute to it.⁴⁰

PROSPERITY, *supra* note 5, at 26-27.

³⁹ Wuthnow, *Rediscovering Community*, *supra* note 32, at 2 (normal, natural), 6 (basic to our nature).

⁴⁰ A habit ultimately based upon notions of reciprocity, in other words, is not the same thing as a habit based upon beliefs about what is right for its own sake (or because of a divine command). Actions based upon both appear to be sought for their own sake; only in the latter case, however, is the origin of the habit also a belief about the intrinsic rightness of actions of a certain kind. Wuthnow seems to acknowledge this point elsewhere, in discussing the etiology of trust, when he says that “trust is not simply a matter of making rational calculations about the possibility of benefitting by cooperating with someone else.” Robert Wuthnow, *The Foundations of Trust*, 18 PHIL. & PUB. POL’Y 3, 7 (1998) (contrasting trust based upon calculation with trust based upon a moral belief in the intrinsic goodness of trust).

A third cooperation theorist, Francis Fukuyama, also views an active civic life as a means to achieve an end that is not fundamentally civic in nature. His emphasis on interpersonal trust as a condition of civic health is derived almost exclusively from his insight that trust is necessary to achieve economic efficiency first and foremost because economic markets that must police compliance is less efficient than those in which cooperation is a product of shared values or norms.⁴¹ Fukuyama arrived at his understanding of the integral relation between trust and prosperity empirically. Using comparative statistics from several countries, he found a positive correlation between economic and social development, on the one hand, and a country's traditions of trust and cooperation, on the other, based upon.⁴² As a consequence, he argues that strong civic traditions of interpersonal trust and cooperation are essential for reducing transaction costs and increasing economic efficiency and prosperity.⁴³ In Fukuyama's view, Americans today risk losing their economic prosperity because of certain intellectual trends

⁴¹ See FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY, *supra* note 5, at 27. He includes among these social norms such things as the work ethic and communal activism. Similarly, a culture in which litigation, rather than negotiation, is viewed as the best way to resolve disputes among parties to a transaction will, in the long run, be less prosperous since litigation is a less efficient vehicle for arriving at solutions to such disputes than is negotiation, especially negotiation based upon attitudes of cooperation and trust. See *id.* at 151, 310-11. Further, a litigious culture will itself generate a higher level of distrust among citizens. *Id.* at 51.

⁴² See FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY, *supra* note 5 (arguing that the prosperity in the United States, Germany, and Japan is a consequence of the three countries' strong civic traditions as compared with the less prosperous economies of China, France, and Italy, which have less robust civic traditions).

⁴³ See FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY, *supra* note 5, at 27.

and cultural developments that have lessened people's spontaneous feelings of trust for one another.⁴⁴

⁴⁴ See FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY, *supra* note 5, at 51, and *supra* note 25. Fukuyama uses the phrase "spontaneous sociability," a generalized form of trust, to describe people's willingness "to form new associations and to cooperate within the terms of reference they establish." *Id.* at 27.

The cooperation perspective authors concentrate on two aspects of human character, namely, the capacity for trust and the desire for comfort, and on a structural aspect of civil society, namely, the possibility of coordinated and effective collective arrangements. They appear to assume that cooperation and collective action will tend to produce good outcomes, especially in the areas of greatest concern to them.⁴⁵ An active civil society is thus sought primarily as a condition of and means to these private outcomes, the latter of which have intrinsic value.

⁴⁵ Nonetheless they do acknowledge that there may on occasion be voluntary associations dedicated to violence or other harmful purposes that make use of the cooperative and collective

effects of participation in voluntary associations to achieve their purposes. See *infra* notes 109-110 and accompanying text.

The assumption of cooperation theorists that interpersonal trust within an association will lead to interpersonal trust among members of different groups within a larger community (“generalized interpersonal trust” or “community-wide social capital”⁴⁶) has generated much commentary and criticism. In addition to challenges based upon empirical data,⁴⁷ some authors have pointed to the failure of cooperation theorists to explain, or to explain convincingly, the genesis of interpersonal trust that transcends the boundaries of a particular group.⁴⁸ According to one commentator, interpersonal trust “is by definition specific and contextual,” and is qualitatively different from the “impersonal phenomenon” that Putnam, for example, labels “generalized trust.”⁴⁹ In his later writings, Putnam attempts to address this issue by distinguishing between “bonding” groups, which can achieve their objectives without interacting with outsiders, and “bridging” groups, which facilitate the formation of interpersonal trust across group lines because they seek a goal that is unattainable without the help of outsiders.⁵⁰ Not a few commentators have described Putnam’s “bonding” groups less charitably than he does, noting that they can

⁴⁶ The term “community” can be ambiguous, since a single group constitutes a community in one sense. As used in the following discussion, “community” will refer to relatively large aggregates of groups having potentially different interests, such as a ward, precinct, town, county, state, region, or nation. Communities are not necessarily based upon geography. See BENDER, *COMMUNITY AND SOCIAL CHANGE*, *supra* note 22, at 7, 10, 144-145.

⁴⁷ See *infra* Part III.C.

⁴⁸ Cohen, *Trust, Voluntary Association and Workable Democracy*, *supra* note 7, at 219-223 and sources cited.

⁴⁹ Cohen, *Trust, Voluntary Association and Workable Democracy*, *supra* note 7, at 221.

⁵⁰ See PUTNAM, *BOWLING ALONE*, *supra* note 1, at 22-24, 134-44.

“foster invidious stereotypes” and engage in “subordination” of outsiders.⁵¹ Such critics point out that a significant number of traditional associations were exclusionary and at times created bonds among their members in part by encouraging hostility toward outsider groups such as women or blacks or everyone who was not Irish (or Italian, or Jewish, or Armenian). There is thus the possibility that membership in the type of small voluntary associations usually seen as fertile grounds for the growth of social capital and trust could well have the opposite effect, *i.e.*, it could reduce the level of trust toward people outside the group at the same time that it increases the trust among members of the group.⁵² Other authors have recognized a distinction similar to that of Putnam’s bridging and bonding groups and, like him, they fail to explore the relationship between the two forms of social bonds arguably in tension with each other.⁵³

⁵¹ See, e.g., Deborah L. Rhode, *Association and Assimilation*, 81 Nw. U.L. REV. 106, 106 (1986) (Symposium: Freedom of Association) and *infra* note 52.

⁵² See Margaret Levi, *Social and Unsocial Capital: A Review Essay of Robert Putnam's "Making Democracy" Work*, 24 POL. & SOC'Y 45, 476-48 (1996). See also Peter Y. Hong, *Bowling Alley Tour Refutes Theory of Social Decline*, L.A. TIMES, Mar. 18, 1996, at A1; Robert W. Jackman & Ross A. Miller, *Social Capital and Politics*, 1 ANN. REV. POL. SCI. 47 (1998) (noting that there are “thriving” voluntary associations in ethnically divided societies engaged in activities that are not socially desirable); Rhode, *Association and Assimilation*, *supra* note 51, at 108 (discussing all-male associations and their deleterious effects, such as discrimination, fostering social stereotypes, and denying individual women opportunities that go with membership; early all female organizations some of which challenged while others reinforced women's traditional roles); Alejandro Portes & Patricia Landolt, *The Downside of Social Capital*, 26 AM. PROSPECT 18, [19] (1996) (“The same strong ties that help members of a group often enable it to exclude outsiders.”); MARY DOUGLAS, *HOW INSTITUTIONS THINK* (1986) (noting that cooperation and solidarity within a group imply rejection and mistrust of outsiders) (cited in Clark, *Shifting Engagements*, *infra* note 109, at 13).

⁵³ For example, Dietlind Stolle and Thomas Rochon acknowledge a distinction between “private social capital” and “public social capital.” They describe private social capital as the “capacity for collective action, cooperation, and trust within the group, enabling the collective purposes of the group to be achieved more easily.” Public social

A question thus remains whether participation in voluntary associations in fact produces any norms of community-wide social capital or generalized interpersonal trust with regard to people outside the group.⁵⁴ If they do not, participation in traditional voluntary associations would not necessarily turn members' hearts and minds outward toward collective action with other groups much less toward public welfare, and it might even reinforce conflicts that inhibit cooperation among heterogeneous groups. This possibility, coupled with the other difficulties discussed in this section, constitute serious practical impediments to constructing coherent public policies that will invigorate and elevate the level of civil society.

capital, in contrast, facilitates such things as tolerance and working toward community based goals. See Dietlind Stolle & Thomas R. Rochon, *Are All Associations Alike? Member Diversity, Associational Type, and the Creation of Social Capital*, 42 AM. BEHAV. SCI. 47, 48-50 (1998) (*hereinafter* Stolle & Rochon, *Are All Associations Alike?*). These two authors do not assert a causal (or other) relationship between the two forms of social capital.

⁵⁴ This question is examined *infra* Part III.C.

Political theorist Nancy Rosenblum attacks the assumptions of cooperation theorists from a different direction. Unlike other commentators who have observed that participation in voluntary associations could promote social bonds and cooperation among criminals and malcontents,⁵⁵ Rosenblum argues that, unless a group engages in illegal activities, the psychological benefits to members of secret societies and some paramilitary groups may have a positive societal effect by reducing the members' most extreme tendencies.⁵⁶ She maintains more broadly that even exclusionary groups, such as homeowners' associations, are desirable, although the cooperation they foster does not coincide with the interests of the larger communities in which they reside, because all groups engaged in lawful activities contribute to the "moral uses of pluralism."⁵⁷

Sociologists Michael Foley and Bob Edwards criticize the social capital/effective collective action thesis from another perspective. They argue that the "cooperation theorists" have a tendency to "suppress the conflictive character of civil society, seeking in society and its inner workings the resolution of conflicts that politics and the political system, according to other understandings, are charged with settling or suppressing."⁵⁸ This challenge amounts to a frontal attack on one of the most basic principles of the first perspective in the civil society

⁵⁵ See NANCY L. ROSENBLUM, *MEMBERSHIP AND MORALS* 21, 30 (1998).

⁵⁶ See ROSENBLUM, *MEMBERSHIP AND MORALS*, *supra* note 55, at 273-75.

⁵⁷ See Nancy Rosenblum, *The Moral Uses of Pluralism*, in *CIVIL SOCIETY*, *supra* note 1, at 255; see also Peter Swords, *Pluralism As A Public Good* (paper on file with the author).

⁵⁸ Michael W. Foley and Bob Edwards, *Escape from Politics? Social Theory and the Social Capital Debate*, 40 *AM. BEHAV. SCI.* 550, 551 (1997), *The Paradox of Civil Society*, 7 *J. DEMOC.* 38 (1996).

debate, namely, that the proper forum for airing and settling what are essentially public disputes should be outside the boundaries of legal and formal political institutions. So conceived, the disagreement is profoundly theoretical. Curiously, however, it calls to mind a practical shift in attitude voiced by increasing numbers of teenagers and young adults, namely, that for them formal political structures have become less and less relevant to democratic input and resolution of community problems than are local, community-based institutions, charities, and informal local initiatives and events.⁵⁹

B. The Self-Governance Perspective

⁵⁹ See, e.g., LAKE SNELL PERRY & ASSOCIATES, THE TARRANCE GROUP, INC., SHORT-TERM IMPACTS, LONG-TERM OPPORTUNITIES: THE POLITICAL AND CIVIC ENGAGEMENT OF YOUNG ADULTS IN AMERICA 41 (2002) (noting that young adults tend to see political activism and community activism as separate categories and to prefer the latter).

A second perspective animating portions of the civil society literature emphasizes a different aspect of collective action undertaken through voluntary associations. Civic health is depicted by this perspective as the aggregate conditions that make possible or encourage self-governance, freedom, and autonomy. According to this view, people engage in self-governance when they have control over their own lives by taking part in decisions that will affect how they live. The emphasis is on taking part in the decisions, as contrasted with merely participating in a group's efforts to implement goals assumed by the group to be desirable. This perspective also posits that the process of reaching decisions should be deliberative, as well as participatory, in the sense that "a wide range of competing arguments is given careful consideration in small-group, face-to-face discussion."⁶⁰

⁶⁰ See JAMES S. FISHKIN, *THE VOICE OF THE PEOPLE: PUBLIC OPINION AND DEMOCRACY* 34 (1995) (*hereinafter* *VOICE OF THE PEOPLE*).

Self-governance can, however, admit of a variety of meanings, ranging from the idea of negative freedom, or freedom from external interference or constraints,⁶¹ to the idea of positive freedom, or freedom to pursue an affirmative goal such as self-fulfillment or self-realization.⁶² Self-governance can be understood from an individualistic or collective perspective, and it can be seen as intrinsically worthwhile or as desirable instrumentally, *i.e.*, for the opportunities or results they make possible.⁶³ For civil society authors negative freedom is not the solution to society's problems. Rather, they argue that self-governance entails personal self-mastery and civic responsibility.⁶⁴ As a consequence, "[d]ecentralization alone will not automatically lead to a revival of civic virtue; it is a necessary, though not sufficient, condition thereof."⁶⁵ If autonomy over one's life without more were sought, the result could be to legitimate and reinforce the push toward atomism, privacy, and separation—which prevent or tear down social and communal bonds.⁶⁶

The civil society authors who celebrate autonomy and self-governance look to a robust civil society to provide occasions for people to join together to deliberate about local or community affairs. Thus, they emphasize the importance of local governing boards,

⁶¹ As long as it is consistent with the same freedom for others.

⁶² See Charles Taylor, *What's Wrong with Negative Liberty*, in *THE IDEA OF FREEDOM* 175, 176-77 (Alan Ryan ed., 1979).

⁶³ See Taylor, *What's Wrong with Negative Liberty*, *supra* note 62, at 176.

⁶⁴ See Joyce, *On Self-Government*, *supra* note 18, at 46-47; see also EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at 13, 135, 164-65.

⁶⁵ Joyce, *On Self-Government*, *supra* note 18, at 47.

⁶⁶ See EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at 140, 154.

town hall meetings, and neighborhood associations for developing an active citizenry.⁶⁷

Purely private voluntary organizations are also considered essential because they provide opportunities for people to learn the skills needed in decision-making contexts in general.⁶⁸

⁶⁷ See Joyce & Schambra, *A New Civic Life*, *supra* note 22, at 20. The authors mention "small groups, family, neighborhood, church, and ethnic and voluntary associations" as components of the type of "face-to-face, participatory community" that citizens need.

⁶⁸ See *infra* notes 174, 178, 264, 178, 264-179 (describing the types of skills learned by participating in voluntary organizations).

This understanding of civic health is espoused by civic renewal advocates who are politically conservative as well as those that are politically liberal. The politically conservative disparage the welfare state, the idea of a national community, and central government micro-managing local affairs⁶⁹ because they promote institutional and legal barriers to individuals taking part in public decisions affecting their lives. Self-governance is also valued by critics of therapists and the therapeutic orientation of our legal, educational, and popular cultures on the grounds that these promote psychological or internal barriers that may discourage people from taking an active part in the control of their lives.⁷⁰

The emphasis on informed deliberation and civic responsibility as essential components of autonomy is characteristic of conservative social theorists, such as Michael Joyce, William Schambra, and Don Eberly. Their belief that individuals cannot be autonomous unless they recognize and aspire to certain moral standards⁷¹ strikes some thinkers as repressive and antithetical to the very idea of freedom.⁷² Yet theorists who advance views to the left of center politically have also rejected the identification of autonomy with freedom from interference, arguing that the idea of purely negative freedom is inherently incoherent⁷³ and that a liberal state devoid of affirmative purposes is neither possible nor desirable.⁷⁴

⁶⁹ See *supra* pp. 9-12.

⁷⁰ See Joyce, *Self-Government*, *supra* note 18, at 45.

⁷¹ See Joyce, *On Self-Government*, *supra* note 18, at 46-48.

⁷² See Morone, *The Corrosive Politics of Virtue*, *supra* note 1.

⁷³ See Taylor, *What's Wrong with Negative Liberty*, *supra* note 62, at 179, 181-87,

191-93 (arguing that the idea of negative freedom itself presupposes valuations about purpose).

⁷⁴ See WILLIAM A. GALSTON, LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE 81-82 (1991); Russell Hittinger, *Varieties of Minimalist Natural Law Theory*, 34 AM. J. JURISP. 133, 149-52, 163-167 (1989).

The centrality of self-governance for some civil society theorists is consistent with their centrality for certain liberal political and legal theorists.⁷⁵ For example, James Fleming has argued that “deliberative autonomy”—which he equates with “citizens... apply[ing] their capacity for a conception of the good to deliberating about and deciding how to live their own lives”—is one of the “bedrock structures” of the American constitution.⁷⁶ And most commentators agree that the classical doctrine of contract in American law is premised upon the autonomy of the individual and his right to obligate himself to others, or obligate others to himself, when the parties to the contract consent.⁷⁷ The perspective embodied by the strand of the civil society literature that focuses on autonomy and self-governance is thus consistent with and compliments an important aspect of American jurisprudence.

⁷⁵ See JOHN STUART MILL, ON LIBERTY 72 (1859; 1985) (asserting that “[t]he only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it”).

⁷⁶ See James E. Fleming, *Securing Deliberative Autonomy*, 48 STAN. L. REV. 1, 2-3 (1995).

⁷⁷ See Chad McCracken, *Hegel and the Autonomy of Contract Law*, 77 TEX. L. REV. 719, 729-30 and sources cited (1999).

Many civil society authors have concluded that private groups, such as voluntary associations, are well suited to the development of publicly responsible and deliberative policies and agendas because they are located somewhere between purely public and purely private objectives. In a public, yet non-political sphere, people can come together and debate contested issues in an open and collective forum without the pressure, felt by official political officials, to reach a final decision capable of attracting a legislative majority. As a consequence, voluntary associations are more likely than formal political institutions to be the locus of frank and deliberative discussions and to govern through compromise and consent.⁷⁸

In addition, their role of providing a forum for collective decision making outside formal political institutions enables associations (through their members) to act as a check upon actions contemplated or taken by formal political institutions and actors. In particular, because of the skills, confidence, and other resources their active members acquire, voluntary associations have the potential to empower their members to make salutary demands on decision makers, such as requiring them to justify their decisions publicly and in terms acceptable to diverse groups.⁷⁹ Finally, it has been argued that the need for officials to convey explicit and public justifications of their actions has a tendency to induce them to articulate their actions in terms of public purposes. Even in situations

⁷⁸ See Jean Cohen, *American Civil Society Talk*, in *CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL*, *supra* note 1, at 55, 71 (arguing that deliberation plays a greater role in the “civil public” than in the “political public”).

⁷⁹ See Cohen, *American Civil Society Talk*, *supra* note 78, at 74.

where this public articulation is largely rhetorical, it may still have what one commentator calls the “civilizing force of hypocrisy.”⁸⁰

When civic health is understood as revolving around the conditions for self-governance of citizens, two courses of action are appropriate. First, it is necessary to maximize the situations in which citizens act as lawmakers, i.e., there should be a presumption that members of a community should make the decisions that impact their community whenever possible. Relatedly, citizens need to deliberate in an informed and careful way as part of the local decision making process. Second, private and public measures should be adopted to encourage individuals to join voluntary associations, where they will learn or reinforce attitudes and skills necessary for the active exercise of self-government.

In sum, this perspective advocates civic engagement so that citizens will be equipped to enjoy freedom through self-governance. The focus of this perspective is on informed and responsible participation in decision making in addition to the goal of coordinated and effective collective action—the hallmark of the first perspective. As a result, the self-governance perspective differs from the first by conceiving of civic engagement as both the means to and an ingredient of civic health. The cooperation perspective sees civic life as predominantly instrumental, whereas the self-governance perspective values civic engagement both instrumentally and as an intrinsic good. Finally,

⁸⁰ See Cohen, *American Civil Society Talk*, *supra* note 78, at 74 (quoting Jon Elster, *Arguing and Bargaining over the Senate at the Federalist Convention*, in *EXPLAINING SOCIAL INSTITUTIONS* 16 (Jack Knight and Itai Sened, eds., 1995)).

the cooperation perspective is consistent with either an interest-group or a more deliberative model of political life, whereas according to the self-governance perspective, part of the essence of civic activity is its potential to transform individuals into thoughtful decision makers who, in the best case, will be the architects of their own freedom.

C. The Representative Institutions Perspective

A third perspective on civic health centers on the goal of strengthening representative institutions and democratic practices and values. At a minimum, the democratic idea of political equality entails the right on the part of all adult citizens to participate in making decisions likely to affect their lives in a material way, the right to equality of representation, or some combination of these two. Advocates of civic renewal writing from this perspective emphasize the extent to which and the ways in which political equality so understood is currently lacking in the United States and is unlikely to be achieved through minor adjustments to existing political arrangements. All the data show that there are large disparities in political participation that track people's socioeconomic status.⁸¹ Although voting is currently the *least unequal* form of political participation, voting rates also tend to reflect socioeconomic differences.⁸² The disparity between the participation rates of the more and less affluent is even greater with forms of

⁸¹ See *infra* notes 82-85.

⁸² See the sources cited in Henry E. Brady, Sidney Verba, and Kay Lehman Schlozman, *Beyond SES: A Resource Model of Political Participation*, 89 AM. POL. SCI. REV. 271, 271 n.4 (1995); see also SIDNEY VERBA, KAY LEHMAN SCHLOZMAN, & HENRY E. BRADY, VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS 1,189-90 (1995) (*hereinafter* VOICE AND EQUALITY) (citing statistics showing that those who earned \$15,000 or less in 1988 were roughly 3/5 as likely to vote as those earning \$75,000 or

political participation other than voting than with voting.⁸³ Considering that constituent influence is an important factor affecting the agendas set by public officials, the asymmetry in participation rates creates the danger that decision makers will be more concerned with taking actions responsive to the views of those who participate most.⁸⁴ This danger matters for the possibility of representative institutions because there is evidence that different socioeconomic groups voice different concerns: those at the lowest part of the socioeconomic spectrum “are more than twice as likely . . . to discuss concerns about basic human needs such as poverty, jobs, housing, and health,” whereas those at the high end are more likely to be “inspired by economic issues such as taxes, government spending, or the budget, or by social issues such as adoption or pornography.”⁸⁵

more).

⁸³ This is partially due to the circumstance that contemporary political campaigns increasingly seek contributions of money rather than time. See Louis J. Ayala, *Trained for Democracy: the Differing Effects of Voluntary and Involuntary Organizations on Political Participation*, 53 POL. RES. Q. 99, 101 (2000); Sidney Verba, Schlozman, & Brady, *The Big Tilt: Participatory Inequality in America*, 32 AMER. PROSPECT 74, 75 (1997); Arend Lijphart, *Unequal Participation: Democracy's Unresolved Dilemma*, 91 AM. POL. SCI. REV. 1, 2 n.1 (1997) (noting that public financing could eliminate this source of inequality).

⁸⁴ This is the case even assuming decision makers act for a variety of motives, including the public interest (as they understand it).

⁸⁵ Verba, Schlozman, & Brady, *The Big Tilt*, *supra* note 83, at 78; see also VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 247-51, 263-64; Lijphart, *Unequal Participation*, *supra* note 83, at 4-5. But see Michael M. Gant and William Lyons, *Democratic Theory, Nonvoting, and Public Policy*, 40 AM. POL. Q. 21 (1993) (arguing that, at least at the level of electing Presidents, research suggests that the views those who are eligible to vote but stay home mirror the views of those who in fact vote); RUY A. TEIXEIRA, *THE DISAPPEARING AMERICAN VOTER* 100 (1992); RAYMOND WOLFINGER & STEVEN ROSENSTONE, *WHO VOTES?* (1980) (finding no significant difference between the candidates favored by voters and nonvoters). Arend Lijphart,

Thus, low levels of political participation can contribute to as well as reflect civic decline by skewing public policies toward the interests of those classes with high turnout and participation rates. In addition, asymmetries in representation violate one of the basic axioms of democratic theory, which presupposes the equal worth of every citizen, namely, that “[t]he needs and preferences of no individual should rank higher than those of any other.”⁸⁶ According to this perspective on civic health, therefore, persistent political inequalities undermine the moral legitimacy of democracy in America.⁸⁷

who agrees with the point of view expressed in the text, specifically challenges several aspects of Teixeira’s analysis. Lijphart, *Unequal Participation*, *supra* note 83, at 4.

⁸⁶ See VERBA, SCHLOZMAN, & BRADY, VOICE AND EQUALITY, *supra* note 82, at 10.

⁸⁷ See VERBA, SCHLOZMAN, & BRADY, VOICE AND EQUALITY, *supra* note 82, at 10-15. See also Samuel Issacharoff, *The Law of Democracy: Legal Structure of the Political Process*, 97 MICH. L. REV. 1578, 1588-89 (1999) (concluding that the consequence of “wealth driven political inequality” is a “democratic process that is formally equal in theory, but dramatically unequal in practice”).

Representative institutions are also problematic to the extent that democratic political processes aim at reflecting the will of the people. Although voting for candidates for public office is typically the primary mechanism for transmitting the will of the people in a representative system, it conveys little specific information about the content of the will of the people because of the fact that most candidates campaign by declaring their support for a wide range of policies. A vote for a particular candidate thus underspecifies the popular support for each of the policies raised during the campaign, not to mention the positions a candidate adopts after being elected.⁸⁸ Civic renewal thus also requires citizens to take advantage of additional ways of communicating their ideas and preferences to lawmakers, e.g., writing letters to members of Congress or state or local officials, attending and speaking at hearings, submitting grass roots testimony, inviting representatives to a town hall meeting or roundtable, writing an opinion piece for a newspaper and forwarding a copy to an official's office, and requesting a meeting with the official's staff to discuss certain issues (including preparing materials to send in advance of the meeting). Because voluntary associations are established to promote one or a few goals common to their members, they have the potential to convey more concrete and detailed information about the will of their members than is possible through elections alone. Voluntary associations thus have the potential to serve an important

⁸⁸ For other critiques of the adequacy of the system of representation judged by democratic principles that have been put forward independent of the current civil society debate, see ACKERMAN, *WE THE PEOPLE: FOUNDATIONS* 236, 255, 260, 263 (arguing that the will of the people is not expressed during ordinary representative politics because during ordinary politics, the People do not speak) (1993); Jean, *Voluntary Association and Workable Democracy*, *supra* note 7, at 216 (arguing that the "deliberative genesis and justification of public policies or decisions deeply affecting the public...must be seen as *constitutive* of the modern form of democracy").

democracy-enhancing function, namely, to enable citizens who make use of these nonpolitical vehicles of civil society to communicate with lawmakers in a more precise manner than is possible when they vote. Regardless of whether one believes that lawmakers are obligated to promote constituents' preferences to the greatest extent possible or that their input is rather part of the total mix of considerations a lawmaker should consider when deliberating about issues on the public agenda, representation will be more reflective of the equal worth of citizens if measures like those sketched in this paragraph become widespread.

In addition to expressing concerns about political equality, observers of American political life emphasizing the representative institutions perspective have also argued that the health of such institutions depends as much on the existence of dispersed, non-governmental centers of power as it does on governmental institutions such as majority rule, the separation of powers, and the system of checks and balances.⁸⁹ Dispersed sources of power, according to this view, are essential to a strong democracy, because the quality of democratic processes depends in part upon citizens' ability to monitor the performance of governmental entities and demand transparency and accountability. Voluntary associations are well suited to promote these goals by keeping their members

⁸⁹ For the ideas in this paragraph, see RICHARD A. COUTO AND CATHERINE S. GUTHRIE, *MAKING DEMOCRACY WORK BETTER: MEDIATING STRUCTURES, SOCIAL CAPITAL, AND THE DEMOCRATIC PROSPECT* (1999); VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 30-31.

informed and providing a vehicle for them to influence or hold government actors to account more effectively than can isolated individuals.⁹⁰

⁹⁰ See *supra* notes 28-44 and accompanying text.

Finally, a democracy must be stable for its institutions to operate effectively. Although concern about the stability of democracy is more frequently expressed in relation to emerging democracies than for the United States, it is not uncommon for political and social scientists to argue that the creation and survival of democratic institutions depend, in important part, upon both the existence of social and attitudinal factors and a certain level of economic prosperity in addition to the formal structure of political institutions. The causal sequence between economic development, civic attitudes, and the stability of democratic institutions is contested. According to some, interpersonal trust and other civic attitudes are necessary preconditions of a stable institutions and processes.⁹¹ Others have isolated the preference for gradual political reform as the critical civic attitude for ensuring democratic stability, and they argue that there is no relationship between that preference and the possession of interpersonal

⁹¹ Ronald Inglehart, *The Renaissance of Political Culture*, 82 AM. POL. SCI. REV. 1203, 1214, 1216-18 (1988) (based upon cross-cultural data, defending the proposition that in countries with the lowest levels of interpersonal trust and overall life satisfaction, people tend to support antisystem parties such as those on the extreme Right or the extreme Left and that countries with high levels of satisfaction and trust are “linked with the persistence of democratic institutions”); Inglehart, *Trust, Well-Being, and Democracy*, in DEMOCRACY AND TRUST, *supra* note 7, at 88, 89; GABRIEL A. ALMOND AND SIDNEY VERBA, *THE CIVIC CULTURE* (1963) (based upon cross-cultural empirical data, arguing that a cluster of attitudes—a “civic culture”—was a necessary condition for the survival of democratic political institutions). According to Inglehart, overall life satisfaction is a far more important determinant of democratic stability than political satisfaction, although the latter attitude may be “a better predictor of the popularity of a given government”). Inglehart, *Renaissance of Political Culture*, *supra*, at 1209. Overall life satisfaction is influenced by economic development, but it is not determined by it. *Id.* at 1209. *But see* Edward N. Muller and Mitchell A. Seligson, *Civic Culture and Democracy: the Question of Causal Relationships*, 88 AM. POL. SCI. REV. 635, 637 (1994) (based upon their causal model and cross-national data, the authors found that years of continuous stable democracy produce “high levels of civic culture and that economic development fosters civic culture indirectly, by virtue of producing stable democracy”).

trust.⁹² Interpersonal trust, for these authors, is an effect, not a cause, of the longevity and level of democracy.⁹³

⁹² Muller and Seligson, *Civic Culture and Democracy: The Question of Causal Relationships*, *supra* note 91, at 639.

⁹³ Muller and Seligson, *Civic Culture and Democracy: The Question of Causal Relationships*, *supra* note 91, at 645, 646-47.

Some research affirming the causal role of civic attitudes in producing democratic stability has simultaneously confirmed a causal relationship between economic conditions and civic attitudes. According to this research, economic conditions have a causal relationship with the stability of democratic institutions through their impact on civic attitudes. In particular, poverty has been shown to be conducive to distrust because “[u]nder conditions of extreme poverty, the loss incurred from misplaced trust can be fatal.”⁹⁴ According to the same analysis, economic development stabilizes democracy by contributing to the spread of cultural orientations that support democracy.⁹⁵ Other studies have similarly concluded that interpersonal trust decreases with increases in unemployment and that economic disparities—such as the fact that those with the most wealth received almost all of the increase in total household wealth in America in the last two decades⁹⁶--may be an additional source of instability for the country’s democratic institutions.⁹⁷ To the extent that economic factors are a condition of or contribute significantly to the stability or instability of democracy, the representative institution perspective argues that the civic renewal debate must address issues of economic

⁹⁴ Inglehart, *Trust, Well-Being, and Democracy*, *supra* note 91, at 88, 89. See also Pablo R. Fajnzylber, Daniel Lederman, and Norman Loayza, *Inequality and Violent Crime*, 45 J. LAW & ECON. 1 (2002).

⁹⁵ Inglehart, “*Trust, Well-Being, and Democracy*,” *supra* note 91, at 97, 112. Examples are people’s trust that no individual or group will be able to retain political power in violation of legal limitations and rules and people’s deep-seated belief in the legitimacy of the regime. *Id.* at 89.

⁹⁶ See S. LANCE DENNING, *FINDING VIRTUE’S PLACE: EXAMINING AMERICA’S CIVIC LIFE* 16-18 (1999).

⁹⁷ Caroline Hodges Persell, Kurt Seidel, Liena Gurevich, and Adam Green, *Civil Society and Economic Distress: Possible Causes and Consequences of Associational Memberships*, paper prepared for The American Sociological Association annual

prosperity and economic justice, e.g., inequalities in income, wealth, and the allocation of national resources, if its diagnosis and recommendations are to be effective.⁹⁸

meeting, July 16, 1998, 23-24.

⁹⁸ For the argument that there is no empirical evidence supporting the view that civic attitudes are linked in a systematic way with democratic stability or economic prosperity, see Robert W. Jackman and Ross A. Miller, *A Renaissance of Political Culture?*, 40 *AM. J. POL. SCI.* 632 (1996).

The representative institutions perspective on civic health emphasizes the importance of creating, reinforcing, and popularizing a wide range of values traditionally associated with democratic forms of government. Civil society authors writing from this perspective give pride of place to the value of equality in many forms, including equality of educational and other opportunities and equality of respect for individuals regardless of their ethnic, religious, or national background or socioeconomic status in addition to political equality.⁹⁹ As ethnic backgrounds, religious affiliations, races, and life styles have become increasingly diverse, pluralism and tolerance have become recognized as central among the values that promote and reinforce democratic institutions and practices.¹⁰⁰ Other values, such as optimism and interpersonal trust have also been put forward by some civic renewal advocates as basic democratic values.¹⁰¹

⁹⁹ See VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 1-2, 10-15.

¹⁰⁰ It is beyond the scope of this essay to attempt a comprehensive discussion of democratic values. Without question, the objectives of effective collective action, autonomy, and self-governance by an informed and deliberative citizenry, which I have distinguished conceptually in the preceding two sections, fit well under this heading, as do various other notions of freedom.

¹⁰¹ For optimism and generalized trust as core democratic values, see Eric M. Uslaner, *Democracy and Social Capital*, in *DEMOCRACY & TRUST*, *supra* note 7, at 121,

140-44.

Some features of the representative institutions perspective on civic health are potentially in tension with one or both of the first two perspectives discussed. This third perspective endorses the goal of cooperation and collective action, but in a qualified way. Given the current relatively high status composition of people active in civic life, simply increasing the level of civic activity, without more, could leave intact or even increase existing inequalities in representation.¹⁰² Although authors who stress cooperation and collective action hope for socially beneficial and just outcomes as well as efficient processes, they appear to assume that a more robust civic life will necessarily bring such outcomes in its wake. From the vantage point of the third perspective, in contrast, democracy presupposes more than formally democratic institutions and an invisible civic hand.

In addition, in contrast to both of the previous two perspectives, the representative institutions perspective is much more concerned with participation in the political process and influencing lawmakers than with nonpolitical, *i.e.*, civil, forms of civic activity. This emphasis can be traced to several considerations. First and foremost, “politics is the realm for which democratic norms seem to promise a level playing field.”¹⁰³ Second, status-skewed participatory disparities appear to be significantly greater for political activities than for some other forms of civic activity.¹⁰⁴ Third, because some critical

¹⁰² The actual operation of associations and the composition of their memberships is far more complicated than can be conveyed in this section. For a discussion of the ways in which they reinforce, rather than weaken, political inequalities, see *infra* Part III.C.

¹⁰³ VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 513.

¹⁰⁴ See VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 74-79, 513.

prerequisites of enhanced participation by populations currently unlikely to participate, such as more and better educational and economic opportunities, may well require the active intervention of governmental authorities, it is important, according to this perspective, not to minimize the role of politics and government in enhancing civil society nor to overstate the potential achievements of cooperation and collective action by citizen groups.

Finally, in contrast to the self-governance perspective, the representative institutions perspective of civic health does not inquire, or ask citizens to inquire, into the justification for their preferences as claims on public resources. The legitimacy of each claim derives from the equal respect owed to its originator. The self-governance perspective, in contrast, rests upon the view that individuals owe themselves as well as their communities the obligation to deliberate about their goals, taking into account the goals of others and the needs of the community at large, before concluding that their own goals as they initially conceived them make legitimate claims on others. As a consequence, situations could arise in which giving equal weight to the input of all citizens would meet the standards of the representative institutions perspective while failing to satisfy those of the self-governance approach. The failure to consider these differences may lead to public policies that are politically palatable but conceptually problematic or counterproductive.

D. The Community Morality Perspective

The civic renewal literature contains a fourth perspective, one that considers people's character and their moral values and practices to be constitutive elements of civic health. According to this perspective, healthy civic life is impossible without

widespread acceptance of a core of moral norms and a sense of moral obligation toward oneself, others, and the community as a whole.

Although the authors for whom these concerns are central agree with proponents of the other three perspectives that participation in civic life is generally important for civic health, many take the view that its role has been exaggerated. According to Don Eberly, for example, contemporary declines in civic engagement are the symptom of a deeper problem than a lack of participation; they are ultimately attributable to the fact that American culture has lost its moral compass.¹⁰⁵ Similarly, for Christopher Beem, civic engagement is a necessary but not sufficient condition of civic health.¹⁰⁶ In his view, the internal dynamic of contemporary voluntary associations, including families, fails to foster in people the moral norms and core democratic values they need to contribute to an orderly and stable society.¹⁰⁷ Consistent with their views is that of Eric Uslaner, who accepts the view that expectations of reciprocity based upon experiences in civil society

¹⁰⁵ See EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at 15, 155, 157.

¹⁰⁶ See Christopher Beem, *Civil Is Not Good Enough*, 6 *RESPONSIVE COMMUNITY* 47, 47-50 (1996). Beem includes the family and all organizational life other than government and the market in his notion of civil society. See *id.* Because he includes families as well as organizations, Beem prefers the term "civil" life to "civic" life.

are important to build interpersonal trust and cooperativeness, but also argues that possessing a strong moral sense is essential for maintaining interpersonal trust and for translating ties to one's community into stable, cooperative behavior.¹⁰⁸

¹⁰⁷ See Beem, *Civil Is Not Good Enough*, *supra* note 106, at 53.

¹⁰⁸ Eric M. Uslaner, *Morality Plays: Social capital and moral behavior in Anglo-American democracies*, in *SOCIAL CAPITAL AND EUROPEAN DEMOCRACY*, *supra* note 12, at 215-16 (hereinafter *Morality Plays*).

Many commentators recognize that voluntary associations can further undesirable as well as desirable purposes.¹⁰⁹ Residential community organizations may be cooperative, but they can also be seen as “organized and oriented around a barely hidden segregationist, even secessionist, agenda.”¹¹⁰ In addition, families and their values are not necessarily sources of civic strength, especially when families impart to their children excessively individualist or materialistic values.¹¹¹ In principle, then, the existence of strong social bonds is in and of itself morally neutral unless it derives from or is accompanied by moral values.¹¹² According to these authors, it is the possession of moral values that enables people to “look beyond our own self-interest and to longer-term

¹⁰⁹ Militia groups and racist organizations are usually mentioned in this connection. See Putnam, *Tuning In, Tuning Out*, *supra* note 10, at 665 (stating that whether the goals of voluntary associations are praiseworthy or not is “of course, entirely another matter”); Elshtain, *Not a Cure-All*, *supra* note 6, at 15 (noting that local attachments can take “unpleasant forms”); Beem, *Civil Is Not Good Enough*, *supra* note 106, at 50; EBERLY, *AMERICA’S PROMISE*, *supra* note 1, at 24. Ironically, there is evidence that the conspirators in the Oklahoma City bombing belonged to the same bowling league. See John Clark, *Shifting Engagements: Lessons from the “Bowling Alone” Debate*, 196 HUDSON BRIEFING PAPER: SHAPING THE FUTURE 1, 13 (1996) (basing his observation upon a report by the New York Times, Aug. 13, 1995, p. 25). See also Beem, *Civil Is Not Good Enough*, *supra* note 106, at 54 (stating that “more mainstream groups” like the Christian Coalition, the National Rifle Association, AARP, and The National Organization for Women “have come to reflect the belligerence and inflexibility associated with this militaristic orientation”).

¹¹⁰ Beem, *Civil Is Not Good Enough*, *supra* note 106, at 50.

¹¹¹ See COUNCIL ON CIVIL SOC’Y, *A CALL TO CIVIL SOCIETY: WHY DEMOCRACY NEEDS MORAL TRUTHS* 19 (1998) (hereinafter “COUNCIL, CALL TO CIVIL SOCIETY”).

¹¹² For a contrary view, see ROSENBLUM, *MEMBERSHIP AND MORALS*, *supra* note 55, at 15-17, 50-53, 55, 61-64, 319-27 (arguing that there may be a moral aspect to engagement in groups even when the character and purposes of the groups is offensive to democratic values and that a healthy pluralism does not presuppose congruence between group purposes and public purposes).

stakes.”¹¹³ Moral values, in short, are critical to ensure that a more robust civil society is more public spirited, not just more spirited.

¹¹³ Uslaner, *Morality Plays*, *supra* note 108, at 216. Uslaner also argues that in the United States, Canada, and the U.K., “values and expectations of reciprocity reinforce each other.” *Id.* at 234.

Almost all civic renewal authors believe that civil society cannot survive in the absence of a certain level of moral commitment, if not agreement, on the part of individual citizens. Representative is the Final Report of The National Commission on Civic Renewal (the “Report”), a document endorsed by a wide range of political and social scientists, philosophers, and members of the nonprofit community.¹¹⁴ The Report laments the country’s moral as well as its civic ills, deplores the “vulgar” aspects of popular culture, especially popular music, movies, and television, criticizes the easy availability of liquor and pornography, and in general decries contemporary sexual and material self-indulgence and gratification.¹¹⁵ Further, the Report identifies the weakening of America’s moral culture as a key cause of the country’s civic deficiencies.¹¹⁶ As a consequence, the Report advocates measures to strengthen personal moral standards

¹¹⁴ See THE NATIONAL COUNCIL ON CIVIC RENEWAL, A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT 5-21 (1998) (hereinafter “NAT’L COUNCIL: NATION OF SPECTATORS”) for the Report. For the participants in the Commission and in its deliberations, see *id.*, at 65-66.

¹¹⁵ See NAT’L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 5, 6, 7, 17-18. See *also* COUNCIL, CALL TO CIVIL SOCIETY, *supra* note 111, at 5-8.

¹¹⁶ See NAT’L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 6-8.

and the conduct of individuals, including public officials, as part of the civic renewal agenda.¹¹⁷

¹¹⁷ See NAT'L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 11-12, 13, 14-17, 18. See also COUNCIL, CALL TO CIVIL SOCIETY, *supra* note 111, at 12-13 (arguing that moral truths “underwrite” the civil and political goals of American democracy and that they inform and ensure the Nation’s commitment to individual and political freedom).

There has been considerable controversy surrounding the idea of core or common moral beliefs accepted by all or most citizens, especially when the core beliefs are cast as “moral truths.”¹¹⁸ Critics fear that some of the core beliefs could well conflict with many citizens’ own religious or secular beliefs or that some civic renewal advocates are simply confounding moral truth with traditional morality.¹¹⁹ To attempt to inculcate moral norms as part of the civic renewal agenda would, according to this view, amount to the coercive imposition of subjective moral views on the public at large under the ostensibly neutral banner of civic morality. In addition, commentators have questioned whether the moral norms typically endorsed by certain segments of the civic renewal community are in fact likely to create “civic virtue in the sense of the disposition to care about the common good of the whole polity and the capacity to deliberate about it” rather than merely addressing standards of personal morality.¹²⁰ If so, the core of moral norms arrived at might not be useful for promoting a culture of public spiritedness or communal values such as

¹¹⁸ See COUNCIL, CALL TO CIVIL SOCIETY, *supra* note 111, at 6, 12.

¹¹⁹ See, e.g., Linda C. McClain and James E. Fleming, *Symposium: I. Introduction. Some Questions for Civil Society-Revivalists*, in 75 CHI.-KENT L. REV. 301, 310 (2000); Morone, *The Corrosive Politics of Virtue*, *supra* note 1; Nick Gillespie, *Truth Squad: The Coercive Agenda behind the “Civil Society” Movement*, REASON ONLINE (Aug./Sept. 1998).

¹²⁰ See McClain and Fleming, *Some Questions for Civil Society-Revivalists*, *supra*

tolerance.

note 119, at 310-11.

The conceptual center of the civil society movement claims, in contrast, claims to be committed only to a secular and reasoned elaboration of foundational moral principles.¹²¹ For Don Eberly, for example, there exist “certain universal ideas of right and wrong” evident in the writings of diverse peoples, eastern and western, ancient and modern.¹²² Christopher Beem argues that there are moral norms that transcend particular epochs, nations, and cultures.¹²³ The fact that the Judaeo-Christian religious tradition supplied such values for most of the history of the United States does not in and of itself make them intrinsically religious or subjective.

William Galston’s understanding of the source and content of the core moral norms differs from that of Eberly or Beem. Galston argues that the common moral norms and virtues that are necessary to ground civil society in America are those that make possible

¹²¹ See EBERLY, *AMERICA’S PROMISE*, *supra* note 1, at 189, 194-95; see also Beem, *Civil Is Not Good Enough*, *supra* note 106, at 56. Beem argues that to be healthy, civil society must have a core of common values that link citizens together sufficiently to ensure social harmony in the face of diversity. In Tocqueville’s time, there was such a network of common “regulative principles...to help Americans distinguish between good and bad civil society.” Christopher Beem calls these truths moral and philosophical principles. That the founding documents were inspired by some kind of belief in transcendence is not, in his view, a coincidence; on the contrary, a purely particularist moral commitment will have difficulty surviving the pressures that threaten it. See Beem, *Civil Is Not Good Enough*, *supra* note 106, at 57 (stating that a moral consensus must be grounded in the universal features of human existence and not merely in the belief that they are good for Americans). Eric Uslaner adds “being married” as a source of moral commitments (based upon 1981 survey data). Uslaner, *Morality Plays*, *supra* note 108, at 229. He also states that in the U.K., secular morality is the main source of what he calls “self-obey” commandments. *Id.*

¹²² See Don E. Eberly, *The Quest for America’s Character*, in *CONTENT OF AMERICA’S CHARACTER*, *supra* note 29, at 19. Eberly calls these “values that are universally found in successful societies,” although he discusses approvingly the approach of C.S.Lewis, who considered certain moral values transcendent, and that of Ben Franklin, who considered certain virtues the values that “nourished human civilization.” *Id.*, at 19-21.

¹²³ See EBERLY, *AMERICA’S PROMISE*, *supra* note 1, at 12, 183, 187.

and sustain “liberal democracy,” “self government,” and “citizenship.”¹²⁴ Such norms and virtues are “functional or instrumental,”¹²⁵ and thus knowable by practical reason, not theoretical philosophy or revelation. As a consequence, to discern the appropriate norms and practices requires a practical understanding of constitutional democracies and the American system of government as well as an analysis of the observations of empiricists.¹²⁶

The Report approved by the members of the National Commission on Civil Renewal largely implements this functional approach. It identifies as moral virtues: parents putting the well-being of their children ahead of their “self-gratification,” acknowledging the spiritual capacity of human beings and circumscribing our personal conduct and that of our children in light of this human possibility, acknowledging that we have obligations to people outside of our families and being willing, if necessary, to sacrifice some of our own self-interests to the interests of others, and acting with moderation and self-restraint in sexual

¹²⁴ William A. Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, 75 CHI.-KENT L. REV. 603, 604-06 (2000). For a fuller discussion, see WILLIAM A. GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 217-28 (1991).

¹²⁵ Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 124, at 606.

¹²⁶ See Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 124,

matters, alcohol consumption, and the satisfaction of physical desires in general.¹²⁷

at 606.

¹²⁷ See NAT'L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 12.

These precepts are clearly moral in character, but they are advanced because of their usefulness for America's civic goals. For example, the Report urges people who chose to become parents (or who fail to make choices to prevent becoming parents) to assume the moral responsibility of raising, caring for, and loving their children so that the children become educated, caring, and willing participants in civil society. However, people are not expected, much less exhorted, to become parents in the first place, as they would be by the commands of certain religious traditions. Again, the Report appears to urge moderation in the satisfaction of sexual and other physical and material desires because of the importance of some forms of self-restraint for the self-governance upon which self-government depends.¹²⁸ To that end, it recommends that potentially destructive (legal) substances and activities be located at a distance from schools and that their availability in poor neighborhoods be limited.¹²⁹ But there is no suggestion in the Report that totally abstaining from, rather than moderate indulgence in, such things is superior to moderation, as might be the case according to some religious teachings.

¹²⁸ See NAT'L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 8.

¹²⁹ See NAT'L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 17. Presumably illegal substances would be discouraged in any amount because they are illegal.

Some civil society commentators refer to the moral norms necessary for civil society as moral truths, presumably because they are the product of reasoning about the foundational morality necessary to sustain a democratic society. The term “truth” is preferred to “values” because in contemporary America, moral values are portrayed as products of individuals’ belief systems or personal and subjective preferences rather than the product of reasoned arguments open to public scrutiny and discussion of their validity.¹³⁰ Nothing in the civil society literature precludes the existence of moral beliefs and practices peculiar to one or more religions or to non-religious ethical traditions. In fact, most authors assume that such beliefs and practices will be possessed by most citizens in addition to, and in part overlapping with, the moral precepts necessary for a healthy civil society.¹³¹ For civic renewal to succeed, however, such beliefs and practices

¹³⁰ See, e.g., Eberly, *The Quest for America’s Character*, *supra* note 122, at 11-13.

¹³¹ See NAT’L COUNCIL, *NATION OF SPECTATORS*, *supra* note 114, at 12 (observing that in general, morality is reinforced by religious beliefs, but asserting that the moral foundation upon which civil society depends “does not require any particular denominational creed”). See *also* COUNCIL, *CALL TO CIVIL SOCIETY*, *supra* note 111, at 12 (stating that the moral truths that make possible democratic self-government “are in arge part biblical and religious”). However, *A CALL TO CIVIL SOCIETY*, unlike *A NATION OF SPECTATORS*, adds that various non-religious sources also “strongly” inform the moral truths necessary for a democratic civil society, citing the classical (Greek) natural law

must be in a more or less peaceful coexistence with one another and with the moral truths necessary for a healthy civil society in America.

tradition, the ideas of the Enlightenment, documents from America's founding, speeches by Abraham Lincoln and George Washington, and the concept of higher law endorsed by and materials authored by Martin Luther King. *Id.*

In contrast to the point of view just sketched, some civil society authors concerned about moral values believe that, for the most part, moral norms are likely to be created and reinforced because of certain structural features of the American system. For example, William Schambra has argued that because America is a large commercial republic, it will have such a multiplicity of interests that local majorities will not be able to suppress minorities.¹³² He also maintains that because of the size of the commercial republic, no local community can "seal itself off completely from the moderate habits and values of the outside world."¹³³ To illustrate this point, he observes that, as a rule, merchants will have to be polite to strangers because strangers may in the future become customers.¹³⁴

Schambra readily concedes that in a large commercial republic the marketplace will tend to encourage greed and materialism in citizens. However, he also believes that

surely our churches, neighborhoods, and civic associations have over time managed to temper and moderate the harshest aspects of the marketplace's self-interest and materialism. Generation after generation, Americans have been taught that there are obligations beyond mere personal gain and the pursuit of wealth--obligations to family, community, and faith--and behave accordingly.¹³⁵

¹³² See Schambra, *Beyond the Great National Community*, *supra* note 27, at 11.

¹³³ Schambra, *Beyond the Great National Community*, *supra* note 27, at 12.

¹³⁴ See Schambra, *Beyond the Great National Community*, *supra* note 27, at 12 (noting also that there is unlikely to be ethnic or religious warring factions because the commercial character of the United States has permeated it with "sober, stolid values"); see also MICHAEL NOVAK, *BUSINESS AS A CALLING* (1996) (arguing that "[business] has a vested interest in virtue"). For a contrasting view, see GERTRUDE HIMMELFARB, *DECIPHERING AMERICAN MORALITY* (1999) (arguing that the capitalistic ethic was an important cause of the moral decline in the second half of the twentieth century).

¹³⁵ Schambra, *Beyond the National Community*, *supra* note 27, at 12. *But see id.* at 14 (conceding that the large commercial republic has not always been successful in

On balance, he concludes, the potential mischief of the excesses of the marketplace have always in the past been successfully offset by the individual freedom, civic vitality, and moral community that characterizes life in America.¹³⁶

curbing people's immoral sentiments).

¹³⁶ See Schambra, *Beyond the National Community*, *supra* note 27, at 15 (arguing that it is because of the "tension between civil society and the marketplace" that the United States has survived in as good a condition as it has).

Similarly, as was discussed previously, many civil society theorists argue that participation in voluntary associations tends to generate civic virtues, such as interpersonal trust, social capital, and generalized reciprocity, in those who participate.¹³⁷ The civic participation/social capital thesis is also a structural account of the genesis of virtue because it asserts that some virtues are likely to arise automatically, as an incident of a certain kind of behavior. However, as noted earlier, those who advance this point of view fail to explain how civic virtue developed in the service of private interests will also be exercised in the public interest when that becomes necessary.¹³⁸

¹³⁷ *See supra* pp. 12-14.

¹³⁸ *See supra* Part III, C.

Civic renewal advocates promoting the fourth perspective reject the structural approach of Schambra to the emergence of moral norms, and many have reservations about the structural approach of Putnam, so well. Their claim is that the current weakening of civic life cannot be ameliorated simply through legal, policy, or economic reforms, nor by transforming the contemporary organization of people's social and political lives so as to maximize occasions for associational interaction or decisionmaking through old style voluntary associations, town councils, and small citizen meetings. In particular, as Christopher Beem argues, participation in civil life in general and voluntary associations in particular is unlikely to generate moral norms unless the greater part of those who join them already possess these values.¹³⁹

Implicit in this view is the conviction that people's actions or behavior are in large part determined by their values and beliefs, rather than the reverse. These theorists thus reject the view that the interactions of individuals within associations or the structural relationships among associations will, without more, impart the kind of morality to members that a decent civil society presupposes.

Several civic renewal authors have asserted that the contemporary American culture of rights has contributed to the breakdown of moral values and behavior.¹⁴⁰

While not denying that the two phenomena are related, Eberly argues that the causal

¹³⁹ See Beem, *Civil Society Is Not Good Enough*, *supra* note 106; and *infra* Part IV.D. See also Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 124, at 605 (arguing that "the artful arrangement" of institutions such as checks and balances is insufficient to sustain liberal democracy); Don E. Eberly, *Correspondence: Intellectuals Prefer Culture*, 1 WKLY STANDARD 6 (Feb. 5, 1996) (hereinafter *Intellectuals Prefer Culture*).

¹⁴⁰ See, e.g., *supra* note 25.

sequence between rights and moral value runs in the opposite direction, at least initially. For him, if morality, custom, and culture in a society no longer distinguish between right and wrong, law and the coercive arm of the state will gradually become the primary way to constrain behavior. Once that happens, “citizens are at the same time more prone to resort to law than voluntary conflict resolution in sorting out their differences, and they are dismayed by the overreach of the law.”¹⁴¹

¹⁴¹ EBERLY, *AMERICA’S PROMISE*, *supra* note 1, at 112, 115. Eberly also asserts that if people do not have fundamental moral beliefs to ground their actions, they will turn to economics or science to supply them with fundamental beliefs. *Id.* at 195.

At the deepest level, therefore, the moral virtue strand of the civil society debate attributes defects in contemporary civic life to changing attitudes toward specific moral codes and to the legitimacy of moral claims altogether. The embodiment of this transformation is the contemporary tendency of people toward self-absorption, as reflected in the American "ideology of self-expression, self-interest, and individual entitlement."¹⁴² To reverse this development, according to this strand of civil society theory, civic renewal must begin by building, or rebuilding, a public moral consensus.¹⁴³ For moral values to be recovered and accepted, however, people must abandon their cynicism and moral skepticism.¹⁴⁴ Finally, for this last change to occur people must recognize, repudiate, and seek to roll back "the demise of character-shaping institutions."¹⁴⁵

The centerpiece of Eberly's civic renewal recommendations is thus reinvigorating character-shaping institutions, most importantly, the family. The family is a potentially important character building institution because it is often the first institution, chronologically and psychologically, to imbue children with moral beliefs and

¹⁴² EBERLY, THE CONTENT OF AMERICA'S CHARACTER, *supra* note 29, at xii; *see id.* at 28 (contrasting public spiritedness with self-absorption).

¹⁴³ *See* EBERLY, AMERICA'S PROMISE, *supra* note 1, at 12, 196; *see also* Beem, *Civil Is Not Good Enough*, *supra* note 106, at 50. Eberly calls the combination of moral and civic renewal, with the moral renewal triggering and informing the civic renewal, "civil society plus." *See* EBERLY, AMERICA'S PROMISE, *supra* note 1, at 5, 15-16.

¹⁴⁴ *See* EBERLY, AMERICA'S PROMISE, *supra* note 1, at 12.

¹⁴⁵ *See* EBERLY, AMERICA'S PROMISE, *supra* note 1, at 11; *see also* Don E. Eberly, *Question: Can Government Play a Significant Role in Restoring U.S. Families? No: New Laws Can't Remedy the Nation's Profound Cultural Crisis*, WASH. TIMES, INSIGHT ON THE NEWS MAGAZINE, Jan. 29, 1996, 25 (hereafter *Can Government Play a Significant Role?*); Eberly, *Quest for America's Character*, *supra* note 122, at 6.

social attitudes such as caring about the well-being of others and interpersonal trust. He implies that the more successful families are in building their children's moral character, the less important is participation in voluntary associations for creating the shared moral norms that support civil society.¹⁴⁶ Other key character-shaping institutions are schools and faith based institutions. At the same time, Eberly does not see the role of character formation as wholly private. Rather, in his view, "The job of politics is to 'shape the public sentiments,' as Lincoln put it, without which policy reforms will be of little effect."¹⁴⁷

E. Conclusion

This Part has elaborated four conceptually distinct perspectives that figure prominently in the civil society debate. The writings of individual civic renewal authors may incorporate concerns identified with more than one of the perspectives sketched above since some of the perspectives can be harmonized with others. However, when conflicts arise, those who prize a particular perspective more than others will subordinate the latter to the former. Distinguishing these perspectives is, therefore, useful because each perspective is based upon a view of the primacy of a distinctive

¹⁴⁶ EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at xiii. Eberly focuses on what people think or believe insofar as it affects how they behave; thus, he applauds campaigns to encourage teen abstinence, parental responsibility, the sacredness of marriage, and so on. See Eberly, *Can Government Play a Significant Role?*, *supra* note 145, at 26.

¹⁴⁷ Eberly, *Correspondence*, *supra* note 139, at 6.

value (or cluster of values) over competing, possibly desirable, but nonetheless subordinate values. As a policy matter, it may not be possible for all of these values to be public priorities at the same time. Where there are internal conflicts, the pursuit of some values may impede the pursuit of others. Thus, it is important to understand which civic renewal proposals reflect which perspectives and values as a prelude to evaluating such proposals both for public policy and theoretical purposes.

Underlying the cooperation perspective sketched above is a version of modern liberal political theory that has as its conceptual foundation the primacy of maximizing individual freedom and government neutrality with respect to individual preferences and pursuits. As a consequence, many of the civic recommendations stemming from this perspective are purely instrumental, i.e., in the service of ends that are not necessarily themselves civic. The self-governance perspective reflects the concerns of another strand of liberal political theory, one that contains a particular view of the nature of human well being, namely, the belief that in the best case, individuals should be rational and autonomous in their own lives and should assume some responsibility for the well-being of the larger community. Insofar as autonomy is identified with self-governance, the civic recommendations based upon this perspective are viewed as intrinsic goods. Insofar as the self-governance of individuals promotes collective self-governance, the recommendations are instrumental. According to the representative institutions perspective, democracy, and especially equality, are constitutive of civic health. Thus, one immediate goal of this perspective is equalizing the quantity and quality of citizen input reaching political leaders (“voice”) across educational, socio-economic, and other status groups. Like the cooperation perspective and unlike the self-governance

perspective, the third perspective does not assume the substantive content of individual or collective well-being, with the important exception of the belief in the equal worth of individuals and the political imperative of equal representation.. Finally, the community morality perspective views the moral well-being of individuals and the moral character of their social and communal relationships as paramount. Similar moral concerns may be urged by proponents of the other perspectives on civic health, sometimes under the Tocquevillian rubric of “self-interest rightly understood.”¹⁴⁸ For some proponents of the fourth perspective, however, people should have an interest in doing what is right because it is right, and not because of a calculation that moral behavior or public spiritedness might eventually inure to their private benefit. For these theorists, then, civic life can be intrinsically worthwhile, but only insofar as it reflects and perpetuates moral norms. In addition, some authors who emphasize this perspective may also believe in the intrinsic value of moral life, but they recognize clearly that, to serve as public norms, moral values must be exclusively derived from and justified in terms of their functional dimension.

¹⁴⁸ See *supra* note 37.

III. THE ROLE OF VOLUNTARY ASSOCIATIONS: EMPIRICAL EVIDENCE

Before drawing out the implications of the differences among the four perspectives for the regulation of voluntary associations, it is useful to examine how and under what conditions associations can perform the types of the citizen-enhancing work attributed to them. At a minimum, this involves appreciating that "voluntary associations" are not monolithic: they have different attributes, and some are better suited than others to nurture civic spirit or perform community-oriented functions. It also entails examining the empirical research devoted to investigating the conditions under which such associations have the hoped-for outcomes.

A. Classifications of Voluntary Associations

Voluntary associations can be classified in a variety of ways. They are often divided into market and non-market organizations, and the latter are further divided into families and non-kinship groups formed voluntarily.¹⁴⁹ For-profit entities are typically excluded, even though they are voluntary associations, on the ground that they do not create or reinforce social capital or promote civic engagement.¹⁵⁰ Large bureaucratic voluntary associations with enormous membership rolls are sometimes bracketed because they require little of their members beyond writing a check¹⁵¹ even though the

¹⁴⁹ See *supra* notes 5-7.

¹⁵⁰ Some scholars have argued, however, that workplaces can contribute to civic engagement by giving workers skills, experiences, and networks of associates that facilitate civic involvement.

¹⁵¹ See Theda Skocpol, *Associations without Members*, 45 AM. PROSPECT 66, 68-69, 71-73 (1999); see also PUTNAM, *BOWLING ALONE*, *supra* note 1, at 51. AARP is one such organization. Organizations that require check-writing as the primary mode of participation need not be huge, but very large organizations on average tend to want or need less in the way of direct participation on the part of their members than do their

organizations are civically active to promote the interests of their members among lawmakers at the local, state, or national levels. Their political leverage derives from the ease with which they can, through newsletters and other communications, inform their members about the substance and status of legislation under consideration, mobilize them to favor particular positions on issues, and encourage them to register, vote, and otherwise become politically active.

smaller counterparts.

For purposes of state and federal regulation, the most basic distinction among formal voluntary organizations is between the treatment of for-profit and nonprofit entities. Voluntary business organizations may be for-profit companies or nonprofit groups such as trade associations, chambers of commerce, and other professional associations. Although the primary purpose of these nonprofit organizations is commercial, they are regulated as nonprofits under the business and tax laws of most states and under the Internal Revenue Code because they do not contribute directly to the profitability of any specific firm and do not themselves generate profits for distribution to members or shareholders.¹⁵² Instead, such groups further the interests of an industry or profession by collecting and providing information relevant to an entire class of businesses, establishing standards, and lobbying government officials or the public at large on behalf of industry positions.¹⁵³ Some types of veterans groups, fraternal beneficiary societies, and labor organizations are also treated as nonprofits under state and federal law.¹⁵⁴ Although some of these voluntary associations may engage in ad hoc or ongoing charitable activities, their primary goal is to improve conditions for their

¹⁵² See, e.g., I.R.C. § 501(c)(6) (1994), which identifies the organizations listed in the text as candidates for exemption from federal income taxation. For elaboration of the characteristics required of such organizations in order to gain federal exemption, see Treas. reg. §1.501(c)(3)-1.

¹⁵³ Such groups are sometimes referred to as mutual benefit organizations. See Boris I. Bittker & George K. Rahdert, *The Exemption of Nonprofit Organizations from Federal Income Taxation*, 85 YALE L.J. 299, 305-06 (1976).

¹⁵⁴ See I.R.C. §§ 501(c)(5) (unions and other labor organizations), 501(c)(8) (fraternal beneficiary societies operating under a lodge system and providing life, health, and related benefits to the members), and 501(c)(23) (certain organizations for present and past members of the Armed Forces of the United States that provide insurance-type benefits).

members, e.g., by organizing social activities, providing insurance or other benefits to their members at discount rates, and lobbying. By virtue of being classified as nonprofits, these organizations receive tax benefits and other favorable treatment under state and federal law.¹⁵⁵

¹⁵⁵ For state law benefits for noncharitable nonprofits, see Miriam Galston, *Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities*, 71 TEX. L. REV. 1269, 1296-1302 (1993). An organization that has nonprofit status under state law will not necessarily be exempt from federal or even state income taxation. The reverse is often true: states tend to make federal exemption from income tax a condition of receiving state income tax exemption rather than relying upon their own grant of nonprofit status. For example, the District of Columbia grants an automatic exemption from the income and franchise tax to any organization exempt under § 501(a) of the Code except those exempt under § 501(c)(3). (In order to be exempt from the income and franchise tax as a charity in the District of Columbia, an organization must have both a federal tax exemption and demonstrate that a certain percentage of its activities or expenditures benefits District of Columbia residents. See Instructions for Filing Application for Exemption (Form FR 164); see also D.C. CODE ANN. § 47-1802.1 (1990) (listing organizations exempt from District of Columbia income and franchise tax).) Revenues of noncharitable exempt organizations that would

constitute unrelated business income under § 511 of the Code are not exempt in D.C. Similar laws exist in many states. See, e.g., ILL. ANN. STAT. ch. 120, para. 2-205(a) (Smith-Hurd 1991); MD. TAX-GEN. CODE ANN. § 10-104(2) (1988). For a discussion of tax and nontax benefits associated with exempt status, see Bazil Facchina et al., *Privileges & Exemptions Enjoyed by Nonprofit Organizations: A Catalog and Some Thoughts on Nonprofit Policymaking*, in TOPICS IN PHILANTHROPY (New York University School of Law, The Program on Philanthropy and the Law No. 3, 1993).

In contrast to mutual benefit nonprofits, charitable entities must be operated to help charitable classes--such as the poor, homeless, sick, or handicapped--or engaged in a category of activity that state or federal law has determined contributes to the public interest. Examples of the latter type of charity are educational groups or institutions, health care organizations, houses of worship, and museums. In addition to the tax and other benefits granted to noncharitable nonprofits,¹⁵⁶ charities are entitled to receive contributions that are deductible from the income of the donors, subject to certain restrictions.¹⁵⁷ The charitable contribution deduction tax benefit has been variously explained as compensating for charities' lack of access to capital markets, lessening the burdens of government, taking advantage of charities' efficiency in providing charitable services, or deriving from a "sovereignty" view of the charitable sector.¹⁵⁸

¹⁵⁶ See *supra* note 53.

¹⁵⁷ See I.R.C. § 170(a). Other exempt entities may be entitled to receive deductible contributions. See I.R.C. § 170(c)(1), (3), (4), (5).

¹⁵⁸ See Evelyn Brody, *Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption*, 23 IOWA J. CORP. L. 585 (1998).

From the perspective of sociologists, a fundamental distinction should be made between expressive and instrumental associations, or between associations that members join for expressive as against instrumental reasons.¹⁵⁹ In their pure form, expressive associations provide activities that create the "satisfactions of personal fellowship" and that members engage in simply or primarily because they are enjoyable.¹⁶⁰ The members derive "immediate and continuing gratification" merely from taking part in the association's activities; the activities of such organizations are wholly or largely contained within the organization; and the activities are ends in themselves.¹⁶¹ Examples are recreational clubs, choirs, little league teams, and many other kinds of social organizations.

In their pure form, instrumental organizations enable their members to accomplish goals outside of the organization. In particular, members may seek to effect changes to the social, economic, or political order¹⁶² or to maintain the status quo against a threat of

¹⁵⁹ See C. Wayne Gordon & Nicholas Babchuk, *A Typology of Voluntary Associations*, 24 AM. SOC. REV. 22, 25-26, 27-28 (1959), reprinted in THE GOVERNMENT OF ASSOCIATIONS: SELECTIONS FROM THE BEHAVIORAL SCIENCES 24 (William A. Glaser & David L. Sills eds., 1966). Even if an association is predominantly expressive in its mission, some people may join for instrumental reasons; conversely, a person may join a fundamentally instrumental organization for expressive reasons.

¹⁶⁰ See Gordon & Babchuk, *A Typology of Voluntary Associations*, supra note 159, at 25, 27. In sociological jargon, "integration of the personality system is often held to be the major reason for the existence of the group." Nicholas Babchuk and John N. Edwards, *Voluntary Associations and the Integration Hypothesis*, 35 SOC. INQUIRY 149, 151 (1965).

¹⁶¹ See Arthur P. Jacoby, *Some Correlates of Instrumental and Expressive Orientations to Associational Membership*, 35 SOC. INQUIRY 163, 163-64 (1965) (hereinafter *Correlates of Instrumental and Expressive Orientations*).

¹⁶² See Babchuk & Edwards, *Voluntary Associations and The Integration Hypothesis*, supra note 160, at 149, 151. However, the authors also mention a study finding that "upper-class women" emphasized personal satisfaction as their reason for joining instrumental associations. In contrast, "middle-class women" emphasized

change – goals that are frequently long-term and depend upon influencing individuals, groups, or public officials outside the group. People thus join instrumental organizations primarily as means to some other end or ends.¹⁶³ Examples are the NRA, the League of Women Voters, and the Sierra Club. Some associations may serve both expressive or instrumental purposes depending upon the reasons members join.¹⁶⁴

association goals as their reasons for joining voluntary associations, even though they "were mostly affiliated with expressive associations." *Id.* at 152.

¹⁶³ See Gordon & Babchuk, *A Typology of Voluntary Associations*, *supra* note 159, at 25-26; Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 161, at 164. See also John Wilson and Marc A. Musick, *Work and Volunteering: The Long Arm of the Job*, 76 SOC. FORCES 251, 253 (1997) (dividing social participation into expressive, self-interested, and benefitting the needy or community problems).

¹⁶⁴ See Gordon & Babchuck, *A Typology of Voluntary Associations*, *supra* note 159, at 28 (mentioning Kiwanis and the American Sociological Society as examples of mixed purpose associations). The authors also call Alcoholics Anonymous a mixed purpose organization, presumably because of the camaraderie that develops among those who go regularly to the same chapter, even though the primary purpose remains instrumental. The distinction between expressive and instrumental groups is similar to, and to some extent overlaps with, the distinction between bonding and bridging groups made by Robert Putnam. See *supra* pp.19 -21.

It is also common for sociologists and political scientists to distinguish between voluntary associations that seek to promote some aspect of the self-interest of the members and those that cast their goals in light of the public interest. The term “public interest” can be used in a variety of ways. For some, the term refers only to commitment to or involvement in one's community, as contrasted with purely private activities. So understood, an organization's activities may be in the public interest even if its members do not join for altruistic or public spirited reasons. Rather, they would be in the public interest if their members see public life as the means to secure private economic goals, e.g., tax reform. If “public interest” is used in this way, advocacy groups are inherently public interest groups, regardless of whether they pursue the personal goals of their members.¹⁶⁵

¹⁶⁵ See Frank J. Sorauf, *The Conceptual Muddle*, in *THE PUBLIC INTEREST* 183, 184-85 (Carl J. Friedrich, ed. 1962) (noting that some identify the public interest with “the democratic political process of compromise and accommodation” and observing that, so understood, the term refers to a means rather than an end and has “little to do with the wisdom or morality of public policy itself”). See also Jane Mansbridge, *On the Contested Nature of the Public Good*, in *PRIVATE ACTION AND THE PUBLIC GOOD* 3, 7 n.8 (Walter W. Powell & Elisabeth S. Clemens, eds. 1998) (noting that “interest” in the sense of benefit evolved from its original meaning as interest charged by lenders), 9-10 (distinguishing aggregative meanings of the public good from collective meanings) (*hereinafter* “*The Contested Nature of the Public Good*”).

Others reserve the term public interest for efforts to assist others because of a belief that this is the right thing to do and regardless of whether they expect a private benefit.¹⁶⁶ Used in this way, both pro-choice and pro-life groups might be properly called public interest groups because they are based upon a profound belief in the correctness of their respective missions rather than upon personal advantage or utility. Even if the members of such groups can be seen as seeking a self-interested goal, theirs are self-interested civic goals rather than self-interested private, material goals—a distinction that “matters for the political life of the community.”¹⁶⁷

B. Why People Participate in Voluntary Associations

Many commentators--both those who believe in and those who reject the idea of civic decline--agree that people who participate in one voluntary association are more likely to participate in other aspects of civil life, broadly defined to include neighborhood involvement and other types of informal helping or social participation, as well as in political activities.¹⁶⁸ Thus, much study has focused on what motivates people to get involved in voluntary associations in the first place.

1. Education. The most consistently documented finding in this area

¹⁶⁶ See Mansbridge, *On the Contested Nature of the Public Good*, *supra* note 165, at 9-10. See also Alan Wolfe, “What Is Altruism?”, in PRIVATE ACTION AND PUBLIC GOOD, *supra* note 165, at 36, 37 (quoting J. Phillippe Rushton’s definition of altruism as “social behavior carried out to achieve positive outcomes for another rather than for the self”).

¹⁶⁷ VERBA, SCHLOZMAN, AND BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 23.

¹⁶⁸ See David Horton Smith, *Determinants of Voluntary Association Participation and Volunteering: A Literature Review*, 23 NONPROFIT AND VOLUNTARY SECTOR QUARTERLY 243, 253 (1994). In some formulations, this belief risks becoming a tautology. See *infra* p. 78.

is that there is a strong positive correlation between formal education and civic engagement: people with some college participate in voluntary associations and vote significantly more than less educated groups.¹⁶⁹ To some extent, this correlation is related to the correlation between civic engagement

¹⁶⁹ See ON GIVING AND VOLUNTEERING IN AMERICA: A SUMMARY OF THE ESSENTIAL DATA, prepared for the Inaugural Meeting of the National Commission on Philanthropy and Civic Renewal, 2 (Washington, D.C. 1996) (according to 1993 data collected by Independent Sector, people with a high school diploma or less made up 12% of all volunteers, while those with some college or graduate school made up 52% of all volunteers); see also M. MARGARET CONWAY, POLITICAL PARTICIPATION IN THE UNITED STATES 22-23 (1991). See also J. Miller McPherson, *A Dynamic Model of Voluntary Affiliation*, 59 SOC. FORCES 705, 711, 712, 715 (1981) (agreeing that education is the "most important exogenous variable in almost all studies of affiliation," but noting that in countries other than the United States education does not play as important a role in predicting affiliation). In the 1950s and 1960s, people with a grade school education voted at the same rate as people with high school educations do in the 1980s and 1990s; in the 1950s and 1960s, people with a high school education voted as much as people with college educations in the 1980s and 1990s. See CONWAY, POLITICAL PARTICIPATION, at 22, Table 2-1.

and socioeconomic status. However, even when researchers control for income, those with more formal education participate more in civil society.¹⁷⁰

¹⁷⁰ See CONWAY, POLITICAL PARTICIPATION, *supra* note 169, at 22; Christopher J. Anderson, *Political Action and Social Integration*, 24 AM. POL. Q. 105, 116 (1996). For a discussion of the relationship between education, social class, and civic engagement (“participation in noninstitutionalized politics”), see Ronnelle Paulsen, *Education, Social Class, and Participation in Collective Action*, 64 SOC. OF EDUC. 96 (1991) and *infra* note 250. By noninstitutionalized politics, the author means forms of collective action that do not involve formal political institutions, e.g., “protest demonstrations and community problem solving.” *Id.* At 96.

Education also has an impact on the manner or type of civic engagement that people choose. According to one study, "[t]hose with more formal education are more likely than those with less to direct their [volunteering] activities not only to their own communities but also to other communities."¹⁷¹ Further, there is evidence that people with college degrees or more education show greater interest than other people in working with serious social problems relating to disabled, disadvantaged, abused, troubled, or neglected children and youth.¹⁷² In the realm of political activity proper, education is most highly correlated with voting, demonstrating, signing a petition, boycotting, and contacting public officials. The correlation is substantially weaker for working with others and attending meetings and rallies.¹⁷³

There are numerous reasons why education fosters civic engagement. Education makes certain forms of engagement easier by imparting useful information and skills, e.g., how to write a member of Congress a letter, participate in an association, work for a political campaign, or register to vote.¹⁷⁴ In addition, education also helps motivate

¹⁷¹ See SURVEY ON VOLUNTEERING FOR SERIOUS SOCIAL PROBLEMS, document prepared for the Points of Light Foundation and made public at the Inaugural Meeting of the National Commission on Philanthropy and Civic Renewal, at 5 (Washington, D.C., September 1996) (noting that among volunteers for serious social problems, 69% of college graduates volunteered, whereas 57% of those with a high school diploma or less volunteered) (hereinafter VOLUNTEERING FOR SERIOUS SOCIAL PROBLEMS).

¹⁷² See VOLUNTEERING FOR SERIOUS SOCIAL PROBLEMS, *supra* note 171, at 5.

¹⁷³ Anderson, *Political Action and Social Integration*, *supra* note 170, at 114.

¹⁷⁴ See Brady, Verba, and Schlozman, *Beyond SES*, *supra* note 82, at 283. According to Brady, Verba, and Schlozman, the impact of education on voting turnout has been overstated. Based upon an analysis of data from over 15,000 phone interviews conducted in 1989 and 1990, they concluded that "the impact of education on voting is funneled entirely through political interest." *Id.*

people to become civically engaged, presumably by socializing students to value civic involvement and providing them with networks of people who are civically involved and invite them to join specific organizations, projects, or events.¹⁷⁵ Since people with “higher levels of education tend to come from families in which the parents had higher levels of education as well,” values imparted by these students’ parents are an additional source of motivation for civic engagement.¹⁷⁶

¹⁷⁵ See STEVEN J. ROSENSTONE AND JOHN MARK HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, 76-77, 135-36 (1993); Brady, Verba, and Schlozman, *Beyond SES*, *supra* note 82, at 283.

¹⁷⁶ CONWAY, POLITICAL PARTICIPATION, *supra* note 169, at 23. See also *infra* notes 219, 234.

2. Religion. Religion, whether in the form of membership in a religious organization or attendance at religious services, is a close second predictor of civic involvement.¹⁷⁷ The correlation between religion and civic engagement has been explained, in part, by the likelihood that involvement in religious organizations can develop communication and organizational skills useful for effective participation in voluntary associations of whatever kind.¹⁷⁸ Churches have been found to be especially critical for teaching skills in African-American communities.¹⁷⁹

This explanation does not necessarily shed light on the source of motivation for civic engagement, however. For example, the development of communication and organizational skills may facilitate participation in civic life among people who already want to participate, but would feel inadequate if they lacked these skills, by making them more comfortable in or confident about pursuing civic involvement. The development of such skills does not, however, explain the desire for civic engagement

¹⁷⁷ See Robert Wuthnow, *Mobilizing Civic Engagement: The Changing Impact of Religious Involvement*, in *CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY* 331, 333 (Theda Skocpol & Morris P. Fiorina eds. 1999) (citing sources) (hereinafter “Wuthnow, *Mobilizing Civic Engagement*”); see also Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *infra* note 180, at 138-39 (making the same point with respect to volunteering).

¹⁷⁸ See VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 305-06, 310-11, 313; see also Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, at 346.

¹⁷⁹ See Peter Dobkin Hall, *Vital Signs: Organizational Population Trends and Civic Engagement in New Haven, Connecticut, 1850-1998*, in *CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY*, *supra* note 177, at 211, 237. See also VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 320-30 (noting that participation in politics is highly correlated with socio-economic status except that participation in churches increases the level of participation of poor blacks and white fundamentalists; however, participation in churches does not increase the participation levels of Catholics).

on the part of these people in the first place.

Robert Wuthnow addresses the motivational link between religious and civic involvement. He argues that

[a]ctive church members are likely to be exposed to religious teachings about loving their neighbor and being responsible citizens, they are more likely to have social capital in the form of ties to fellow congregants that can be used to mobilize their energies, and they are more likely to be aware of needs and opportunities in their communities as a result of attending services in their congregations.¹⁸⁰

Based upon similar reasoning, some civic renewal writers have attributed the decline in civic participation in important part to the decline in traditional forms of religious commitment.¹⁸¹

¹⁸⁰ Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, at 334; see also John Wilson & Thomas Janoski, *The Contribution of Religion to Volunteer Work*, 56 SOC. OF RELIGION 137, 137-38 (1995).

¹⁸¹ See Putnam, *Bowling Alone*, *supra* note 1, at 69 (arguing that people joined or went to church or other religious institutions less in 1970 (41%) than they did in 1950 (48%)), 70 and Figure 12 .

This connection has been challenged on several grounds. As a threshold matter, there is data showing that the level of religious engagement in the United States, measured by beliefs, practices, or a combination, has remained quite stable for at least five decades.¹⁸² Some commentators, in fact, see an upswing in religious observance.¹⁸³ To some extent, the disagreement reflects different evaluations of changing forms of religious practice and expressions of religious identity that have occurred in the last several decades.¹⁸⁴ If, as Robert Wuthnow argues, spirituality has undergone a significant shift from “habitat-based” to “seeker-based,”¹⁸⁵ it stands to reason that measures of religious identification based upon attendance at or

¹⁸² See Bill Broadway, *Poll Finds America 'as Churched as Ever'*, WASH. POST, May 31, 1997, at B7 (basing his claim that Americans are “as churched as ever” on a Gallup Poll done for the Princeton Religious Research Center); Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, at 331, 334-35 (1999) (arguing that religious involvement has been stable for at least five decades, with a temporary increase in the 1950s, and that the way some surveys phrased the question about religious involvement may be responsible for the decrease that Putnam asserts) *The Solitary Bowler*, ECONOMIST, Feb. 18, 1995, at 21 (claiming that church attendance in America shows the weakest decline; it has been stable at 40% since 1939); Ladd, *Data Just Don't Show Erosion*, *supra* note 1, at 21 (basing his claim on data from colonial times through 1990, he concludes that the rates of religious “adherence” have been stable and about 55% since the 1920s).

¹⁸³ See Bill Broadway, *Christian Pollster and Analyst Sees Country at Spiritual Crossroads*, WASH. POST, May 31, 1997, at B7 (noting data collected by the Barna Research Group to the effect that born-again Christians in the Catholic and Baptists churches have increased significantly as has Sunday school attendance by both children and adults).

¹⁸⁴ See *supra* note 182.

¹⁸⁵ ROBERT WUTHNOW, *AFTER HEAVEN: SPIRITUALITY IN AMERICA SINCE THE 1950S* 3 (1998). This is not the first time in the history of religion in America that people have turned away en masse from formal, ritually oriented forms of religious worship to more individualistic, spiritually or mystically oriented forms of worship. See *generally* RICHARD KYLE, *THE RELIGIOUS FRINGE: A HISTORY OF ALTERNATIVE RELIGIONS IN AMERICA* (1993); PETER W. WILLIAMS, *POPULAR RELIGION IN AMERICA* (1989).

involvement with houses of worship will witness a decline.

The link between religion and civic engagement must be further qualified by research showing that the link is complex and not uniformly present across religions or religious denominations. For example, although there is a strong correlation between religious engagement and civic engagement in general, several studies have found significant differences in the extent and type of civic activity characteristic of different religions and denominations within religions. Some early studies found that Catholics participated less than Protestants in civic and service organizations.¹⁸⁶ Data from the early 1970's, in contrast, show that Catholics, Jews, and Episcopalians volunteered significantly more than other religious groups and denominations as well as people claiming no religious affiliation.¹⁸⁷ According to data from 1991, Catholics were much more likely to join a nonreligious voluntary association than were evangelical

¹⁸⁶ See MURRAY HAUSKNECHT, *THE JOINERS: A SOCIOLOGICAL DESCRIPTION OF VOLUNTARY ASSOCIATION MEMBERSHIP IN THE UNITED STATES 76-77* (1962) (distinguishing between Protestants and Catholics)); see also Hall, *Organizational Population Trends and Civic Engagement in New Haven*, *supra* note 179, at 233-34 (distinguishing between liberal and conservative Protestants and Roman Catholics in New Haven).

¹⁸⁷ See Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 180, at 143.

Protestants, whereas mainline Protestant denominations were much more likely to join such associations than were Catholics.¹⁸⁸

¹⁸⁸ See Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, at 341, 343. See also ON GIVING AND VOLUNTEERING IN AMERICA, *supra* note 169, at 2 (based upon 1993 data from Independent Sector, 22% of volunteers are Catholic while 54% are Protestant).

The disparity in civic participation as between Catholics and mainline Protestants may come from the habits of mind that are imparted to congregants by the different structures of the two denominations. According to one interpreter of the data, Protestant congregations tend to view the clergy as serving the members, whereas it is more common for authority in Catholic churches to be hierarchical, with the congregants at the bottom of the authority structure.¹⁸⁹ This is consistent with the findings of political scientist Robert Putnam, who studied numerous districts in Italy¹⁹⁰ and found that high levels of religious observance or expressions of religious identity were strongly correlated with low levels of civic activity.¹⁹¹ Putnam attributed this fact, in part, to the Italian Church's emphasis on ecclesiastical hierarchy, in which "[v]ertical

¹⁸⁹ See HAUSKNECHT, *THE JOINERS*, *supra* note 186, at 54-55. Verba, Scholzman, and Brady give the same explanation for low participation rates in politics among poor Catholics. See VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 245. Hierarchical structures are also considered a factor reducing the likelihood of civic engagement in other contexts. See *infra* notes 208-10 and accompanying text (describing the positive relationship between work that offers employees challenge and discretion and their involvement in civic life).

¹⁹⁰ See ROBERT PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* (1993), who found that the difference in economic development in the northern and southern parts of Italy was directly correlated to the differences in their civic traditions and culture. To explain this correlation, he argued that, over time, civic engagement produced trust and other bonds among neighbors, members of groups, and people active in other types of communities. Through the trust and bonds thus generated, according to Putnam, certain regions in Italy developed and maintained a strong civic tradition, social capital, and other civic resources that enabled the residents to work toward common goals and demand accountability from their local governments. Subsequently Putnam generalized his findings from Italy and concluded that interpersonal trust and social capital are essential for all forms of cooperation, whether economic, social, or political, in the United States and elsewhere. See PUTNAM, *BOWLING ALONE*, *supra* note 1, at 21.

¹⁹¹ See PUTNAM, *MAKING DEMOCRACY WORK*, *supra* note 190, at 107-08.

bonds of authority are more characteristic...than horizontal bonds of fellowship.”¹⁹² The demonstrated predictive value of religious affiliation for civic engagement may, then, mask a more meaningful correlation between experiences in certain structural environments and civic engagement that, in the case of religious institutions, rest on basic characteristics of their underlying theologies.

¹⁹² See PUTNAM, *MAKING DEMOCRACY WORK*, *supra* note 190, at 107.

A direct link between theology and civic engagement has been posited based upon data showing that volunteering in community or secular organizations is higher among mainline and liberal Protestants than among evangelicals or more conservative Protestants or among Catholics.¹⁹³ Researchers have speculated that this difference is due to the fact that the former denominations tend to link their theological teaching explicitly with social activism, whereas the latter are more likely to stress piety, personal salvation, and volunteering to the church.¹⁹⁴ One consequence, then, of the increased popularity of fundamentalist congregations during the final third of the last century may be a reduced level of involvement in secular (including civil and political) organizations, as members are encouraged to direct their energies and financial resources to their own churches and church-related organizations and activities.

In sum, it is certainly true that religious values may lead those who take them seriously to be concerned about the well-being of people outside their own religious communities and to be inspired to join and participate in civic organizations devoted to helping causes or populations regardless of their religious orientation. At the same time, the positive civic impact of religious organizations appears also to depend on the

¹⁹³ See Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, at 341-44; see also Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 180, at 143-44, 148 (finding Catholics volunteer at the same rate as liberal Protestants).

¹⁹⁴ See Wuthnow, *Mobilizing Civic Engagement*, *supra* note 177, 342-44; see also Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 180, at 149-50; Hall, *Organizational Population Trends and Civic Engagement in New Haven*, *supra* note 179, at 234; PUTNAM, *MAKING DEMOCRACY WORK*, *supra* note 190, at 107. Wuthnow also attributes the phenomenon to the fact that evangelical churches make very great, time-consuming demands on the members of their congregations, and they provide them with a wide assortment of opportunities to engage their energies.

content of the values that they inculcate. If so, when people internalize civic values as part of their religious life, their civic commitment will be strong. When, in contrast, religious teachings focus on the needs of specific religious communities or emphasize the virtues of piety and the goal of personal salvation, the civic impact is likely to be negligible or even negative.

3. Job and workplace. Scholars have long been interested in the degree to which jobs or careers influence the likelihood that people will be active members of civil society and influence the type of civic activities they choose.¹⁹⁵ As a threshold matter, research shows that spending large amounts of time on the job does not necessarily interfere with a person's willingness to be engaged civically outside of work. In fact, according to some studies, “among workers, longer hours are often linked to more civic engagement, not less” and people “with longer paid work hours are actually more likely to volunteer.”¹⁹⁶ Although it may seem counterintuitive, women working full time for pay are more involved in formal and informal civic activities than are women who do not engage in paid work.¹⁹⁷ Women who work part-time for pay, however, are more involved in such activities than both full-time working women and

¹⁹⁵ See, e.g., Graham L. Staines, *Spillover Versus Compensation, A Review of the Literature on the Relationship Between Work and Nonwork*, 33 HUM. REL. 111 (1980) (hereinafter *Spillover Versus Compensation*) and authorities cited there.

¹⁹⁶ See PUTNAM, *BOWLING ALONE*, *supra* note 1, at 191 and authorities cited. Putnam here includes informal activities, such as having people to dinner and “schmoozing,” in his measure of civic involvement.

¹⁹⁷ See Kay Lehman Schlozman, *Did Working Women Kill the PTA?*, 11 AM. PROSPECT 14 (Sept. 11, 2000) (emphasizing the positive aspect of paid work on women's political involvement); see also PUTNAM, *BOWLING ALONE*, *supra* note 1, at 200-01.

women who do not have paid jobs.¹⁹⁸ This finding may suggest that working has a strong positive effect on a person's desire for civic engagement, even though it reduces the amount of time available for civic activities, but that full-time employment cuts excessively into the hours available for outside activities, at least for women.¹⁹⁹

¹⁹⁸ See PUTNAM, *BOWLING ALONE*, *supra* note 1, at 201.

¹⁹⁹ Men who have been employed in structured work environments for a significant period are more likely to be engaged in civic life than those who have not. See C. Muhammad Siddique, *Orderly Careers and Social Integration*, 20 *INDUS. REL.* 297 (1981). See also Harold Wilensky, *Orderly Careers and Social Participation: The Impact of Work History on Social Integration*, 26 *AM. SOC. REV.* 521, 530-32 (1961) (on the basis of an analysis of upper working class and lower middle-class men, finding that men who have had orderly horizontal or vertical careers will have more memberships in formal associations, attend more meetings, spend more time in associational activities (other than church activities), interact more frequently with persons different from themselves, be exposed to more of the major institutional spheres of society, and have stronger attachments to the community than men lacking such orderly careers).

There is considerable interest in the relationship between characteristics of work and the type of civic activities that people engage in outside of work. Researchers have found that in general people choose civic activities that are similar to or build on their work experiences more often than they choose non-work activities that contrast with their work experiences.²⁰⁰ Empirical work studying the kinds of outside activities preferred by working women, as contrasted with whether and how often they engage in such activities, have found that many working women are joining professional groups now whereas previously they tended to join service oriented groups to a greater degree.²⁰¹ To the extent that women's participation in professional groups is motivated

²⁰⁰ See Staines, *Spillover Versus Compensation*, *supra* note 195, at 112, 115, 116, 117, 123. When there are similarities between a person's work and his leisure activities, sociologists attribute this to a "spillover" or "generalization" effect, which presupposes that the skills developed, attitudes created, roles played, and needs satisfied on the job "spill over" or are generalized during leisure time outside the job. See Staines, *Spillover Versus Compensation*, *supra* note 195, at 115. A dissimilarity between work and non-work activities is explained as a "compensation" or "competition" effect. According to this theory, people's experiences on the job satisfy some human needs but not others. As a result, in their leisure time people seek to compensate for the various voids that are not satisfied through their work on the job. See *id.* at 115 (citing work suggesting that this causes people to seek involvement in voluntary associations in the first place and implying that such people will seek activities unlike those performed at work). Cf. See Robert Hagedorn & Sanford Labovitz, *Participation in Community Associations by Occupation: A Test of Three Theories*, 33 AM. SOC. REV. 270, 280 (1968) (finding compensation only when the person experiences isolation in the occupation). Some studies show that people who have physically demanding jobs are not only less likely to be physically active when they participate in activities outside work; they are less likely to participate to begin with. See Staines, *Spillover Versus Compensation*, *supra* note 195, at 118. Alternatively, according to this view, people may be seeking variety in their non-work activities to balance their work activities. See *id.* at 116, and sources cited in Wilson and Musik, *Work and Volunteering*, *supra* note 163, at 253. In general, studies have found a positive spillover effect more often than a compensation effect. There have, however, been a substantial number of studies that found a compensation effect or no relationship between work and non-work activities at all.

²⁰¹ See Danny R. Hoyt et al., *The Voluntary Association Memberships of Women*,

by the desire to refine skills necessary for their jobs or helpful for career advancement, the motivation is not for civic engagement, except incidentally. Alternatively, women's turn toward professional organizations may be due to a loss of interest in the types of groups they formerly joined coupled with a new interest in different types of associational activities. In this case, a woman's job may have created a motivation for civic engagement that did not exist previously. In that event, the finding that women working for pay are more involved in civic life than their non-working counterparts²⁰² may be explained by women's desire to balance work life with experiences outside the workplace while taking advantage of expertise gained in the workplace. Working women may also be responding to exposure to social networks first encountered on the job. Either way, the influx of women into the workplace would be responsible for expanding the variety of women's civic commitments and introducing them to a range of associational opportunities not previously encountered.

The likelihood that workers will join a union and engage in formal union activities constitutes a special case of worker participation in voluntary associations.

Researchers have found that the propensity of workers to attend meetings or hold office in their unions is a function of two variables: the degree to which individual members see themselves as at risk and, second, the union's perceived level of

paper delivered at the American Sociological Association convention in 1985 (a summary of the paper is available in Sociological Abstracts, Inc.); see also Patricia Klobus Edwards, John N. Edwards, and Ann Dewitt Watts, *Working Women and Social Participation: The Diminishing Importance of Gender*, paper delivered at the American Sociological Association convention in 1981 (Sociological Abstracts, Inc.).

²⁰² *Supra* note 197.

effectiveness in promoting fairness in the employment relationship. A recent study found that ethnic-minority women were the most likely to participate in a union perceived as effective in promoting fairness; non-ethnic minority women were the next most likely, followed by non-ethnic minority men, and finally ethnic minority men.²⁰³ In such cases, involvement in unions is pursued predominantly for instrumental (rather than ideological or social) reasons.²⁰⁴

²⁰³ See Steven Mellor, Janet L. Barnes-Farrell, & Jeffrey M. Stanton, *Unions as Justice-Promoting Organizations: The Interactive Effect of Ethnicity, Gender, and Perceived Union Effectiveness*, 40 *SEX ROLES: A JOURNAL OF RESEARCH* 331 (1999).

²⁰⁴ See Thomas Kohler, *Civic Virtue at Work: Unions as Seedbeds of Civic Virtue*, 36 *B.C.L. Rev.* 279 (1995), *reprinted in* *SEEDBEDS OF VIRTUE* 113 (Mary Ann Glendon & David Blankenhorn eds., 1995) (criticizing the decline in union membership and attributing it to the fact that people tend to value autonomy and self-interest over other values, thereby overlooking the potential of collective bargaining negotiations to be a forum for responsible self-government).

Highly placed individuals in corporate America often seek out civic opportunities, including joining charitable groups, because it is made clear on the job that such outside activities enhance the reputation of the company and thus may enhance the individual's chances for promotion.²⁰⁵ Since voluntary organizations are often “prestige-conferring,”²⁰⁶ people with a high level of occupational success may seek parallel achievements in the institutions of civil society. The widely recognized strong positive correlation between high educational level and socio-economic status, on the one hand, and the level of civic participation, on the other, may also explain the participation of such individuals.²⁰⁷

²⁰⁵ See Thomas Janoski & John Wilson, *Pathways to Voluntarism: Family Socialization and Status Transmission Models*, 74 SOC. FORCES 271, 273 (1995) (noting that membership in voluntary associations is frequently “almost part of the job” for people in high-status occupations); see also Wilson & Musick, *Work and Volunteering*, *supra* note 163, at 253 and sources cited; Staines, *Spillover versus Compensation*, *supra* note 195, at 115 and sources cited.

²⁰⁶ Jack C. Ross, *Toward a Reconstruction of Voluntary Association Theory*, 26 BRIT. J. SOC. 20, 27 (1972).

²⁰⁷ See VERBA, SCHLOZMAN, & BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 189-200.

There is also evidence that workplace positions demanding qualities such as autonomy, initiative, decision-making, discretion, considerable interaction with other workers, complex tasks, and leadership correlate positively with civic involvement.²⁰⁸ It is possible that the correlation between civic engagement and challenging jobs of the kind described bears upon confidence more than on motivation, given that the workplace is one of the most important place for learning and practicing skills useful for civic engagement.²⁰⁹ However, given that a positive correlation between civic engagement and challenging jobs exists even when the studies control for level of education,²¹⁰ it is more likely that such jobs are responsible for motivating employees' involvement in civil society in addition to equipping them to participate with a variety of experiences and well-honed skills.

²⁰⁸ See Wilson & Musick, *Work and Volunteering*, *supra* note 163, at 253-54 and sources cited. *But see* Steven L. Schweizer, *Participation, Workplace Democracy, and the Problem of Representative Government*, 28 *POLITY* 359, 368-69 (1995) (arguing that "the drift of empirical research suggests that workplace democracy does not increase external political participation").

²⁰⁹ See Verba, Schlozman, & Brady, *Race, Ethnicity and Political Resources*, *infra* note 264, at 476-78.

²¹⁰ See Wilson & Musick, *Work and Volunteering*, *supra* note 163, at 253-54.

Recent research has found that the correlation between participation in nonpolitical civic activities and participation in political activities is far greater than the correlation between participation in workplace activities and political involvement.²¹¹ The disparity was the most pronounced in connection with time-consuming or volunteer-oriented political activities, as contrasted with voting.²¹² This finding suggests that a person's work is not as significant a factor in prompting civic engagement, at least in the form of political participation, as is participation in voluntary forms of associational life. At the same time, the author of this research noted that the causal element had not been proven: it is possible, given the results of the research, that the time-intensive types of political activity might be causing the participant also to engage in non-political voluntary associations.²¹³

4. Friends, parents, and social ties. Friends are an important source of motivation for getting involved in civil society. People who are asked in person or through a personal communication to join or volunteer, do so far more often than those who learn of such opportunities from the newspaper or other print or broadcast media.²¹⁴ When questioned, such joiners often respond that the primary reason they

²¹¹ See Ayala, *Trained for Democracy: the Differing Effects of Voluntary and Involuntary Organizations on Political Participation*, *supra* note 83 (analyzing the same data base as Verba, Schlozman, and Brady, *supra* note 82, with some adjustments of methodology). The author notes that the result was the same for professionals as it was for low-skilled workers. *Id.* at 104.

²¹² Ayala, *Trained for Democracy*, *supra* note 83, at 106.

²¹³ Ayala, *Trained for Democracy*, *supra* note 83, at 108.

²¹⁴ See S. Wojciech Sokolowski, *Show Me the Way to the Next Worthy Deed: Towards a Microstructural Theory of Volunteering and Giving*, 7 *VOLUNTAS* 259, 272,

joined was the personal solicitation of a friend.²¹⁵ The powerful effect of solicitations by friends may also explain why people who work and those who attend church have higher rates of civic engagement than those who do not, since most workplaces and church groups provide an assortment of networks of people with varying interests, some of them eager to recruit fellow workers or worshipers. Researchers have even found that subjects in an experiment who do not have much interpersonal trust tend to show a stronger preference for civic activities after writing an essay on the benefits of friendship.²¹⁶

275 (1996) (hereinafter *Show Me the Way*) (finding that solicitation increased volunteering to philanthropic entities although it did not increase charitable giving). According to one researcher, direct recruitment at voluntary organizations and churches does not explain the strong correlation between involvement in voluntary associations, including churches, and voter turnout. See Carol A. Cassel, *Voluntary Associations, Churches, and Social Participation Theories of Turnout*, 80 Soc. Sci. Q. 504 (1999).

²¹⁵ See Arthur P. Jacoby, *Personal Influence and Primary Relationships*, 7 Soc. Q. 76, 77-81 (1966) (noting as well that personal influence was a much greater factor in the decision to join expressive associations than in instrumental ones).

²¹⁶ See Melanie C. Green & Timothy C. Brock, *Trust, Mood, and Outcomes of Friendship Determine Preferences for Real Versus Ersatz Social Capital*, 19 POL. PSYCHOL. 527 (1998).

Children growing up in homes where one or both parents were active in civic associations are much more likely than children with the same socioeconomic status and education to join civic associations or to be civically active when they are adults.²¹⁷ When one or both parents engaged in helping behaviors and also had a nurturing relationship with the children, the children were significantly more likely to become committed activists or engage in sustained helping behaviors than children without such backgrounds.²¹⁸ The mechanism involved in socialization by parents is thought to

²¹⁷ See E. Gil Clary et al., *Volunteers' Motivations: A Functional Strategy for the Recruitment, Placement, and Retention of Volunteers*, 2 *NONPROFIT MGMT & LEADERSHIP* 333 (1992) (noting the importance of family and friends as motivators); Janoski and Wilson, *Pathways to Voluntarism*, *supra* note 205, at 283.

²¹⁸ See E. Gil Clary & Jude Miller, *Socialization and Situational Influences on Sustained Altruism*, 57 *CHILD DEV.* 1358 (1986) (finding, based upon data from adult volunteers at a telephone crisis-counseling agency, that helping behavior was twice as likely to extend through the six-month commitment period if the volunteer's parents had been committed activists and nurturing to their children than if the parents had not

be role modeling, reinforcement of values, and possibly actual recruitment of children by their parents.²¹⁹

been). However, the authors also found that partially committed adults, e.g., those whose parents had preached but not practiced altruism and had been less nurturing than the parents of the comparison group, achieved the identical level of altruistic commitment as the others if they received highly cohesive volunteer training prior to undertaking the volunteer work. *Id.* at 1362.

²¹⁹ See Eric Uslaner, *Producing and Consuming Trust*, 115 POL. SCI. Q. 569, 572, 575 (2000); Paul Allen Beck and M. Kent Jennings, *Pathways to Participation*, 76 AM. POL. SCI. REV. 94, 98-101, 105 (1982); Janoski & Wilson, *Pathways to Voluntarism*, *supra* note 205, at 273-74, 289.

At the same time, some researchers have found that the impact of family socialization varies depending upon the type of voluntary association. Parental transmission of status has been shown to be better than parental socialization for predicting children's participation in "self-oriented" associations, such as business or professional groups, unions, or veterans groups. In contrast, family socialization provided a better explanation of children's participation in community-oriented associations such as church, fraternal, neighborhood, and service organizations.²²⁰ These findings are consistent with research on the pivotal nature of cultural, social, or family values on levels of involvement in associations directed toward collective goals discussed below.²²¹

²²⁰ See Janoski & Wilson, *Pathways to Voluntarism*, *supra* note 205, at 279-286. The authors note that their distinction between self- and community-oriented organizations is different from the more commonly used distinction between expressive and instrumental organizations. *Id.* at 274. See also Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 180, at 137-38.

²²¹ See *infra* III.B.5.

The desire for interpersonal social relationships is another reason for joining associations.²²² Some researchers have found that organizations with civic purposes such as helping needy populations attract people looking for fellowship.²²³ In general, members motivated to join for reasons of this kind tend to be committed to a group's internal activities but are less likely to engage in external activities connected to the group than are those who join from altruistic or ideological motives.²²⁴ "Social ties" with a philanthropic organization are also good predictors of volunteering and donations.²²⁵ "Social ties" to a philanthropic organization include organizational membership, church

²²² See Philip H. Pollock, III, *Organizations as Agents of Mobilization: How Does Group Activity Affect Political Participation?*, 26 AM. J. POL. SCI. 485, 488 (distinguishing between "solidary" incentives, such as fun or conviviality, and "purposive" incentives, such as ideology or collective interest, for joining an association) (1982) (hereinafter *Organizations as Agents of Mobilization*).

²²³ See Pollock, III, *Organizations as Agents of Mobilization*, *supra* note 222, at 488.

²²⁴ See David Knoke, *Incentives in Collective Action Organizations*, 53 AM. SOC. REV. 311, 326 (1988).

²²⁵ See Sokolowski, *Show Me the Way*, *supra* note 214, at 275.

attendance, or parents who volunteered.²²⁶

5. Attitudes and values. Since the pioneering work of Mancur Olson on collective action problems, political and social theorists have often been pessimistic about the likelihood that people will expend substantial resources to obtain a public good in circumstances

²²⁶ See Sokolowski, *Show Me the Way*, *supra* note 214, at 269.

where they can expect to share in the fruits of other people's efforts regardless of their own contribution.²²⁷ Subsequent studies, in contrast, have determined that people's motives for joining, volunteering for, and giving money to non-economic voluntary organizations are usually mixed, and that altruism, ideology, and the desire for prestige are better predictors of certain kinds of civic activity than are material motives.²²⁸ An analysis based upon 1990s survey data similarly found that the desire for material rewards, such as career opportunities, was not a significant predictor of the likelihood that adults would volunteer for philanthropic activities or make charitable donations, whereas altruism (in the sense of desiring to help others) and the desire for self-improvement were both positively correlated with rates of volunteering (although not

²²⁷ See MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION* (1965). Differently put, Olson's theoretical model "requires substantial private-good incentives to overcome the tendency of public goods to induce free riding." David Knoke, *Incentives in Collective Action Organizations*, 53 *AM. SOC. REV.* 311, 326 (1988).

²²⁸ See Knoke, *Incentives in Collective Action Organizations*, *supra* note 224, 227, at 326 (finding, based upon a study of professional, recreational, and women's organizations using 1980s data, that "[g]eneral normative principles, prestige, and status enhancements are especially potent instigators of general commitment and internal participation," in contrast to selective benefit inducements, such as services or finding job opportunities). Knoke found, however, that normative incentives do not tend to induce participation in activities outside to the association, with the important exception of women's organizations. *Id.* It is possible to make distinctions among types of values, beliefs, or attitudes as motivators of behavior. See e.g., Thomas Janoski, March Musick, and John Wilson, *Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering*, 13 *SOC. FORCES* 495, 498 (1998) (quoting Paul Schervish's distinction among general values, fundamental orientations, and "causes we are dedicated to"); Carolyn L. Funk, *Practicing What We Preach? The Influence of a Societal Interest Value on Civic Engagement*, 19 *POL. PSYCHOL.* 601, 602 (1998) (distinguishing between values and attitudes). This essay does not make such distinctions.

with donations).²²⁹ Similar findings led one political scientist to conjecture that organizations attempting to attract members with material or other individual benefits would improve their success in recruitment and maintenance of members by appealing to people's societal values.²³⁰ Further, members who joined organizations in order to obtain personal, utilitarian benefits tended to be more passive and less committed to or involved in an organization than those who joined to influence public policy.²³¹

²²⁹ See Sokolowski, *Show Me the Way*, *supra* note 214, at 268, 273.

²³⁰ See Funk, *Practicing What We Preach? The Influence of a Societal Interest Value on Civic Engagement*, *supra* note 228, at 611.

²³¹ See Knoke, *Incentives in Collective Action Organizations*, *supra* note 224, 227, at 326.

The preceding findings are consistent with the results reached by research about the impact of family, friends, and social ties on levels of civic involvement, discussed above,²³² since frequently these are influential through instilling civic attitudes and values.²³³ In fact, according to one sociologist, socioeconomic status has its acknowledged profound effect on the likelihood of political participation because of the attitudes and orientations associated with social and economic status.²³⁴ Even when individuals join or volunteer simply in response to a personal appeal, they may do so because of the value they place on friendship, itself a civic value as fulsome as more obvious civic values such as voting. Further, sometimes a person joins a voluntary group for one reason but acquires a different reasons for remaining in the group,²³⁵ or joins a group independently of social or civic values and then acquires such values as a result of participation in the group.²³⁶

6. Conclusion. Several themes recur in the preceding discussion of reasons for people participating in voluntary organizations. First, the reason for joining is often complex and multi-faceted. Second, some reasons may themselves derive, both conceptually and in actuality, from other reasons. For example, church

²³² *Supra* Part III.B.4.

²³³ *See supra* Part III.B.1, 2, 4.

²³⁴ Pollock, III, *Organizations as Agents of Mobilization*, *supra* note 222, at 484.

²³⁵ *See* CONWAY, POLITICAL PARTICIPATION IN THE UNITED STATES, *supra* note 169, at 66.

²³⁶ For the relative impact of self-selection as against group participation on the likelihood that participants in a voluntary association will be active in other aspects of civic life, *see infra* Part III.C.2-3.

attendance is a strong predictor of participation in civic life more broadly, but the difference in participation rates among denominations has led some researchers to speculate that it is the civic attitudes conveyed at church or friendship ties with other church members rather than the religious motive for church attendance that explains the strong correlation between attendance and civic participation. Again, the strong correlation between level of education and degree of civic participation may derive from the content of higher education (especially civic values), the friendship ties formed at institutions of higher learning, or civic values learned from parents who also value higher education.

As complex as these issues of cause and effect are, they are eclipsed by the complexity of the counterpart issues raised by the proposition that participation in voluntary associations is itself a “cause” of additional participation in civic life, whether political or civil. The next section explores the empirical research devoted to assessing the role of associational participation as itself a source, and not merely a reflection, of an active civil society.

C. Self-Selection, Socialization, and Mobilization

1. Introduction: methodological challenges. One building block for much of the civil society literature is the documented existence of a significant positive correlation between active association membership, on the one hand, and civic attitudes and values and other forms of civic activity, on the other.²³⁷ At the same time,

²³⁷ The discussion that follows does not apply, however, to dangerous forms of civic activity such as characterizes racist, hate, and terrorist groups, unless otherwise noted. For groups of this kind, see *supra* note 109.

a correlation between active association membership and other forms of civic engagement is, as a theoretical matter, open to at least three interpretations: that active association members were civically oriented before they joined an association and joined, in part, because of that orientation (the self-selection thesis); that such members developed their civic orientation primarily as a result of their association activities (through socialization²³⁸ or active recruitment by other members of the group);

²³⁸ The term “socialization” is also sometimes used to refer to the process whereby childhood or cultural influences impart values or attitudes to people. I used the term this way in Part III.B.4, 5. Used that way, the term refers to developments outside of associational life. See, e.g., Beck and Jennings, *Pathways to Participation*, *supra* note 219, at 94. In this Part III.C, in contrast, I use the term to refer to the transformation that a member may experience as a result of participating in the activities of an association. Following sociological terminology, I use “self-selection” or “selection” to refer to the

or that some combination of these two causal mechanisms is at work.²³⁹

The difficulty in identifying which causal relationships underlie a correlation is complicated by the fact that empirical studies are not usually designed to assess the relative roles of self-selection prior to joining an association as against socialization or

impact on joiners of attitudes created independent of their participation in a specific organization. Some authors also speak of “selective recruitment” to refer to the process whereby an organization recruits members who already display the attitudes, skills, or other qualities useful to the organization. See, e.g., Carla M. Eastis, *Organizational Diversity and the Production of Social Capital: One of these Groups Is Not Like the Other*, 41 AM. BEHAV. SCI. 66, 71 (1998).

²³⁹ See Marc Hooghe, *Value Congruence in Voluntary Associations: A Social Psychological Explanation for the Interaction between Self-Selection and Socialization*, 76 MENS EN MAATSCHAPPIJ 102 (2001) (examining the role of both pre-existing and post-involvement attitudes in connection with feelings of ethnocentrism); John Brehm and Wendy Rahn, *Individual-Level Evidence for the Causes and Consequences of Social Capital*, 41 AMER. J. POL. SCI. 999 (1997); David L. Rogers, Gordon L. Bultema, and Ken H. Barb, *Voluntary Association Membership and Political Participation: an Exploration of the Mobilization Hypothesis*, 16 SOC. QUARTERLY 305 (1975) (examining the impact of both self-selection and organizational involvement on engaging in political activities such as writing elected or agency officials, meeting with agency officials, or attending a public hearing).

mobilization after becoming a member. Further, self-selection can be attributed to a person's unlearned predispositions or learned attitudes and interests, whether ultimately traceable to formal schooling or informal educational experiences such as occur in families, neighborhoods, schools, or camps. Mobilization, in turn, can be either direct, through express recruitment, or indirect, through the process of socialization. Moreover, the existing research that measures and compares the relative roles of pre- and post-joining influences is not uniform in the outcomes studied (e.g., voting, volunteering, or some other civic activity) or the influences measured (e.g., values, recruitment, role models). This lack of uniformity in research design has resulted in a patchwork of incomplete and often incommensurable findings.

Another impediment to achieving clarity about the respective roles of self-selection in joining as against socialization and mobilization after joining is that associational involvement, even in expressive and other nonpolitical organizations, is itself a form of civic engagement. As a result, there is a danger that some findings will amount to a tautology, *i.e.*, the equivalent of the statement that "there is a significant positive correlation between people who are civically engaged and people who are civically engaged." Implicitly responding to this concern, some research looks at whether participation in one type of civic activity leads to subsequent involvement in one or more additional types of civic activity. Most often, research of this kind examines whether involvement in nonpolitical associations leads to involvement in political associations or in other forms of political activity.

2. Provisional findings. A few recent empirical studies have called into question the proposition that there is a strong positive relationship between civic

engagement (whether political or not) and the presence of or increase in interpersonal trust on the part of those who were civically engaged.²⁴⁰ A survey by Andrew Kohut of adults in Philadelphia and surrounding areas revealed that they exhibited high levels of civic engagement, including volunteering, despite the fact that they possessed relatively low levels of interpersonal trust.²⁴¹ Kohut's findings are inconsistent with the view that civic engagement presupposes a significant level of interpersonal trust, and they may also suggest that civic engagement does not necessarily generate or increase interpersonal trust.²⁴² Kohut's results were largely replicated by a survey prepared for AARP by analysts at the University of Virginia Center for Survey Research.²⁴³ Consistent with, although distinct from, the Kohut and AARP findings is research finding conclusion that increases in interpersonal trust among people do not

²⁴⁰ See *supra* Part II.C.

²⁴¹ See KOHUT, TRUST AND CITIZEN ENGAGEMENT 4-5 (Pew Center for the People and the Press 1997). The survey measured interpersonal trust and found that 54 percent of the people surveyed believe "You can't be too careful in dealing with others." *Id.* at 5. At the same time 57 percent of those surveyed said that people usually try to be helpful and 64 percent said "others try to be fair." *Id.* Thus, the report concluded that those surveyed were more "wary" than distrusting. The survey also found that the level of distrust was higher in the city than in the suburbs and that the reasons for distrusting others included people's fear of other people's dishonesty, selfishness, lack of consideration, and unpredictability as well as their fear of crime. *Id.* at 5. The study found that parental warnings were the single most important factor determining whether children, once adults, distrusted others. *Id.* at 7.

²⁴² For evidence to the contrary, *i.e.*, that participation in voluntary associations can increase civic attitudes and interpersonal trust, see *infra* notes 252-254 and accompanying text.

²⁴³ See THOMAS M. GUTERBOCK & JOHN C. FRIES, MAINTAINING AMERICA'S SOCIAL FABRIC: THE AARP SURVEY OF CITIZEN INVOLVEMENT 84-85, 89-90 (Center for Survey Research 1997) (hereinafter AARP SURVEY OF CITIZEN INVOLVEMENT).

necessarily translate into increased participation by them in their communities.²⁴⁴

²⁴⁴ Dhavan V. Shah, *Civic Engagement, Interpersonal Trust, and Television Use: An Individual-Level Assessment of Social Capital*, 19 POL. PSYCHOL. 469, 487 (1998).

At the same time, some revealing correlations have been found. On the pre-joining side, research done by one sociologist suggests that those who join voluntary associations have more generalized interpersonal trust²⁴⁵ prior to joining than those who do not join.²⁴⁶ This is the case even after controlling for education and socioeconomic status, both of which are also highly correlated with high levels of generalized trust.²⁴⁷ The author concludes that there is significant self-selection among people who join voluntary associations.²⁴⁸ This conclusion does not contradict the findings of the other researchers just discussed. Rather it suggests that generalized trust may be a sufficient but not a necessary cause of civic engagement.²⁴⁹

Although less studied than interpersonal trust, empirical research supports the view that a person's confidence or sense of political efficacy is an important cause of civic engagement. According to one analysis, the well-documented positive relation of

²⁴⁵ See *supra* pages 19-21.

²⁴⁶ Stolle, *Bowling Alone, Bowling Together: Group Characteristics, Membership, and Social Capital*, 19 POL. PSYCH. 497, 507-09, 515 (1998) (hereinafter *Bowling Alone, Bowling Together*) (basing these findings upon recent survey data drawn from active members of a variety of associations in Sweden and Germany). Since Stolle was unable to control for self-selection completely, he could not conclude definitively if people are more trusting before they join an association or they become more trusting with the decision to join. *Id.* at 508. He did not, however, find that people became more trusting after joining.

²⁴⁷ Stolle, *Bowling Alone, Bowling Together*, *supra* note 246, at 508 n.16, 515.

²⁴⁸ Stolle also found significant effects on generalized trust as a result of associational activity in certain instances. See *infra* at 255.

²⁴⁹ The reason is that it can be true that people with significant levels of interpersonal trust are likely to join more often than those without such trust without it also being true that a significant level of interpersonal trust is necessary for a high level of civic engagement.

socioeconomic status and education with civic engagement can be explained by the fact that these factors create “a sense of political efficacy” in students.²⁵⁰ In his study of civic engagement among adults in Philadelphia, Kohut also found that a large percentage of people surveyed said they were confident they would be effective when they involved themselves in community issues, even though many of these same people expressed a high level of distrust of others.²⁵¹ These studies suggest that in some circumstances, individuals’ perception of their own or their organization’s efficacy may be more important than interpersonal or generalized trust in leading them to engage in civic activity.

Turning to post-joining effects, the results of some research suggest that associational involvement can increase certain types of civic attitudes on the part of participants. One

²⁵⁰ See Paulsen, *Education, Social Class, and Participation in Collective Action*, *supra* note 170.

²⁵¹ See KOHUT, TRUST AND CITIZEN ENGAGEMENT, *supra* note 241, at 4. Of course, confidence and a sense of political efficacy can also result from, as well as lead to, associational involvement.

study found that associational involvement contributes significantly to the emergence of interpersonal trust, even though the same research also revealed that interpersonal trust does not contribute significantly to community participation.²⁵² Three studies based upon 1960s data found “positive changes in the altruist as a function of volunteering.”²⁵³ In contrast, a recent study based upon European data concluded that associational involvement did not usually increase members’ generalized trust.²⁵⁴ However, when the data describing groups with a high proportion of foreigners was isolated from the rest, there was an increase in generalized trust among members of groups with many foreigners during the period of their involvement (as well as a significant self-selection effect).²⁵⁵ This finding suggests that involvement in voluntary associations with members of diverse backgrounds may further the level of tolerance among members. The lack of strong support for the belief that group participants are likely to acquire or develop generalized interpersonal trust as a result of their activities in the group could be due to the scarcity of research focusing on the issue. At the same time, the available research suggests that there is no generic association effect and, thus, that substantial research measuring the impact of participation by type of

²⁵² Shah, *Civic Engagement, Interpersonal Trust, and Television Use*, *supra* note 244, at 487-88.

²⁵³ These are noted in Clary & Miller, *Socialization and Situational Influences on Sustained Altruism*, *supra* note 218, at 1359. The studies revealed increases in empathy, nurturing, and self-confidence and self-acceptance.

²⁵⁴ Stolle, *Bowling Alone, Bowling Together*, *supra* note 246, at 510 (basing these findings upon recent survey data drawn from active members of a variety of associations in Sweden and Germany).

²⁵⁵ See Stolle, *Bowling Alone, Bowling Together*, *supra* note 246, at 516-18; see

association will be necessary before public policy can be designed to promote civic renewal through association involvement. The available evidence also points to the likelihood that, at least in this country, Putnam's belief that expressive bonding groups, like bowling leagues and choral societies, can lay the foundation for more complex social, public-oriented bonds cannot claim the status of a rebuttable presumption.²⁵⁶

also Stolle & Rochon, *Are All Associations Alike?*, *supra* note 53, at 60-61.

²⁵⁶ For a different view of the civic contribution of members of bowling leagues, see *The Big Lebowski*, available at most Blockbuster stores. For a comparison of the pre- and post-joining attributes of members of two choral groups, one organized to perform the sacred music of a fifteenth century Flemish composer and the other to perform an evening of songs from Broadway musicals, published by a participant observer, see Eastis, *Organizational Diversity and the Production of Social Capital*, *supra* note 238.

Also on the post-joining side of the equation, there is a significant amount of empirical research devoted to measuring the effect of involvement in voluntary associations on political participation.²⁵⁷ Although numerous studies have found a strong positive correlation between involvement in nonpolitical voluntary associations, including attending church, and political participation as a generic category,²⁵⁸ the results are more ambiguous when voter turnout—a single measure of political participation—is examined separately. One study found that participation in both religious and nonreligious voluntary groups was a “moderately important predictor” of turnout, and that the “participatory predispositions” toward civic engagement of those that joined these groups explained very little of the correlation.²⁵⁹ The inference is that their engagement in associational activities (socialization or recruitment) caused

²⁵⁷ There is also research exploring situations in which social interactions other than organizational involvement increase the likelihood of political activity, and some have argued that social environment can influence political involvement even in the absence of concrete social interactions. See Anderson, *Political Action and Social Integration*, *supra* note 170, at 111. Marvin Olsen, in contrast, found no correlation between informal social interactions and voter turnout after controlling for other participation factors. See Marvin E. Olsen, *Social Participation and Voting Turnout: A Multivariate Analysis*, 37 AM. SOC. REV. 317, 323 (1972). Because of the focus of this Article on associations, this research is not considered.

²⁵⁸ See VERBA SCHLOZMAN & BRADY, VOICE AND EQUALITY, *supra* note 82, at 338-39; ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 175, at 83-88; DAVID KNOKE, ORGANIZING FOR COLLECTIVE ACTION: THE POLITICAL ECONOMIES OF ASSOCIATIONS 17, 193-95 (1990); Olsen, *Social Participation and Voting Turnout*, *supra* note 257.

²⁵⁹ See Cassel, *Voluntary Associations, Churches, and Social Participation Theories of Turnout*, *supra* note 214, at 509-10, 514 (based upon her analysis of National Election Study (NES) data, and controlling for other influences, finding that only education and age had more of an effect on voter turnout in presidential elections from 1972-1992 than did predispositions).

members to vote, in those cases where they did. Other research has concluded that only engagement in religious institutions, but not other forms of associational involvement, has a strong effect on the likelihood that association participants will vote.²⁶⁰ The latter view, *i.e.*, that only a weak link exists between participation in nonpolitical associations (other than churches) and voting, is consistent with empirical work by two political scientists who found that more than half of the decline in voter turnout in presidential elections between 1960 and 1988 was due to a “decline in mobilization” of voters through personal contacts in favor of media, especially television, advertising; the increasing numbers of primaries, which diluted scarce resources; and states changing their elections for governor to off-years.²⁶¹

²⁶⁰ See VERBA, SCHLOZMAN, AND BRADY, *VOICE AND EQUALITY*, *supra* note 82, at 359; *cf.* Pollock, III, *Organizations as Agents of Mobilization*, *supra* note 222, at 500 (finding that there was a causal relationship between the SES of people who joined solidary organizations and their voting, but finding no effect on people’s voting behavior because of their participation in such associations, whether by unintentional or intentional mobilization of members).

²⁶¹ See ROSENSTONE AND HANSEN, *MOBILIZATION, PARTICIPATION, AND AMERICAN*

DEMOCRACY, *supra* note 175, at 183-84, 214-18. “Mobilization” is used by this author to refer to the efforts of people (whether or not affiliated with associations) to get citizens to vote and not as the term is used in this section, *i.e.*, for the efforts of some members of an association to recruit others or the more subtle socializing effect of an organization on its members. See also Richard M. Valelly, *Couch-Potato Democracy?*, in 7 AM. PROSPECT 25 (1996) (agreeing with Rosenstone and Hansen and emphasizing that “parties, groups, and movements” used to make personal contact with voters and draw them into elections, as did unions, which have also declined).

A study of the relationship between nonpolitical voluntary associations and what the researchers classified as “intermediate” political activity, namely, attempts to influence government officials, as contrasted with lower levels of political activity, such as voting, reading about politics, or discussing politics²⁶² concluded that both self-selection and organizational involvement explain the extent of people’s intermediate forms of political participation, but that mobilization within an association accounts for a larger effect.”²⁶³ This is consistent with the view of those who credit the positive impact of associational involvement on subsequent political engagement to the information and skills members acquire through participation in the activities of an association.²⁶⁴ The connection between participation in voluntary organizations and political engagement may also be a result of the fact that people who participate in voluntary associations are more likely to see themselves as having control over their lives, develop the ability and the desire to think through issues and problems that affect

²⁶² See Rogers, Bultema, and Barb, *Voluntary Association Membership and Political Participation*, *supra* note 239, at 309.

²⁶³ See Rogers, Bultema, and Barb, *Voluntary Association Membership and Political Participation*, *supra* note 239, at 314. This study is one of the few to compare the post-joining outcomes with the parallel relationship between self-selection (a combination of SES and political attitudes). See also Ayala, *Trained for Democracy*, *supra* note 83, at 104, 108, 109 (finding that the impact of participation in voluntary associations on political participation rivaled the effect of SES).

²⁶⁴ See Jan Leighley, *Group Membership and the Mobilization of Political Participation*, 58 J. OF POL. 447, 448, 453 (1996); cf. Sidney Verba, Schlozman, & Brady, *Race, Ethnicity and Political Resources: Participation in the United States*, 23 BRIT. J. POL. SCI. 453, 473-78 (1993) (reporting the results of empirical studies showing that membership in a nonpolitical organization imparts civic skills to members but noting that people are much more likely to acquire such skills in the workplace).

them, assume responsibility to solve such problems, be willing and able to work with others to implement their decisions, and have more and more enriched interpersonal relations than their counterparts who do not participate.²⁶⁵ Whatever the mechanism of this causal process, for it to occur members must be active participants, at least for a significant period of time, for beneficial effects of association membership to occur.²⁶⁶

²⁶⁵ See ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 175, at 14-15, 79.

²⁶⁶ See SIDNEY VERBA & NORMAN NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY 184 (1972) (concluding that members must be active in an organization in order to acquire the skills that make increased political engagement likely); Stolle, *Bowling Alone, Bowling Together*, *supra* note 246, at 515. For the view that there is no meaningful difference between the level of social capital displayed by active and passive members, see Dag Wollebaek and Per Sell, *Voluntary Associations and Social Capital: Does Face to Face Interaction Really Matter*, paper presented at the ECPR Workshop "Social Capital and Interest Formation," Copenhagen, 2000.

In contrast to the data relating nonpolitical civic engagement to engagement in political organizations and activities, the evidence is much clearer that involvement in advocacy, political, or politically-oriented organizations causes additional political engagement. This is probably because leaders within such groups deliberately seek to mobilize the members to engage in political activity outside the group to promote the groups' objectives.²⁶⁷ Empirical work has found such direct efforts to be effective.²⁶⁸ In short, empirical work has found mobilization within a political association to be an effective mechanism for promoting more and subsequent civic involvement, especially involvement in politics.

In sum, based upon current empirical studies, there is some evidence that participation in a voluntary association will induce or cause additional civic activity on the part of the participant, but the causal link appears to be far weaker than is often assumed. Further, where a causal link between the two has been documented, the

²⁶⁷ See ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 175, at 83. The efforts of leaders of an association to encourage the political participation of members may extend beyond the members' original incentives in joining in the first place. See also Leighley, *Group Membership and Mobilization*, *supra* note 264, at 452.

²⁶⁸ See KNOKE, ORGANIZING FOR COLLECTIVE ACTION, *supra* note 258, at 203-205; Pollock, III, *Organizations as Agents of Mobilization*, *supra* note 222, at 500-01. Pollock examined primarily people who were active in purposive organizations, such as "political action groups, lobbying organizations." He found that such people got involved in campaign activity because of mobilization rather than because of their political attitudes. Noting that voting has not increased with educational levels (as would be expected), whereas campaign activity and contacting have exceeded projected levels, Pollock speculates that the increased preference for intense modes of political participation, at the expense of voter turnout, is related to the decline in "system supporting attitudes, such as political efficacy and political trust" [which would connect with voting] and heightened activity in purposive organizations. *Id.*

effect seems to be attributable to mobilization by group members, especially group leaders, to a far greater degree than it is to skills, confidence, or civic attitudes acquired through participation in the “first” association. In addition, confidence in a person’s own or her organization’s political efficacy rather than generalized interpersonal trust appears to be the attitude most likely to prompt civic engagement. Given the embryonic stage of empirical research in this area utilizing a high degree of methodological rigor, for the time being it seems prudent to assume that future research is likely to find that the relative importance of pre- and post-association factors will turn out to be context dependent and not uniform.²⁶⁹

²⁶⁹ See, e.g., Marc Hooghe, *Value Congruence within Voluntary Associations : Ethnocentrism in Belgian Organizations*, November 2001 (paper on file with the author).

3. The role of integration in socializing members of associations.

Sociologists have also studied the relationship between participation in voluntary associations and civic attitudes. Central to this research is the concept of “integration,” a term of art referring to the way in which bonds form among people. Voluntary associations can be viewed as integrative in two ways.²⁷⁰ First, when members of voluntary associations²⁷¹ develop bonds with one another through their common activity and goals, the process is referred to as “social-psychological integration.”²⁷² The bonds thus created constitute what Putnam calls the interpersonal trust of “bonding groups.”²⁷³ Since people who bond with each other through expressive associations,²⁷⁴ such as weekly bridge games or square dancing, are not likely to be concerned with community issues by virtue of their group bonds, the expectation is that their social-psychological integration within the group would prompt little or no social integration outside the group and, similarly, little or no civic engagement.²⁷⁵ As was noted in Part II, some

²⁷⁰ See Babchuk & Edwards, *The Integration Hypothesis*, *supra* note 160, at 149 n.1.

²⁷¹ See *supra* notes 159-[plus 2] and accompanying text.

²⁷² See Babchuk & Edwards, *The Integration Hypothesis*, *supra* note 160, at 149 n.1.

²⁷³ For this term, see *supra* note 50 and accompanying text.

²⁷⁴ For the distinction between expressive and instrumental associations, see *supra* Part III.A.

²⁷⁵ Of course, their participation in expressive or bonding groups does not preclude that they also participate in other types of groups. For evidence that calls the expectation referred to in the text into question, see *infra* notes 280-81 and

commentators have argued that intra-group bonds may actually interfere with the formation of bonds to the larger community.²⁷⁶

accompanying text.

²⁷⁶ See *supra* notes 51-52.

It would seem that intra-group integration will also occur in instrumental associations, but that social integration with a larger community will occur as well, since by definition such groups aim at influencing people or policies external to the group to gain the objectives they seek.²⁷⁷ As a consequence, members of such groups need to recognize and operate in accordance with external cultural norms and practices, and they may also develop certain "activist-type" skills, including a sense of the effectiveness of working together as a group to accomplish their common purpose. Belonging to instrumental voluntary associations should, therefore, both dispose and equip enable members to be civically active.²⁷⁸ Empirical research confirms this expectation to some extent, but it suggests important limits on the type of social integration members acquire.

²⁷⁷ See Babchuk & Edwards, *The Integration Hypothesis*, *supra* note 160, at 149 n.1.

²⁷⁸ See Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 161, at 165; see also Bartolomeo J. Palisi & Perry E. Jacobson, *Dominant Statuses and Involvement in Types of Instrumental and Expressive Voluntary Associations*, 6 J. VOLUNTARY ACTION RES. 80, 86 (1977) (hereinafter *Dominant Statuses*). The data in both articles were based upon student responses to questionnaires.

An early study of students designed to test the proposition that members of instrumental associations were more likely to be oriented toward “community activities that may not provide much immediate gratification but which are generally considered worthwhile and desirable,” in contrast to activities of members of expressive groups, found that student subjects who joined associations for instrumental reasons were in fact more likely than their expressive counterparts to be civically engaged, e.g., to vote, watch educational and documentary television programs, and read newspapers and news magazines thoroughly and daily.²⁷⁹ Contrary to the study’s hypothesis, however, the instrumentally oriented students did not participate more in service organizations or give blood in greater numbers than did students in expressively oriented groups.²⁸⁰ Based upon this and other findings, the study raised the possibility that “[t]he instrumental association member may well be an interested and concerned citizen, but the interest and concern appears to be self-oriented and rather impersonal in nature. People are important primarily as objects to be manipulated to serve one’s own ends.”²⁸¹

²⁷⁹ They were also more likely to receive good grades and feel disappointed when they did not get them. *Id.*

²⁸⁰ See Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 161, at 171.

²⁸¹ See Jacoby, *Some Correlates of Instrumental and Expressive Orientations*, *supra* note 161, at 172. The data also showed that students who joined expressive voluntary associations lived with other people significantly more and reported having many more friends than did students who preferred instrumental associations. *Id.* at 166. The author opined that people who join expressive associations or view the associations they join as expressive do so because they value or need human relationships, in contrast to loners, who appear not to possess such values and needs

If accurate, participation in voluntary associations is unlikely to facilitate the creation of generalized interpersonal trust even if it succeeds in causing members to be civically active.

to the same degree. See Jacoby, *Personal Influence and Primary Relationships*, *supra* note 215, at 82. This is consistent with the possibility that people who participate in expressive voluntary associations may be more civic minded than they would be if they preferred solitary recreation, like watching television or computer games, because group activity develops or reinforces personal ties and, as a consequence, a form of social trust or social capital. See Babchuck & Edwards, *The Integration Hypothesis*, *supra* note 164, at 150, 151; see also PUTNAM, *BOWLING ALONE*, *supra* note 1, at 149.

Several studies exploring the relationship between association participation and social integration discovered that associational life often replicates and reinforces socioeconomic inequalities. In one, the data showed that associations made up primarily of high status individuals are more influential than those whose members are low status²⁸² and that voluntary associations "which have high levels of affiliation also appear to allocate that affiliation in ways which reinforce, rather than counteract, the distribution of inequality in society."²⁸³ Other research showed that dominant status students²⁸⁴ were more likely to be members of instrumental associations than were subordinate status students; dominant status individuals were much more likely to join voluntary associations whose goal was to obtain benefits for their members than groups devoted to accomplishing some goal for the community outside the members; and when dominant status individuals did join instrumental voluntary associations with a community orientation they participated at a rate lower than the average participation

²⁸² See McPherson, *A Dynamic Model of Voluntary Affiliation*, *supra* note 169, at 720.

²⁸³ McPherson, *A Dynamic Model of Voluntary Affiliation*, *supra* note 169, at 721, 724; *see also id.* at 720. In the article, McPherson still acknowledges the integrative effect of voluntary associations, even though he argues that the case has been overstated. *Id.* at 705 (citing studies that demonstrate societal integration). He refines his reservations in Pamela A. Popielarz & J. Miller McPherson, *On the Edge or In Between: Niche Position, Niche Overlap, and the Duration of Voluntary Memberships*, 101 AM. J. OF SOC. 698 (1995) (hereinafter *On the Edge or In Between*).

²⁸⁴ They distinguish "dominant" status people from "subordinate" status people, based upon income, education, occupation, gender, age, marital status, and religion. *See* Palisi & Jacobson, *Dominant Statuses*, *supra* note 278, at 82-83. The authors develop the distinction in Lemon et al., *Dominant Statuses and Involvement in Formal*

rate for instrumental associations overall.²⁸⁵ The status reinforcing aspects of voluntary associations may be due to their tendency²⁸⁶ to be "overwhelmingly homogeneous," which inhibits contacts among dissimilar people.²⁸⁷ According to the authors of research on the composition of voluntary associations,

[V]oluntary association homogeneity magnifies social differences, rather than mitigating them. When people are segregated into homogeneous groups, access to the important resources that these groups afford inevitably becomes concentrated in small social circles rather than dispersed in the population. These resources include new social network ties (and the information and support that they provide), as well as other forms of social capital and political influence.²⁸⁸

Voluntary association homogeneity, in turn, is the norm because "new members

Voluntary Associations: A Systems Approach, 1 J. OF VOL. ACTION RES. 30 (1972).

²⁸⁵ See Palisi & Jacobson, *Dominant Statuses*, *supra* note 278, at 82-83, 86. Because this study was of students, the level in school, major, and grade point average were also components of dominant and subordinate status. The study found that they participated more in "for self" voluntary associations than for "for other" associations. The study also determined that the students were no more likely to *participate* in such organizations than other people. *Id.*

²⁸⁶ See Palisi & Jacobson, *Dominant Statuses*, *supra* note 358, at 86 (citing Chapter 3 of EDWARD BANFIELD, *THE UNHEAVENLY CITY REVISITED* (1974)).

²⁸⁷ See Popielarz & McPherson, *On the Edge or In Between*, *supra* note 283, at 698-99 and works cited there and 704.

²⁸⁸ Popielarz & McPherson, *On the Edge or In Between*, *supra* note 283, at 699.

replicate the sociodemographic characteristics of old ones."²⁸⁹ Even when people relatively dissimilar to existing members are in fact recruited, members at the periphery of an association's "niche" tend to leave the association sooner or at a higher rate than those in its core.²⁹⁰ Thus, if homogeneous when first organized, they are likely to remain

²⁸⁹ Popielarz & McPherson, *On the Edge or In Between*, *supra* note 283, at 701. To test their hypothesis, the authors used gender and education, two easily identifiable dimensions of network ties. They also conjecture that future studies will show that different dimensions exert different amounts of pressure on members.

²⁹⁰ See Popielarz & McPherson, *On the Edge or In Between*, *supra* note 283, at 699-703. The authors' explanation of this phenomenon is that "[f]or individuals at the center of the niche, the group is an integral part of the social structure of relations. But for those at the edge of the niche, the group divides the social world rather than reinforces it." *Id.* at 704.

that way, thereby limiting the possibility of "cross-category contact."²⁹¹

²⁹¹ See Popielarz & McPherson, *On the Edge or In Between*, *supra* note 283, at 717. The authors also found that competition among the groups for members was most successful when a competing group sought to lure away members of another association that were most dissimilar from those at the center of the target association, assuming the members on the periphery of the first organization also happen to be in the niche of the competing organization (the "niche overlap" effect). *Id.* at 704-705. The authors found that the people are especially vulnerable to being lured away are those who are at the periphery of the niche of group one and also within the niche of group two ("niche overlap"). *Id.* The consequence of competition among groups is thus that the duration of memberships for those on the periphery is shorter than the durations for those at the core. In short, both the effect within associations and the effect among associations act as homogenizing mechanisms for voluntary associations. *Id.* at 715.

In contrast to the preceding, research based upon Belgian survey data showed that associations “catering for a highly educated part of the public, like environmental groups, school boards, or human rights organizations” tended to be less ethnocentric than other associations and reduced the level of prejudice among members even after controlling for the effect of the higher educational levels of the members. In contrast, associations dominated by blue collar workers did not have a democratizing effect even though they voiced explicitly anti-discrimination policies.²⁹² The study concluded that interaction among members by itself does not reduce prejudice; rather, “[a]ssociations simply offer an amplification of the values the members bring into them.”²⁹³ These findings are consistent with Swedish and German data that showed increased generalized interpersonal trust in groups with a large percentage of foreigners accompanied by significant self-selection.²⁹⁴

²⁹² See Marc Hooghe, *Socialization, Selective Recruitment and Value Congruence: Voluntary Associations and the Development of Shared Norms*, paper delivered at Workshop 13 (“Voluntary Associations, Social Capital and Interest Mediation: Forging the Link”), ECPR Joint Sessions 2000, Copenhagen, April 14-19, 2000 (based upon original Belgian survey data, concluding that there is “value congruence” under such conditions).

²⁹³ See *id.* at 7.

²⁹⁴ See *supra* note 255 and accompanying text.

In sum, empirical research thus suggests that the expectation that voluntary associations will perform an important function integrating individuals within a group into a diverse larger community has probably been overstated. To the extent that a voluntary association exhibits homogeneity or favors dominant status people, it is not very likely to create generalized interpersonal trust, *i.e.*, social bonds connecting its members to people outside the group. It is possible to speculate that this is because interpersonal trust within an organization is in fact based upon an expectation of reciprocity, however inchoate. If that expectation is based upon a member's experience with other members of the group and an awareness of their common goals, there is no reason to suppose it would spontaneously lead to a form of interpersonal trust extending to individuals outside that member's experience and not necessarily sharing those goals. The theories that attempt to bridge the gap between interpersonal trust specific to an organization and generalized interpersonal trust by positing norms and networks somehow common to both do not seem to be borne out by the empirical data. Again speculatively, it would seem that norms of cooperation are less suited to bear the weight of these theories than would be norms further along the continuum between self-interest and altruism, *i.e.*, norms with moral content. In any event, for voluntary associations to have the effect hoped for by optimistic civic renewal advocates, their composition and dynamics need to be studied in greater depth, and stratagems need to be designed to counteract the tendency of associations toward homogeneity and high-status influence so that participation may reduce the stratification of people by education, income, status, and so forth that already exists in other areas of life.

IV. CIVIC RENEWAL AND THE REGULATION OF EXEMPT ORGANIZATIONS

The civic renewal debate is a work in progress. There is evidence pointing to a long pattern of decline in significant areas of civic life, yet there is also evidence that the decline has been sporadic, limited in scope, misinterpreted, or turned the corner.²⁹⁵ Thus, civic life may have deteriorated since the 1960s or, alternatively, it may simply be not as robust as we would want or expect in a country of widespread economic prosperity and increasing levels of education. There is also evidence that the locus of civic engagement has shifted, not declined, as many individuals have come to view civic engagement predominantly in terms of civil or social involvement or other face-to-face encounters, rather than political activity.

Among those who believe that civil society has in fact witnessed a decline or displays a lack of robustness, there is disagreement as to the causes, with political institutions, social movements, restructuring of the labor force, growing disparities in income and wealth, television, new technologies, individualism, materialism, and other cultural ideas and changes among the frequently mentioned candidates. Although there is general agreement that civil society and civic life would benefit if people were more civically engaged, the ultimate goal of civic reform (civic health) is also subject to varying interpretations.

²⁹⁵ See *supra* note 1.

Under conditions of uncertainty of this magnitude, it is difficult to chart a direction, much less design concrete steps, for improving civic life. In addition to this uncertainty, there is a deep disagreement among those who concur on the need for civic life to be more robust as to the appropriate roles of governmental and private actors. Some view government action in general and specific government actions in the last century as a large part of the problem.²⁹⁶ Others believe that whatever the source of the problem, legal enactments are not part of the solution.²⁹⁷ Still others argue that laws and other government actions inevitably influence social, economic, and political norms, even if that it is not the intent of those who drafted them.²⁹⁸ If so, it is irresponsible to ignore the potential impact of government action at the national, state, or local levels; instead, attention must be paid to the many ways in which government action and norms interact, so that public actors play a constructive role in helping to ensure that the interactions benefit rather than undermine civil society.²⁹⁹ Finally, there are civic renewal advocates who believe that public and private actors working together or working concurrently in

²⁹⁶ See *supra* Part II.A.

²⁹⁷ See, e.g., Larry E. Ribstein, *Law v. Trust*, 81 B.U.L. REV. 553 (arguing that law “does not increase” either the strong or semi-strong forms of trust) (2001).

²⁹⁸ See Cass Sunstein, *On the Expressive Function of Law*, 144 U. Pa. L. Rev. 2021 (1996).

²⁹⁹ See Richard Pildes, *The Destruction of Social Capital Through Law*, 144 U. PA. L. REV. 2055, 2067-2076 (1996) (arguing that law and policy can destroy social capital by designing streets and neighborhoods without informal places for people to congregate, by violating norms of fair dealing in its interactions with citizens, and by injudicious attempts to incorporate social norms into law in situations where social enforcement of them is preferable) .

their respective spheres are a necessary part of the solution.³⁰⁰

³⁰⁰ See, e.g., PUTNAM, BOWLING ALONE, *supra* note 1; Jane E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U.J. LEGIS. & PUB. POL'Y 351 (1999/2000) (arguing that state or local legislation could greatly facilitate private transformation of vacant urban land from dangerous eye-sores to community gardens conducive to community development by authorizing access to resources and protecting gardeners from the threat of legal liability) .

This Part focuses primarily on one aspect of the role of law and civic renewal, namely, the legal regulation of nonprofit institutions. In particular, this Part will analyze the Federal income tax rules governing the status and activities of what are called “exempt organizations” in the Internal Revenue Code (the “Code”).³⁰¹ The decision to concentrate on this subset of a much larger topic is based on four considerations. First, many civic renewal advocates believe that participation in voluntary associations can, in certain circumstances, improve civic life, whether because such participation is intrinsically valuable, because of its instrumental value in furthering the goals sought by associations, or because of the effects it has upon members. Second, although the subset of groups that request and receive exemption from Federal income taxation does not exhaust the larger class of voluntary organizations,³⁰² it accounts for a large

³⁰¹ See *supra* note 4.

³⁰² Voluntary associations can be informal or formal. Informal voluntary organizations may be subject to state law regulation, but they are not necessarily required to file or register with the a state agency simply because they exist. For example, a duplicate bridge club or a garden club need not register or file unless, for example they desire to solicit contributions subject to state solicitation laws. Formal voluntary organizations, in contrast, typically have some kind of organizing document, such as articles of association, a charter, or articles of incorporation filed with a state agency. An organization seeking to be recognized as a nonprofit under state law is usually required to file its organizing documents with the state and comply with any other reporting requirements. A copy of an entity’s organizing documents must be provided to the Internal Revenue Service as part of the process of applying for an exemption from Federal income taxation or for charitable status. See I.R.S. Forms 1023, 1024. At the same time, most states make the receipt of Federal income tax exemption a condition of receiving state income or sales tax exemption (although not a condition of merely organizing as a nonprofit within the jurisdiction), or at least accept a Federal determination letter as sufficient to apply for tax benefits in the state. For an overview of state law regulation of nonprofits and their staffs, see JAMES J. FISHMAN AND STEPHEN SCHWARZ, *NONPROFIT ORGANIZATIONS: CASES AND MATERIALS* 60-316 (2d ed. 2000).

proportion of all formal voluntary associations. Third, the regulation of exempt organizations under the Code is the single most comprehensive regulatory structure governing the character and content of the operations of these voluntary associations as well as their structural and financial arrangements. Finally, Federal tax rules constitute the primary source of regulation of exempt organization advocacy, lobbying, and campaign activities—topics of obvious relevance for a discussion of the role of voluntary associations in civic life and their potential utility as vehicles for civic engagement.³⁰³

A. The Cooperation Perspective

As was discussed in Part II, one perspective animating the civic renewal debate starts from the belief that a major purpose of an active civil society is to breed interpersonal trust, social networks, and civic norms among people so as to facilitate cooperation and collective action directed toward resolving societal problems and to make government bodies responsive and accountable to citizens and citizen groups.³⁰⁴ Participation in associational life is thus an instrumental good that derives its value from the desirability of the economic, social, and political outcomes it furthers.

³⁰³ The Federal Election Campaign Act (FECA) is also important. Its scope, however, is much less comprehensive than the Code's regulation of exempt organization advocacy.

³⁰⁴ *Supra* Part II.A.

1. Voluntary associations and cooperation. As was discussed in Part III, empirical research supports the thesis that voluntary associations can facilitate the twin goals of cooperation and effective collective action associated with the first perspective on civic health discussed above,³⁰⁵ even though their impact on the development of civic attitudes has been exaggerated. Small, instrumental voluntary associations may provide a forum for people already predisposed to undertake a community-based or public mission to come together, develop a plan for influencing those outside the group who are in a position to further their mission, and allocate among the members tasks conducive to persuading and motivating outside parties to act on their behalf. The internal dynamic of such associations leads the members to have a reasonable expectation that the other members are committed and willing to expend their personal resources to achieve the goal they share. As a result, the members are likely to acquire confidence in their own ability and the ability of their organization to influence decisions related to the group's concerns.

Based upon the empirical research discussed in Part III, the basis of this expectation is not yet understood.³⁰⁶ It may be a calculation that relies heavily on the face-to-face character of members' interactions and the visibility of members' actions in a small group. It may be a sense of trust that members had prior to joining the group, or one that arose or was strengthened from interactions within the group. It may be a transitory sense of common norms coupled with the confidence, based upon experience

³⁰⁵ See *supra* Part II.A.

³⁰⁶ *Supra* Part III.C.

with that or other groups, that the impact of unified and persistent groups is in general far more effective than the efforts of a single person, however knowledgeable and sophisticated.

Large instrumental voluntary associations, including checkbook organizations or “associations without members,” can also function as vehicles for effective collective action by virtue of the financial resources they possess to spend on a paid staff, professional lobbyists, Madison Avenue type advertising agencies, telemarketers, and mass mailings to their members and others to galvanize them into an outpouring of grass roots activity.³⁰⁷ Because of their greater resources, large associations may be more effective at the national level or in circumstances requiring simultaneous, coordinated action in a large number of states than are small instrumental organizations. Large voluntary associations can thus achieve a powerful external effect even if they have little or no effect on the skills or civic engagement of their members apart from eliciting financial support. In fact, from the vantage point of “getting things done,” such associations may frequently be more effective--especially at the federal, regional, or state level--than small instrumental organizations made up of members who participate actively.³⁰⁸

Small instrumental and large nonparticipatory organizations are thus well suited to address and influence the resolution of many societal ills. Even class action litigation may be considered a voluntary association vehicle with great potential for cooperation

³⁰⁷ See *supra* note 151 and accompanying text.

³⁰⁸ See Newton, *Social Capital and Democracy in Europe*, *supra* note 12 (distinguishing an organization’s internal impact from its external impact).

and effective collective action, as can be seen from the many successes of civil rights, environmental, and tort class action suits brought in the second half of the twentieth century.³⁰⁹ This is the case even though it is rare for more than a handful of the members of the class to participate in the litigation in a way that would engender any of the attitudes, habits, skills, or behaviors often attributed to involvement in voluntary associations in the civic renewal literature.

³⁰⁹ SCHUDSON, *THE GOOD CITIZEN*, *supra* note 1, at 249-252. Most civic renewal advocates, however, consider the American litigious culture as part of the problem, not the solution. See FUKUYAMA, *TRUST*, *supra* note 5, at 51.

Civic renewal advocates writing from the cooperation perspective also expect that participation in associations will increase the generalized interpersonal trust of the members, *i.e.*, that it will extend their intra-group interpersonal trust to trust of people and groups outside the group, thereby enhancing the reservoir of social capital in the larger communities of which they form a part. The emergence of some kind of ripple effect is a critical component of the cooperation perspective argument, even if it is not stated explicitly, because it is the predicate for believing that participation in voluntary associations will lead to more efficient and effective cross- or inter-association cooperation and correspondingly broad community outcomes.³¹⁰

³¹⁰ Some kind of ripple effect would explain Putnam's conviction that there are bridging effects of certain bonding associations such as choral societies and bowling leagues. See PUTNAM, *BOWLING ALONE*, *supra* note 1, at 22-23.

We have seen, however, that some empirical research supports the premise of social integration or the emergence of generalized interpersonal trust resulting from associational involvement, but that much research does not.³¹¹ One possibility discussed in the preceding sections is that people join voluntary organizations because they are predisposed to join, *i.e.*, they already have the attitudes or habits disposing them to civic engagement.³¹² To the extent that this is the causal sequence, in order to ensure a robust civil society civic renewal efforts need to focus on the process whereby such attitudes or habits are formed prior to joining. Research to date has revealed that education, social class, and attitudes and values learned at home, from friends, and at schools are the most important sources of the disposition to join.³¹³ Another finding was that, where voting was concerned, direct mobilization by friends or activists in face-to-face encounters was the most successful strategy, and that this was true regardless of the associational involvement of the person recruited. Direct mobilization within groups also tended to generate civic engagement outside the groups if members were specifically recruited for that purpose. Such mobilization occurred primarily in instrumental voluntary associations, where a common, relatively specific goal rather than a deep-seated or generalized norm of cooperation seemed to be the motivating force. At the very least, empirical research has so far failed to document that there is a significant transformative effect on participants in most instrumental voluntary

³¹¹ See *supra* Part III.C.

³¹² See *supra* notes 175-176, 180-194, 219-221, 228-234 and accompanying texts and generally *supra* Part III.B.

³¹³ See *supra* Part III.B.

associations, *i.e.*, that members active in one association develop such habits of mind and behaviors that they come to view civic engagement as an integral part of their lives.³¹⁴ Similarly, there have been conflicting accounts of the potential of non-instrumental or expressive groups for generating generalized interpersonal trust outside the group.³¹⁵ Thus, based upon the current state of research, civic renewal measures embodying the first perspective should aim at increasing the amount of mobilization within and by groups and other face-to-face requests for all kinds of civic engagement. In addition, future research should focus directly on which non-associational factors create the disposition in people to join which types of groups .

³¹⁴ See *supra* Part III.C.3.

³¹⁵ See *supra* Part III.C.3.

2. The regulation of exempt organizations. The general contours of the current system of regulation of exempt organizations are largely consistent with this understanding. First and foremost, the Code affords exemption from income taxes to mutual benefit organizations as well as to charities and other entities dedicated to enhancing social welfare. Mutual benefit organizations include associations that represent an industry (thus indirectly benefitting individual members of the industry) as well as groups that benefit individuals directly. Examples of the former are trade associations and chambers of commerce; examples of the latter are certain fraternal lodges, recreational groups, cemetery companies, and veterans organizations.³¹⁶ Labor unions, which are exempt under section 501(c)(5) of the Code, can be seen as benefitting both individual union members and the industries the unions represent.³¹⁷

³¹⁶ See I.R.C. §501(c)(6), (7), (8), (13), (19).

³¹⁷ See Thomas C. Kohler, *Civic Virtue at Work: Unions as Seedbeds of the Civic Virtues*, 36 B.C.L REV. 279, 298-300 (1995) (arguing that unions, especially their collective bargaining negotiations, benefit members by enabling them to engage in self-governance as well as by affording them economic benefits).

Some might question the rationale for giving a tax-favored status to mutual benefit organizations, given that they exist to provide direct or indirect material and other benefits to their members rather than to improve conditions of the disadvantaged or otherwise confer a public benefit. From the cooperation perspective, however, group membership is presumptively beneficial for civic life, and groups that enable people to combine to achieve a collective purpose that improves the members' lives is an important part of a robust civil society, both because of its accomplishment of the goals of members and because of the emergence of an ethic of reciprocity, interpersonal trust, or confidence among the members. These organizations may act more efficiently on behalf of and be more responsive to the needs of their members than would comparable government programs. In addition, mutual benefit organizations often sponsor informal, as well as formal, activities, both of which can be effective in creating social ties. The fact that mutual benefit groups primarily further the economic or social interests of their members, rather than engage in charitable or community endeavors, should not bar their favorable tax treatment given that civic life, according to the cooperation perspective, should be the main vehicle for groups to address collective problems in a mutually beneficial and cooperative fashion.³¹⁸ The cooperation

³¹⁸ Of course, some mutual benefit associations do engage in charitable endeavors that help people outside the group; however, that is not the primary reason for their creation and maintenance.

perspective thus affords a strong justification for this feature of the tax law treatment of voluntary organizations.³¹⁹

³¹⁹ A second major respect in which the Code's treatment of exempt organizations other than charities furthers objectives of the cooperation perspective involves the advocacy rules, discussed *infra* notes 333-347 and accompanying text.

Although the broad structure of exemption from taxation under the Code for certain kinds of noncharitable and charitable nonprofit organizations thus gains support from the cooperation perspective, other features of Federal tax regulation of exempt organizations do not necessarily further the vision of civic health assumed by that perspective and some may actively obstruct its attainment. The most important illustration of the former category is the failure of tax law to distinguish between organizations whose members are passive and those in which members are active participants. As was noted earlier, recent decades have seen an expansion of what Theda Skocpol calls “associations without members,” *i.e.*, associations whose members “participate” primarily by writing checks to fund activities carried out exclusively by the organization’s professional staff and paid contractors, such as advertising, telemarketing, and lobbying firms.³²⁰ Members of such organizations are kept apprized of issues of importance through the organization’s newsletter or other mailings. They thus have information for acquiring some expertise about these issues, the positions taken by the organization, and its efforts to influence public policy, private actors, and the legislative process. However, they are not expected to participate in any of these efforts unless the leadership asks them to write letters or make phone calls as part of a grass roots lobbying campaign, vote, or send a check to the organization. All of these are activities that people can undertake as private individuals and, with the exception of voting, while remaining at home. Thus, at their most active, members of such organizations acquire information, write checks, contact officials or individuals (often

³²⁰ See *supra* notes 151 and accompanying text.

using boilerplate messages conveyed to them by the organization), and vote.³²¹ They may acquire confidence in the ability of élites within their groups or professionals hired by their groups to achieve certain goals on their behalf, but they will not participate in a manner calculated to build interpersonal trust, social networks, the ethic of reciprocity, or the habit of cooperation with one another, much less generalized interpersonal trust.³²² In short, associations whose members participate in only a minimal way are unlikely sources of civic engagement because the relationships among people that civic engagement presupposes arise primarily in settings where people work together in common activities toward common goals.

³²¹ There is evidence that the flow of information from association leaders to members can create significant member loyalty and that, in certain situations, it can offset the effects of centralized decisionmaking power and oligarchic staffing in an association. See David Knoke, *Commitment and Detachment in Voluntary Associations*, 46 AM. SOC. REV. 141, 143-44, 153-54 (1981).

³²² See Jeffrey M. Berry, *The Rise of Citizen Groups*, in CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY, *supra* note 177, at 367.

For the tax law to encourage the development of civic engagement according to this point of view, it would have to acknowledge the importance of participation, as contrasted with mere membership.³²³ The Code could do this by favoring through tax benefits organizations in which significant participation is a prerequisite of membership or those in which, as an historical matter, a significant portion of members do participate actively. Alternatively, the tax law could favor through tax benefits the individuals who participate, or who participate significantly in exempt groups. Under the present system, individuals are entitled to deduct from their gross income the dollar value of contributions of property, in cash or in kind, made to organizations acknowledged as charities by the Service.³²⁴ There is no contribution deduction, however, for rendering services to or volunteering for a charitable entity except for documented expenses incurred while volunteering, e.g., for transportation or purchases.³²⁵

The reason for this disparity is often stated in terms of the administrative difficulty of valuing people's services. For example, how would the Service value one hour of a

³²³ Under current tax law, a member of a charity is someone who pays dues, makes a donation that is not nominal, or volunteers for more than a nominal amount of time. Treas. reg. §56.4911-5(f)(1) (applying to a public charity with a section 501(h) election in effect). See *also* Treas. reg. §1.170A-9(e)(7)(iii) (defining a charity's support, in part, in terms of membership fees made "to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities").

³²⁴ See I.R.C. §170(a). The amounts that can be deducted as charitable contributions by individuals are limited to a percentage of an individual's adjusted gross income and are restricted by the type of property contributed and by certain attributes of the charitable donee. See I.R.C. § 170(b)(1). The charitable contribution deduction for corporations is similarly limited. See I.R.C. § 170(b)(2).

³²⁵ See Treas. reg. §1.170A-1(g); *Levine v. Comm'r*, T.C. Memo 1987-413, 54 T.C.M. 209.

lawyer's time donated to a charity? By the going market rate? If so, which market rate? The market rate for entry level attorneys? For attorneys with the same qualifications as the attorney-donor? For attorneys with the same qualifications as the attorney-donor in big firms? In small firms? Based upon averages in big cities? In all cities? Including average rates for attorneys with similar experience in the public sector?

Although this valuation problem is real, the argument against a tax benefit for participating in or volunteering for charities that is based upon administrative difficulty is not as persuasive as it first seems once one considers the counterpart difficulty of valuing many forms of in-kind contributions of property, e.g., works of unknown artists, libraries of used and out-of-print books, stock in closely-held corporations, or second-hand clothes—the value of all of which are entitled to a charitable contribution deduction under the Code. To avoid administrative difficulties in valuing services donated, tax law could allow those who volunteer in charitable organizations serving the disadvantaged, for example, to receive a tax deduction in acknowledgment of the time and effort donated using a standard rate per hour set by the Service perhaps based upon the average hourly compensation for Americans workers.³²⁶ Using a single flat rate would have the effect of assigning an equal value to one hour of anyone's efforts as a volunteer in such a charity. Some charities already keep records of the number of hours

³²⁶ Such a flat rate option is currently available for certain business deductions. See Rev. Proc. 2001-54, 2001-48 I.R.B. 530 (permitting taxpayers to calculate the deduction using the I.R.C. standard mileage rate or actual costs). The proposal in the text would not permit an "actual costs" option.

worked by volunteers for various purposes³²⁷ and they would probably find such recordkeeping cost effective if it elicited a higher rate of member participation. The provisions of charitable tax law as currently structured, in contrast, appear to favor the value of property over the value of work.³²⁸ In any event, since data show that people

³²⁷ For example, some states require students to engage in community service for a certain number of hours in order to graduate from high school. See Code of Maryland Regulations, Title 13A, Subtitle 03, Chapter 01.02.F(11) (providing that each local high school system should include activities, programs, and practices that “provide appropriate opportunities for students to participate in community service”) and *infra* note 422. Since students are required to document their service with a written statement from each facility where they volunteer, these charities have already established procedures for record keeping.

³²⁸ Arguably this favoritism is compounded by the tax-favored status of charitable gifts of appreciated property. See I.R.C. §170(e)(1). Ellen Aprill argues, in contrast,

who volunteer and their households contribute significantly more in financial terms than their nonvolunteering counterparts,³²⁹ both the goal of increasing revenues donated to charities and the value of appearing evenhanded as between the societal importance of volunteering and making a financial contribution to charity suggest adopting public policies that somehow encourage the former as well as the latter.

that from the perspective of dollar efficiency and price elasticity, which could influence taxpayer behavior, those who itemize experience a tax neutral outcome, whereas for those who do not itemize, “the income tax system creates a distortion in favor of “gifts of time.” Ellen P. Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, 42 B.C.L. Rev. 843, 863 (2001). My argument, however, assumes a decision made by someone who works full time for pay and is trying to decide to give money or time to a charity. Assuming the taxpayer is not also an economist, the contribution alternative may look superior because it generates a contribution deduction. (Economists are themselves in disagreement as to the likelihood that the contribution deduction actually affects the level of charitable contributions, especially among low and middle-income taxpayers with relatively low marginal rates. See *id.* at 856-61.)

³²⁹ Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 328, at 863-64.

A second argument against allowing a charitable contribution deduction for volunteering at a charitable organization rests upon notions of tax neutrality. The existing deduction provisions are neutral as between someone who volunteers at a charity for a day and someone who works a day and donates her earnings to the charity and then takes a deduction.³³⁰ Were tax law to authorize charitable contribution deductions for volunteering, in other words, it would upset the existing tax neutrality.³³¹ The neutrality upon which this argument is constructed, however, is in regard to dollar efficiency, so that the Code is neutral as between two equally efficient uses of dollars. The civil society argument, in contrast, would not take its bearing by dollar efficiency exclusively. Rather, it would seek to compare the direct impact of a tax provision in creating inefficiency with the potential indirect positive civic impacts, one of which would be increased cooperation, leading to increased civic outcomes, including an increment in

³³⁰ See Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 328, at 862-64.

³³¹ In contrast to the situation described in the text, the Code is not neutral if the hypothetical taxpayer is a nonitemizer. See Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 328, at 863.

effective collective action. Depending upon the outcome of this calculation, instituting a charitable deduction for contributions of services might further the goals of the cooperation perspective.³³²

³³² Ellen Aprill, Mark Gergen, Mark Hall, and John Columbo have all considered, and rejected completely or as unproven, an economic efficiency argument in favor of a charitable contribution deduction for contributions to churches. See Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 328, at 864-67; Mark A. Hall & John D. Columbo, *The Donative Theory of the Charitable Tax Exemption*, 52 OHIO ST. L.J. 1379 (1991); and Mark P. Gergen, *The Case for a Charitable Contribution Deduction*, 74 VA. L. REV. 1393 (1988).

Another area where the tax law fails to further the cooperation perspective on civic health, one in which the tax law arguably obstructs the attainment of cooperation, is its regulation of lobbying and political campaign activities by charities. Under current law, public charities are permitted to attempt to influence legislation only if their lobbying is not “substantial,”³³³ and private foundations are not permitted to lobby at all.³³⁴ There is an absolute prohibition against either public charities or private foundations are in political campaign activities.³³⁵ Other exempt organizations, in contrast, are in general permitted to engage in lobbying or take part in political campaigns, although some restrictions may apply to individual categories of exemption.³³⁶ Given the importance for

³³³ See I.R.C. §501(c)(3) (requiring that “no substantial part of [such an entity’s] activities is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)). Treas. reg. § 1.501(c)(3)-1(c)(3) elaborates on this restriction, as do I.R.C. §§ 501(h) and 4911 and the regulations thereunder. I.R.C. § 501(h) and § 4911 apply the “no substantial part” test by establishing a maximum percentage of an organization’s expenditures for its exempt purposes that can be spent on attempting to influence legislation. An organization must elect to have its legislative activities judged under this test. Otherwise, the Service and the courts will assess the substantiality of an organization’s attempts to influence legislation under the case law, possibly including the centrality of such attempts relative to the organization’s purpose(s) and the extent of volunteer activities as well as the amount of its expenditures in the calculation.

³³⁴ See I.R.C. § 4945.

³³⁵ See I.R.C. §§ 501(c)(3), 4945, 4955, Treas. Reg. §1.501(c)(3)-1(c)(3)(i), (iii). For an analysis of this prohibition from a civil society perspective, see *infra* notes XX-YY and accompanying text.

³³⁶ See Melissa Waller Baldwin, *Comment: Section 501(c)(3) and Lobbying: The Case for the Local Organization*, 23 OHIO N.U. LAW. REV. 203, 212-213 (1996); Galston, *Lobbying and the Public Interest*, *supra* note 155, at 1276-77 (summarizing the lobbying regulations for exempt organizations other than charities). The Code and Treasury regulations are silent on political campaign activities undertaken by non-charitable exempt organizations other than those described by section 501(c)(4). See Treas. reg. §1.501(c)(4)-1(a)(2)(ii). This implies that any restrictions on the lobbying or political

the collective action perspective of learning civic, including political, skills, attitudes, habits, and practices and of being able to engage in cooperative efforts to influence public policy, this aspect of the regulation of charitable organizations seems to leave a vacuum in those organizations dedicated to providing public goods, like the environment or education, or improving the lives of disadvantaged third-parties rather than the lives of their members. The consequence is to deprive people desiring to engage in public-spirited or altruistic behaviors of an important collective opportunity for influencing the political process. It also impairs the ability of non-affluent people to influence the political process through churches, which are often their primary associational affiliation. Finally, these restrictions deprive charitable institutions desirous of promoting the special interests of the disadvantaged from engaging in advocacy to the same degree as their self-interested, mutual benefit or recreational exempt counterparts can. Given that high-wealth individuals can exert influence on political decisionmaking through their personal campaign contributions or through noncharitable exempt organizations, such as trade associations or social clubs, that are not subject to the lobbying and campaign restrictions restricting charities, the existing tax law limitations on charities appear to create an unfair playing field against organizations presumptively acting in the public interest or for disadvantaged populations and in favor of the affluent and the associations they support.

The lobbying restrictions on public charities and private foundations are, of

campaign activities of noncharitable exempt organizations would thus be derived exclusively from the nature of their exempt purposes and thus would not be likely to intrude on their ability to pursue their missions.

course, a product of several public policies embodied in the tax law,³³⁷ which might outweigh the public policy implications of cooperation perspective on civic health. A major stumbling block to assessing the competing policy claims arises from the fact that the tax law advocacy restrictions were evolving and becoming codified during the first six decades of the twentieth century, in a period prior to the time during which a decline in civic engagement is said to have occurred.³³⁸ It is thus unlikely that the need to adopt

³³⁷ See, e.g., Frances R. Hill, *Targeting Exemption for Charitable Efficiency: Designing A Nondiversion Constraint*, 56 S.M.U.L.REV. 675 (2003); John D. Colombo, *The Marketing of Philanthropy and the Charitable Contributions Deduction: Integrating Theories for the Deduction and Tax Exemption*, 36 Wake Forest L. Rev. 657, 667-89 (2001); Evelyn Brody, *Of Sovereignty and Subsidy*, *supra* note 158, at 585; Nina J. Crimm, *Evolutionary Forces: Changes in For-Profit and Not-for-Profit Health Care Delivery Structures; A Regeneration of Tax Exemption Standards*, 37 B.C.L. Rev. 1 (1995); Mark A. Hall & John D. Colombo, *The Donative Theory of Charitable Tax Exemption*, 52 OHIO ST. L.J. 1379 (1991); Rob Atkinson, *Altruism in Non-Profit Organizations*, 31 B.C.L. REV. 501 (1990); Ira Mark Ellman, *Another Theory of Nonprofit Corporations*, 80 MICH L. REV. 999 (1982); Henry Hansmann, *The Rationale for Exempting Nonprofit Organizations from Corporate Income Tax*, 91 YALE L.J. 54 (1981).

³³⁸ For the development of the policies underlying the lobbying restrictions, see

measures to encourage civic engagement and advocacy was a factor in the policy considerations.

Laura B. Chisolm, *Exempt Organization Advocacy: Matching the Rules to the Rationales*, 63 IND. L.J. 201, 215-20 (1987); Galston, *Lobbying and the Public Interest*, *supra* note 155, at 1282-85 (describing the evolution of the neutrality justification for the restrictions on lobbying by section 501(c)(3) organizations).

Before concluding that the current restrictions on the advocacy by public charities and private foundations should be relaxed, several additional aspects of tax regulation of these entities should be considered. First, public charities are already permitted to attempt to influence lawmaking as long as such activities do not constitute a substantial part of their operations.³³⁹ Thus, one question is whether the existing regulation of lobbying by charities affords them sufficient opportunity to enable their members to engage in cooperative practices and effective collective action in pursuit of their goals. The answer may well depend on the size and other characteristics of the organization. For example, consider a public charity with an annual budget of no more than \$500,000. It is possible that the current section 501(h) election expenditure limit of 20 percent of the charity's annual expenditures would be adequate to enable its members to lobby lawmakers effectively, especially if the lobbying were done by staff or volunteers rather than by hired lobbyists.³⁴⁰ To stay within the lower grass roots lobbying expenditure limit,³⁴¹ however, would be difficult since this limit is permitted to be no more than one

³³⁹ See I.R.C. § 501(c)(3), Treas. reg. §1.501(c)(3)-1(c)(3).

³⁴⁰ For this limit, see I.R.C. § 4911(c)(2). Exempt purpose expenditures include most of an organization's annual expenditures other than certain expenses of fund-raising. See I.R.C. §4911(e)(1). The costs of informing organization members about legislation of direct interest to the organization are not in general considered lobbying (or grass roots lobbying) expenses unless the organization also urges its members to communicate with lawmakers or to urge others to do so. Thus, the charities in question could inform their members about legislative matters of interest to them without incurring costs that count as lobbying expenditures. In addition, lobbying actions that members take without having been urged to do so are unlikely to be attributed to their organizations.

³⁴¹ See I.R.C. § 4911(c)(4) (calculating the grass roots lobbying cap for electing charities as one-fourth of the overall lobbying cap).

fourth of the overall lobbying limit. The organization would have to restrict the frequency of its mailings, use volunteers to phone or canvass neighborhoods, use the internet for many of its communications, or avail itself of some combination of these methods and still might exceed its grass roots lobbying limit. This circumstance points to the desirability of recently introduced legislation that would eliminate the distinction between direct and grass roots lobbying, enabling an electing charity to use any or all of its permissible lobbying expenditures for grass roots lobbying.³⁴²

Would restricting a hypothetical organization with a \$500,000 annual budget, \$100,000 of which could be spent on lobbying, interfere with its potential as a breeding ground for habits of cooperation and an ethic of reciprocity among its members? This question is impossible to answer without knowing the histories, operations, and dynamics of actual organizations with the annual exempt purpose expenditures described and in the absence of research on the relative effectiveness of expensive, professional as against inexpensive, volunteer and internet communications. In principle, the lobbying expenditure caps imposed on a charitable organization making the section 501(h) election could have a salutary effect by forcing it to rely on its members and provide them with opportunities to participate actively in its internal and external affairs. To be effective grass roots lobbyists, volunteers would have to be informed enough to answer the questions posed by their neighbors or others whose votes they seek to influence. If they were to go door to door or button hole people at the supermarket to communicate their message, they would be more actively involved in

³⁴² H.R. 7, S. 256, 108th Cong. § 303 (CARE Act of 2003).

face-to-face discussions than they would be watching the news or campaign advertisements on television at home or even writing a letter to the editor of the local newspaper.

The desirability of the lobbying limitations on charities cannot, however, be determined in a vacuum. Organizations entitled to a charitable exemption are not the only players seeking what are often scarce public resources. Non-charitable organizations frequently devote extremely large sums of money to lobbying campaigns, and they avail themselves of professional lobbyists, buy radio or television time, hire telemarketing firms, and the like.³⁴³ Although legislative battles are not always won by the biggest spenders, it would nonetheless not further the goals of the cooperation perspective if collective actions by engaged and active citizens were routinely overwhelmed by the sophistication and financial resources of professional élites. Whether the lack of symmetry in the tax law restrictions on lobbying in fact has this effect is an empirical question, and the answer may depend on the legislative forum (local, state, national), the subject matter of the legislation, or the type of decision maker

³⁴³ This discussion is limited by including lobbying only by exempt organizations. The implications are, however, broader than first appears because corporate funds in legislative battles are frequently funneled through exempt organizations, especially section 501(c)(6) trade associations and section 501(c)(4) advocacy organizations. Business interests use them for advocacy because this enables businesses to pool their funds and coordinate their efforts so as to maximize their impact. Business interests may prefer exempt advocacy groups even when the legislative issues involved are at the state level and the trade association, for example, is national, since members of an industry in all parts of the country are frequently concerned about the fate of legislation or a referendum in one state. As a result of legislation passed in 1993, there is no longer a business expense deduction for the cost of lobbying. See I.R.C. § 162(e). When business interests contribute to (noncharitable) organizations, they are permitted a business expense deduction for the amount contributed except for any portions of the contribution that are earmarked for or in fact used for lobbying. See I.R.C. §162(e).

involved, e.g. an official, a formal body, or the public itself, as in an initiative or referendum.

To a certain extent, the Federal tax law already addresses the potential problems arising from asymmetries in the regulation of lobbying by charities as compared with other exempt organizations. As was noted above, section 501(c)(4) organizations are permitted to lobby without limit, as long as most of the lobbying is related to the groups' exempt purposes.³⁴⁴ Public charities and private foundations are permitted to establish section 501(c)(4) affiliate organizations, and the latter can for the most part share their name,³⁴⁵ board of directors, officers, premises, and so on, as long as no funds of the charity are used to assist the section 501(c)(4) organization in any way and the officers and directors of each organization satisfy their fiduciary responsibilities to the groups as separate legal entities. Thus, a section 501(c)(4) organization must pay fair market value to its affiliated section 501(c)(3) charity for such things as rent, the use of office support, and the use of the charity's list of contributors and board meetings for the two entities must be kept wholly separate even if the directorates are overlapping.³⁴⁶

³⁴⁴ See Treas. reg. §1.501(c)(4)-1(a)(2); see also Rev. Rul. 71-530, 1971-2 C.B. 237, 237-38 (holding that a section 501(c)(4) organization may have lobbying for social welfare as its sole purpose). Although the amount of such an organization's lobbying is not limited, its character is: to qualify for section 501(c)(4) status, its activities must be primarily directed toward "promoting in some way the common good and general welfare of the people of the community." Treas. reg. §1.501(c)(4)-1(a)(2)(i).

³⁴⁵ Under state law, the names of the two entities must be sufficiently distinct that third parties will not be confused. Save the Long-Haired Chinchillas, Inc. and Save the Long-Haired Chinchillas Advocacy, Inc. would satisfy this requirement.

³⁴⁶ For examples of the possible relationships between section 501(c)(3) and 501(c)(4) organizations, see GREGORY L. COLVIN & LOWELL FINLEY, *THE RULES OF THE GAME: AN ELECTION YEAR GUIDE FOR NONPROFIT ORGANIZATIONS* 42-44 (1996)

Affiliations of this kind are very common. Less frequently, an established section 501(c)(4) entity creates a companion 501(c)(3) organization to engage in useful non-advocacy activities, such as issues research, distribution of issues information, and other educational endeavors that can be funded with charitable contributions.³⁴⁷ Thus, as long as the regulations governing the various relationships between the two entities are carefully observed, charities can influence the public policy process through their sister section 501(c)(4) advocacy organizations.

In short, the limitations on lobbying by charities do not seem to prevent them from engaging in legislative advocacy. Rather, the primary effect is to deprive such entities of the ability to lobby a substantial amount with funds favored by the charitable contribution deduction. Where the Code is deficient is in its failure to privilege associational participation over mere membership. To encourage participation through tax incentives, the tax law could privilege exempt organizations that are predominantly participatory, even if they are not exempt as charitable entities, or it could offer a deduction to the people who participate, possibly requiring a minimum level of participation within a specific time frame (an average of five hours a week for forty weeks, for example) to

(hereinafter RULES OF THE GAME). There are detailed regulations governing such relationships, including the use section 501(c)(4) organizations can make of the research or work product of section 501(c)(3) organizations without jeopardizing the charity's exempt status.

³⁴⁷ See COLVIN & FINLEY, RULES OF THE GAME, *supra* note 346, at 45-46.

increase the likelihood that participation will promote civic objectives. Alternatively, tax law could limit the amount of legislative activity engaged in by all exempt organizations, *i.e.*, by the non-charitable associations currently under minimal or no restrictions, for example, by creating dollar or percentage caps. These suggestions could have the salutary effect of encouraging noncharitable exempt organizations to rely to a far greater degree on volunteers and other low-cost personal contacts rather than television advertising, telemarketing, and professional lobbyists. The last suggestion, however, would be virtually impossible to implement for political reasons, since noncharitable exempt organizations already have an entrenched interest in the current regulatory scheme. The suggestion could possibly raise constitutional issues relating to the right of free speech and free association.

B. The Self-Governance Perspective

1. Voluntary associations and self-governance. The notion of civic health as cooperation and effective collective action is consistent with the theoretical view that the purpose of political life is to translate the wishes or preferences of citizens into public outcomes—be they laws or policies or allocations of resources—as faithfully and efficiently as possible. An active citizenry is important for the cooperation perspective to achieve this end. According to the self-governance perspective,³⁴⁸ in contrast, to be meaningful civic engagement should expose people to participatory and deliberative endeavors rather than merely to cooperative and collective ones. Participatory associational activities are necessary because self-governance presuppose that citizens

³⁴⁸ See *supra* Part IV.B. For the meaning of self-governance in the civic renewal perspective, see Part II.B.

engage in the decision making, whether formal or informal, that will structure and give content to important aspects of their lives. Deliberative communications are also important, according to this perspective, to assure that people's decisions are informed and that discussions take into account a variety of interests and points of view, and not just those of a single part. This perspective thus assumes that, in connection with some issues, people's understandings of their own purposes may change through discussion and deliberation. In some situations, deliberation will expose not only conflicts of interest among separate interests, but also conflicts between some or all of the separate interests (and coalitions of such interests) and what is arguably the public interest, for example, fair allocations of resources, intergenerational justice, and justice between developing and developed nations.

From the self-governance perspective, then, the goal of cooperation and effective collective action would fall short of the civic ideal if it only influences social or political outcomes by exerting pressure on communities, institutions, and leaders without at the same time providing an occasion for citizen participation and reflection on both means and ends. Small voluntary associations are thus in general preferable to large or checkbook organizations because the former are more likely to provide opportunities for participation by members than the latter. Large and other nonparticipatory organizations usually have small boards relative to the size of the membership, professional staffs, and contracts with lobbyists and even public relations companies to help them achieve their goals. Although "associations without members"³⁴⁹ may be extremely effective

³⁴⁹ This is the phrase of Theda Skocpol. See *supra* note 151 (referring to large, bureaucratic voluntary associations with very large membership rolls that require little of

vehicles of collective action, they provide few opportunities for members to contribute to or learn from the association's decision making process.

There is little empirical research devoted to the deliberative character of participation in voluntary associations. However, the proposition that voluntary associations in general, and small organizations in particular, tend to be homogeneous and to recruit members that share one another's views has been confirmed empirically.³⁵⁰ This fact suggests that deliberative opportunities within small organizations will tend to be circumscribed because of the similarity of the members' views on the issues importance to the organizations. The homogeneity of members views, especially as relates to an organization's purpose, in turn, virtually ensures that discussions will be about means, rather than ends, and even discussions about means may be limited by a common orientation on the part of the members (ethnic, religious, liberal or conservative, or consumers versus business).

their members beyond writing a check to help support the organization's activities).

³⁵⁰ See *supra* notes 287-291 and accompanying text.

At the same time, many voluntary associations disseminate newsletters to their members that contain information useful for gaining an informed understanding of the organizations' positions and many organize lectures, panels, and debates. Some voluntary associations engage in efforts to disseminate information on a range of topics in an accessible way, including the use of web sites that can reach shut-ins and others.³⁵¹ Were these associations to undertake to host, publish, or otherwise provoke "a wide range of competing arguments" in circumstances capable of eliciting "careful consideration,"³⁵² they could contribute to the creation of a culture of deliberation among their members and other audiences. Absent a deliberate effort to promote balanced information and discussion, however, voluntary associations are likely to produce a stream of information that is not calculated to encourage debate and that could discourage it if the "facts" and "arguments" presented in communications are targeted to members or recipients already sharing or sympathetic to the organization's views and goals. The latter possibility is, in fact, what most organizations intend when they buy the mailing lists of other groups known to target comparable populations.

2. The regulation of exempt organizations. As was noted above, participation in certain types of voluntary associations--such as neighborhood organizations and parent-teacher groups as well as some local chapters of labor unions and trade organizations--appears to further civic health understood in terms of autonomy and self-governance by providing a forum for members of geographical or other

³⁵¹ See *infra* notes 364-368 and accompanying text.

³⁵² See *supra* note 60 and accompanying text.

communities of interest to debate, design, and promote specific public policies and public practices that they consider beneficial to their respective groups.³⁵³ Although there is obvious overlap with the ends and means characteristic of the collective action perspective, the fulcrum of the self-governance perspective is nourishing problem solving at the community or local level in a manner that maximizes thoughtful and responsible decision making.³⁵⁴

³⁵³ See *supra* Part II.B.

³⁵⁴ This is not inconsistent with the collective action perspective, but neither is it required by it. See *infra* [last paragraph this section].

The Federal tax law regulating exempt associations makes possible the formation of community groups capable of solving local problems on their own by providing a mechanism for pooling individuals' resources without certain adverse tax consequences that would apply, were it not for their exempt status. For example, without exempt status, charities, fraternal societies, veterans organizations, social welfare groups, and other mutual benefit organizations would be unable to collect and invest dues from members for funding long-term projects without being subject to income taxation on their annual net income.³⁵⁵ Exempt status thus enables individuals to pool their financial resources efficiently, *i.e.*, without penalizing members for saving pooled amounts. The ability to save pooled amounts makes it possible for exempt entities to aggregate larger amounts than would be possible on an *ad hoc* basis at the time an actual expenditure was under consideration and to engage in long-term planning, such as creating a sinking fund for capital expenditures by a homeowners' group or accumulating unemployment or strike funds

³⁵⁵ See I.R.C. §§ 501(c)(1)-(28). Homeowner groups are similarly exempt on such income, although their exemption is not authorized by I.R.C. section 501(a). See I.R.C. § 528.

for union members.³⁵⁶

³⁵⁶ Some commentators have argued that not much tax is actually forgiven as a result of the exemption under section 501(a) as long as an organization's revenues can be offset by administrative and program expenditures. See John Simon, *The Tax Treatment of Nonprofit Organizations: A Review of Federal and State Policies*, in *THE NONPROFIT SECTOR: A RESEARCH HANDBOOK* 67 (Walter W. Powell ed., 1987). Recent statistics based upon Forms 990 and 990EZ suggest the opposite. See Paul Arnsberger, *Charities and Other Exempt Organizations, 1997*, in *20 STAT. OF INCOME BULL.* 47, 50 (2000) (Figure D). The "excess of revenue over expenses" in Figure D does not include investment income, which is a substantial source of income to some charities, such as colleges and foundations.

These features of tax law do not guarantee the development of self-governance in the comprehensive sense discussed earlier, *i.e.*, as including both a sense of obligation and informed deliberation.³⁵⁷ In fact, the very same features of tax law facilitate both the existence of well-endowed groups with no sense of or inclination for deliberation or community-oriented decision making as well as other groups with the purpose and ability to devise thoughtful and long-term plans to strengthen a community. However, without the ability to form associations with substantial and dependable resources, it would be difficult for private parties to undertake and coordinate long-term, community-wide solutions to local problems. Further, without this ability, it would be impossible for such groups to dilute the power of centralized government bodies and to prevent them from imposing solutions on local communities from above. In short, organizations often need the opportunities provided through Federal income tax exemption to perform both functions deemed critical to the self-governance perspective, *i.e.*, informed deliberation about community-wide policies and serving as a counterpoise to centralized government actions.

³⁵⁷ See *supra* Part II.B.

The Federal income tax treatment of charities, in contrast, does have the potential to further these two goals. In particular, it gives section 501(c)(3) organizations the ability to raise money through charitable contributions that afford deductions to the donors from their income subject to taxation. The charitable deduction provision encourages private individuals who itemize deductions to support charitable entities engaged in the type of public benefit considered important to them, e.g., education, health, social services, religion, or cultural activities.³⁵⁸ The charitable contribution deduction is frequently defended on the ground that the support of private individuals enables charities to undertake different kinds of projects than would government decision makers.³⁵⁹ Specifically, charities can take risks, consider novel, experimental, or unpopular ideas, and in other ways enhance the diversity of efforts to improve social welfare.³⁶⁰ Correspondingly, association members can also have

³⁵⁸ The extent of the incentive effect is extremely controversial. See CHARLES T. CLOTFELDER, *FEDERAL TAX POLICY AND CHARITABLE GIVING* (1985); Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 328, at 856-67; R. Rickert and P. Westfall, *New Evidence on the Price Elasticity of Charitable Contributions*, 90 J. AM. TAX'N ASS'N 1 (1993) (finding that charitable contributions are affected by the contribution deduction but not by tax rate differences); LOUIS A. TALLEY, *CHARITABLE CONTRIBUTIONS: PROS AND CONS OF DEDUCTIBILITY* (1990); George McCully, *Charitable Tax Incentives Are Worth Fighting For*, *PHILANTHROPY* (May/June 2002) (finding that states with an income tax but without charitable tax incentives scored among the lowest in charitable giving) .

³⁵⁹ See JAMES DOUGLAS, *WHY CHARITY? THE CASE FOR A THIRD SECTOR* 133-36 (1983) (arguing that foundations are not subject to the same time constraints as government actors); John Simon, *Foundations and Public Controversy: An Affirmative View*, in *THE FUTURE OF FOUNDATIONS* 58, 82 (Fritz F. Heimann ed., 1973) (arguing that the need to be reelected frequently prevents lawmakers from sponsoring controversial projects).

³⁶⁰ See DOUGLAS, *WHY CHARITY?*, *supra* note 359, at 133-37; Cheit & Theodore E. Lobman III, *Private Philanthropy and Higher Education: History, Current Impact, and Public Policy Considerations*, in 2 *RESEARCH PAPERS SPONSORED BY THE COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS* 453, 492, 493 (1977) [*hereinafter* FILER COMMISSION]; Albert M. Sacks, *The Role of Philanthropy:*

the luxury of making decisions slowly, if necessary, and seeking out information without the political pressures that can overwhelm public officials, as can the donors who fund them.³⁶¹

To the extent that these possibilities are realized, charitable associations will contribute importantly to informed and thoughtful collective actions both because of donors who scrutinize the goals and operations of potential recipients and the ability of recipient organizations to be more deliberative and innovative than government officials.

An Institutional View, 46 VA. L. REV. 516, 524, 531 (1960). Not all commentators agree that charities are especially open to innovation and experimentation. See Gergen, *Case for a Charitable Contribution Deduction*, *supra* note 332, at 1410.

³⁶¹ *Supra* note 359. Of course, there can be pressures involved in meeting the demands of large private donors as well.

The preceding discussion highlights the opportunities for enhancing self-governance that the tax law governing exempt organizations may facilitate. However, the charitable contribution deduction rules do not guarantee such outcomes or even predisposes organizations and their members and donors in that direction.³⁶² In contrast, in one area the

³⁶² The tax rules impose financial accountability standards, and other organizational and operational requirements, but they do not in general require qualitative judgments as to the desirability of specific charitable purposes or specific projects undertaken by charitable entities. See Treas. Reg. §1.501(c)(3)-1. When the IRS departs from substantive neutrality in applying the exempt organization rules, it always gets in trouble, sometimes deservedly so (in this author's view), as when it denied charitable status to associations devoted to issues concerning homosexuals. See Tommy F. Thompson, *The Availability of the Federal Tax Exemption for Propaganda Organizations*, 18 U.C. DAVIS L. REV. 487 (1985). In the last two decades, the IRS's battles with the Church of Scientology have been widely documented. See Frank Rich, *SCIENTOLOGISTS SCARE EVEN IRS*, SO. BEND TRIBUNE (Indiana) Mar. 20, 1997, at A15; *Intimidating the IRS*, ST. PETERSBURG TIMES, Mar. 11, 1997, at 12A (Editorial);

regulations are drafted so as to encourage informed and deliberative consideration of issues. As was noted earlier, tax law prohibits lobbying by private foundations, permits lobbying by public charities with a section 501(h) election as long as lobbying expenditures do not exceed a percentage of exempt purpose expenditures, and permits lobbying by non-electing public charities as long as it does not constitute a substantial part of the organization's activities.³⁶³ The tax law also provides that a certain kind of informational communication made by private foundations or public charities to their members, lawmakers, or the public in general is not considered lobbying, even if the communication goes so far as to advocate a particular position or viewpoint on specific legislation,

so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify....³⁶⁴

Todd Woody, *War of Words; The Scientology church wants filings containing 'atrocious lies' sealed*, THE RECORDER, Nov. 22, 1995, at 1; Lisa Stansky, *Scientology Tax Case Before 9th Circuit; IRS is demanding tens of thousands of documents; church calls it harassment*, THE RECORDER, May 6, 1992, at 3.

³⁶³ See *supra* notes 333-336 and accompanying text.

³⁶⁴ Treas. reg. §56.4911-2(c)(1)(ii). The regulation also provides that communications that are published or broadcast as part of a series will usually be judged together to determine if the nonpartisan standard has been met. See Treas. reg. §56.4911-2(c)(1)(iii). Thus, if a charity produces a two-part series on the effect of pesticides on agriculture, and the first program develops the case in favor of pesticide use and pending legislation approving its use while the second portrays the conflicting research and arguments opposing the legislation, the series will qualify for the

nonpartisan study, analysis, or research exception, assuming that the two programs occur within six months of one another and during comparable television time slots. See Treas. reg. §56.4911-2(c)(1)(iii), (vii) (Examples 6, 7).

This is known as the exception from the definition of lobbying for “nonpartisan analysis, study, and research.” To qualify for such favorable characterization, a charity is required to convey full and fair information about both the case for and the case against the legislation in question in its communication.³⁶⁵ There is an additional exception from the definition of lobbying for communications by charities that examine or discuss broad social, economic, or similar issues, even if the discussions are directed toward the public or the communications are with lawmakers, and even if “the general subject...[discussed] is also the subject of legislation before a legislative body.”³⁶⁶ This exception does not require a charity to meet the standards associated with the exception for nonpartisan analysis, but it is not applicable if the communication mentions the merits of specific legislation along with its discussion of broad issues or the communication in question urges people to take action with respect to legislation.

Because of the dollar and other quantitative restrictions on their lobbying activities,

³⁶⁵ See Treas. reg. §56.4911-2(c)(1)(vii) (Example 2). Although the communication is also allowed to contain a view for or against specific legislative proposals under consideration by lawmakers, it is not allowed to encourage lawmakers or the public to take action with respect to the legislation favored by the charity, e.g., it cannot say “Write Congressman X and tell him to vote against HR 66. The organization is, however, free to identify public officials in support of or opposed to the legislation. See Treas. reg. §56.4911-2(c)(1)(vi). These regulation provisions apply to charities making the section 501(h) election. For the counterpart exception for nonelecting charities, see Rev. Rul. 66-258, 1966-2 C.B. 213, Rev. Rul. 64-195, 1964-2 C.B. 138. For the counterpart exception for private foundations, see I.R.C. § 4945(e), (f). Both the IRS and the courts have used the definitions in the regulations for private foundations and electing public charities when they analyze parallel issues for nonelecting public charities. See Gen. Couns. Mem. 36127 (Jan. 2, 1975); *Haswell v. United States*, 500 F.2d 1133, 1141-44 (Ct. Cl.), *cert denied*, 419 U.S. 1107 (1974).

³⁶⁶ See Treas. reg. §56.4911-2(c)(2). For the counterpart exception for nonelecting charities, see Rev. Rul. 66-256, 1966-2 C.B. 210. For the counterpart exception for private foundations, see Treas. reg. §56.4945-2(d)(4).

charities typically strive to have as many of communications to their members, the public, and public officials as possible qualify for one of the lobbying exceptions.³⁶⁷ If they are successful, the associated costs of the communications will not be counted as lobbying expenditures against their lobbying limit, and these costs may even enlarge the baseline against which the extent of lobbying will be compared. In the case of private foundations, which are not permitted to engage in any amount of lobbying, the lobbying exceptions constitute the sole means available to them for communicating with lawmakers and the public with respect to legislative matters without risking the loss of their exemption. Thus,

³⁶⁷ See Treas. reg. §56.4911-2(c)(2). There is also an exceptions from the definition of lobbying for responses to requests for technical assistance made by lawmakers to charities at the lawmakers' initiative, even if a charity makes a recommendation in support of or in opposition to specific legislation as part of its communication. See Rev. Rul. 70-449, 1970-2 C.B. 112; Treas. reg. §56.4911-2(c); §53.4945-2(d). In addition, public charities and private foundations can lobby on any issue affecting the entity's own survival, powers, or tax status without it counting as lobbying. For this "self-defense" exception to the lobbying rules, see I.R.C. § 4945(e), Treas. Reg. §53.4945-2(d), §56.4911-2(c)(4), Gen. Couns. Mem. 34289 (May 8, 1970).

whatever the underlying rationale for the lobbying exceptions,³⁶⁸ their effect is to encourage charitable organizations to strive towards reasonably balanced presentations of topics associated with ongoing legislative efforts.

³⁶⁸ It would seem that the examination and discussion of broad social, economic, and similar issues should not be considered lobbying even without the exception, given that, by definition, the exempt organization does not express a view with respect to specific legislation. Perhaps the exception is intended to preclude implying that an organization has expressed a view when it discusses broad issues, inasmuch as there is often specific legislation on important issues pending or under consideration. In the case of the exception for nonprofit analysis, study, and research, in contrast, there appears to be a clear conflict between the desire to avoid Federal subsidies of advocacy and the desire to permit and even encourage the dissemination of materials that portray the pros and cons of important issues in a careful and even-handed way.

By the same token, one of the great weaknesses of the tax law governing exempt organizations from the self-governance perspective on civic health is that it imposes no restrictions encouraging balanced presentations on the part of any exempt organizations other than charities. The usual justification for this discrepancy is that charities alone are restricted in the amounts and kind of lobbying permitted because they are the main exempt entities entitled to receive contributions that are deductible to their donors.³⁶⁹ Historically, the coupling of the entitlement to charitable contributions and the limited entitlement to lobby (and the absolute prohibition against intervention in political campaigns) was justified by the view that charitable contributions constitute a government subsidy and the government should not be in the business of subsidizing private advocacy.³⁷⁰ However, this rationale

³⁶⁹ See I.R.C. § 170(c)(2). Also entitled to receive deductible contributions are government units, if the gift is exclusively for public purposes, I.R.C. § 170(c)(1); certain posts or organizations of war veterans, I.R.C. § 170(c)(3); fraternal lodges, if the contribution is to be used exclusively for charitable purposes, I.R.C. § 170(c)(4); and certain member owned cemetery companies, I.R.C. § 170(c)(5).

³⁷⁰ See *Cammarano v. United States*, 358 U.S. 498, 512 (1959); see also *Slee v. Commissioner*, 42 F.2d 184 (2d Cir. 1930), *aff'd* 15 B.T.A. 710 (1929); H.R. Rep. No. 391, 100th Cong., 1st Sess. 1624-25 (1987), *reprinted in* 1987 U.S.C.C.A.N. 2313-1, 2313-1204 to 2313-1206).

overlooks the circumstance that exemption from Federal income taxes by itself is also a subsidy and that the exemption subsidy is often critical to the survival and effectiveness of many exempt organizations that have no entitlement to charitable contributions.³⁷¹

³⁷¹ See Galston, *Lobbying and the Public Interest*, *supra* note 155, at 1289-1302 (arguing that the difference in the situations of charitable and noncharitable exempt organizations does not justify the extent of the differences in the lobbying regimes applicable to them).

Another anomaly in the taxation of exempt organizations from the self-governance perspective is the fact that the lobbying restriction for charities includes only attempts to influence “legislation,” *i.e.*, action to be taken “by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.”³⁷² As a definitional matter, communications made to influence actions of administrative, executive, or judicial bodies, are not considered lobbying.³⁷³ Administrative and executive bodies include “school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elected or not.”³⁷⁴ For purposes of the self-governance perspective, the definition of lobbying would be more beneficial to civil society interests if it included communications with federal and state entities within the purview of lobbying while

³⁷² Treas. reg. §1.501(c)(3)-1(c)(3)(ii).

³⁷³ See Treas. reg. §56.4911-2(d)(3). Note, however, that lobbying includes contacting “*any official or employee...who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation.*” Treas. reg. §1.501(c)(3)-1(c)(3)(ii). (Emphasis added.) By its terms, the former regulation applies only to charities that have made the section 501(h) election, and the latter regulation applies only to private foundations. *But see supra* note 365 (last sentence).

³⁷⁴ Treas. reg. §56.4911-2(d)(4) (stating the rule for electing public charities). See *also* Treas. reg. §53.4945-2(a)(1) (stating the rule for private foundations).

excluding county and other local officials and bodies. So defined, public charities would be able to engage in attempts to affect public outcomes more or less freely in a local context, which is precisely the forum most suited to making decisions directly affecting the affairs of association members.

In regard to the self-governance perspective, as was discussed in connection with the collective action perspective, charities can avoid the need for nonpartisan analysis and communication by establishing a section 501(c)(4) advocacy organization with strong ideological ties to the charity to lobby on its behalf.³⁷⁵ Thus, the Code enables groups to acquire the resources necessary for productive civic engagement, but it only encourages informative and balanced communications in the limited situation where an organization seeks to engage in advocacy using funds that are charitable contributions deductible to the donors. In practice, this does not create any incentive for noncharitable exempt entities to relinquish their ability to engage in one-sided, sometimes inflammatory or misleading, communications in the heat of a legislative battle.

To transform the current culture of partisan advocacy would require changes in attitudes and values far beyond the powers of the Code. The most that the tax law could do would be to require all legislative advocacy by all exempt organizations to meet certain informational or educational criteria, such as those required to meet the exception for nonpartisan study, analysis, or research or a looser standard requiring reasoned argument in support of or opposed to specific viewpoints.³⁷⁶ In the absence of such a radical change, the present Federal income tax regulation of voluntary associations does not further, and may

³⁷⁵ See *supra* notes 344-347 and accompanying text.

³⁷⁶ See the proposal in Galston, *Lobbying and the Public Interest*, *supra* note 155, at 1343-46.

well thwart, the kind of civil association hoped for by adherents of the self-governance perspective of the civil society debate.

As a theoretical matter, the principles and aspirations of the self-governance perspective are not inconsistent with the aspirations of the collective action perspective. Indeed, some civil society writers adopt both perspectives and some do not seem to recognize that the underlying premises and ultimate aspirations are distinct. However, the collective action strand emphasizes the character of individuals (trusting and connected) and casts intermediate steps in terms of an ultimate value that is social (effective action and solving problems), whereas the self-governance strand emphasizes the cognitive attributes of individuals (informed and deliberative) and considers collective activity as an intermediate step in making possible the desired outcome for individuals (that they live as autonomous and self-governing beings). Further, the two perspectives could lead to conflicting recommendations. Although the collective action perspective is not necessarily at odds with the self-governance perspective, the latter perspective identifies more rigorous conditions as preludes to civic health than does the former. For example, if it could be shown that the preference for nonpartisan analysis and communication in the regulations of advocacy by charities tends to obstruct the ability of groups to act effectively and achieve their purposes, then the collective action perspective would not endorse those regulations.

C. The Representative Institutions Perspective

1. Voluntary associations and representative institutions. As was discussed in Part II, according to the representative institution perspective, civic health presupposes political equality in the sense of a system of representation that is not biased in favor of or against any citizen or class of citizens, the dispersal of decision making power, accountability of governmental officials to citizens, institutional stability, and attitudes supporting all these

goals.³⁷⁷ The empirical research reviewed in Part III.C suggests that voluntary associations can further several of these objectives.

³⁷⁷ See *supra* Part II.C.

Political equality is unlikely to be achieved in practice until political participation and political representation become more egalitarian. This can occur through the increased input of those who currently fail to exercise their legal rights as well as through the increased responsiveness of representatives to populations that are currently underrepresented because of their silence, their ineffective modes of communication, or their lack of influence even when they do communicate.³⁷⁸ Voluntary associations are well suited to alleviate some of these circumstances. Empirical evidence shows that small, participatory voluntary associations, or small group settings within larger associations, provide opportunities for members to learn communication and organizational skills.³⁷⁹ Such settings may also instil confidence in individual members in their own or the organization's ability to make their point of view heard by others, including public officials, or actually to influence the formation of public policy. Research also shows that this kind of confidence may be a condition, and possibly a cause, of civic engagement, even in the absence of interpersonal trust.³⁸⁰ The combination of skills and confidence learned through participation thus has the potential to prompt previously inactive people to become more politically active, e.g., by

³⁷⁸ See *supra* notes 82-85 and accompanying text.

³⁷⁹ See *supra* notes 174, 178, 264, 178, 264.

³⁸⁰ See *supra* notes 250-251 and accompanying text.

writing or otherwise contacting lawmakers and other officials, joining grass roots initiatives, serving on political committees, and working in their own neighborhoods to encourage others to register, vote, or become civically active in other ways.³⁸¹

³⁸¹ However, an increase in voting among those who currently do not vote without increases in other forms of political participation is unlikely to achieve the amount and kind of democratic outcomes essential to the democracy enhancing perspective. See *supra* page 28.

Voluntary associations can also play an important and direct role in improving the socioeconomic status of disadvantaged populations by providing services like job training and placement, low-cost housing, day care, transportation, shelters for the homeless and victims of domestic abuse, and health care for the poor, sick, or disabled. Although only a small portion of the wealth and income of charities is currently devoted to such activities,³⁸² such assistance improves the lives of the needy in a direct and tangible fashion. In addition, some voluntary associations have historically championed causes of underrepresented populations, especially children and others who do not themselves participate or have political clout with lawmakers. Such efforts can be very successful in giving voice to the concerns of these populations in a politically effective fashion. Thus engaged, voluntary associations have the ability to make political institutions more representative and improve the living situations of targeted beneficiaries even when they do not operate in a fashion valued by the cooperation or self-governance perspectives, *i.e.*, by involving the beneficiaries in the process of procuring goods and services. It is possible, however, that such efforts by associations will, over time, enhance the representative character of institutions in other ways, given that empirical research has demonstrated a strong positive correlation between education and socioeconomic status on the one hand and civic engagement on the other.

³⁸² See EBERLY, *AMERICA'S PROMISE*, *supra* note 1, at 67-70 (citing statistics suggesting that most volunteering never reaches the poor and homeless and that a large part of the funding of charities engaged in social services comes from government, not private sources).

Although research suggests that the act of participating in an association will probably not create civic attitudes in favor of participation as such,³⁸³ it has been shown that participants in instrumental and advocacy organizations are likely to be mobilized to engage in civic activities outside the group, if only to advance the group's mission.³⁸⁴ Since empirical evidence also shows that people join associations or participate in their activities when others solicit their participation,³⁸⁵ participation in a voluntary association may beget more participation even without a major change in civic attitudes, e.g., when those who are civically engaged ask their friends, neighbors, co-workers, and family members to help out. However, such a ripple effect can augment the egalitarian character of the political process only if, and to the extent that, the organizations in question seek out participation by or further the interests of underrepresented groups. Churches and community organizations in poor neighborhoods are especially likely candidates for activities of this kind, as are parent associations in districts with substandard or poorly served schools. In short, even though the evidence shows that voluntary associations are typically the beneficiaries of civic attitudes rather than their source, it is also the case that the recruitment and mobilization functions of voluntary associations can promote more representative institutions by drawing larger numbers of nonparticipants into civic life.

³⁸³ See *supra* notes 252-255.

³⁸⁴ See *supra* notes 259-261 and accompanying text.

³⁸⁵ See *supra* notes 214-215 and accompanying text.

On the negative side, empirical research has so far failed to show that voluntary associations have potential for creating or strengthening democratic values, however, because of the frequency with which participants self-select for organizations that share their values and organizations themselves engage in selective recruitment.³⁸⁶ In addition, the composition of most voluntary associations will tends to be especially homogeneous along dimensions related to the organizations' purposes,³⁸⁷ further reducing their utility as "schools for democracy"³⁸⁸ in the sense of teaching participants values different from those they possessed when they joined.³⁸⁹ There is even a danger that encouraging greater participation on the part of citizens generally (as contrasted with targeted increases in the participation of politically underrepresented groups) could accentuate existing distortions in

³⁸⁶ See *supra* notes 246-248 and accompanying text.

³⁸⁷ See *supra* notes 287-291 and accompanying text.

³⁸⁸ For this idea, see PUTNAM, *BOWLING ALONE*, *supra* note 1, at 338-39.

³⁸⁹ *But see* ROSENBLUM, *MEMBERSHIP AND MORALS*, *supra* note 112 (arguing, based upon her own experience researching the effect of membership on members' morals, that belonging to groups and participating with like-minded people in common enterprises furthers democratic values even if the values and practices of the groups are not themselves democratic).

representation.³⁹⁰ Finally, voluntary associations that are successful often grow large and hierarchical, hire professional staffs, and rarely solicit the input of their own constituencies, thereby reinforcing their tendency to speak for more educated and higher status individuals. In short, voluntary associations have the potential to promote more representative institutions and democratic norms and practices, but pursuing a more “robust civic life,” without more, does not adequately capture their usefulness for these purposes.

³⁹⁰ See VERBA, SCHLOZMAN, & BRADY, *THE BIG TILT*, *supra* note 83, at 75 (noting that the policies favored by the dominated groups are different from those favored by the dominant groups).

2. The regulation of exempt organizations and representative institutions.

There are several ways in which the current regulation of exempt organizations affects the goal of reducing inequalities in participation and representation. First, many exempt organizations are active in registering voters and encouraging and enabling them to get to the polls. Federal tax law permits most exempt restrictions organizations, other than charities, to engage in registration and get-out-the-vote activities without restrictions.³⁹¹ Charities are excepted from the general rule by virtue of being prohibited from engaging in any political campaign activities whatsoever.³⁹² However, tax law permits registration and get-out-the-vote activities on the part of public charities, as long as a charity's efforts are "nonpartisan," *i.e.*, not biased for or against a political party or a candidate for office.³⁹³ This means, among other things, that registration and get-out-the-vote (GOTV) assistance cannot be confined to potential voters of a single party or for a specific candidate or candidates, and public charities must encourage people to register and vote based upon "neutral" reasons, *e.g.*, a person's civic duty to vote, his or her self-interest.³⁹⁴ However, it is possible to target

³⁹¹ Among the non-charitable exempt organizations, only social welfare organizations are limited in registering voters and getting them to vote since only these are subject to limitations on the amount of campaign activities permitted to them. See Treas. reg. §1.501(c)(4)-1(a)(2)(ii) (stating that the political campaign activities of organizations described in section 501(c)(4) cannot be considered part of their exempt purpose and requiring that their exempt purpose be their primary purpose).

³⁹² See *supra* notes 333-334 and accompanying text.

³⁹³ See Internal Revenue Service, Exempt Organizations Continuing Professional Education Technical Instruction Program 427, question 7 (1992) (hereinafter "1992 CPE Text"); Milt Cerny, *Current Issues Involving Lobbying and Political Activities As They Affect Exempt Organizations*, 98 *Tax Notes Today* 130 (1998). For a clear and nontechnical description of the rules for charities engaged in registration and get-out-the-vote activities, see COLVIN & FINLEY, *THE RULES OF THE GAME*, *supra* note 346, at 21, and *infra* note 396.

³⁹⁴ For a detailed account of acceptable target groups, see Cerny, *Current Issues*,

students, minorities, immigrants, low-income groups, or women, despite the likelihood that voters in these groups will tend to favor a particular party or candidate.³⁹⁵ It is also possible to call attention to specific issues and highlight the importance of the election for their resolution.³⁹⁶ Private foundations are also required to act in a nonpartisan fashion in registering voters and encouraging or enabling them to get to the polls. However, the guidelines for their activities were laid out by Congress and are more restrictive than the IRS's rules for public charities.³⁹⁷

supra note 393.

³⁹⁵ See Cerny, *Current Issues*, *supra* note 393 (citing IRS Priv. Let. Rul. 9223050, Mar. 10, 1992, and Gen. Couns. Mem. 39811, June 30, 1989).

³⁹⁶ See COLVIN & FINLEY, *THE RULES OF THE GAME*, *supra* note 346, at 21. According to the IRS, the FEC criteria for determining whether registration and get-out-the-vote activities are nonpartisan are similar to the factors used in the Service's inquiry. See Internal Revenue Service, 1992 CPE Text, *supra* note 393, at 427-28 (citing 11 C.F.R. §§114.4(b)(2), (c)(1)).

³⁹⁷ See I.R.C. § 4945(f) and Treas. Reg. §53.4945-3.

By their terms, the voter registration and get-out-the-vote rules do not address the problem of inequality of political representation because nothing requires charities or other exempt organizations to target underrepresented populations. In fact, the exempt organizations most likely to register underrepresented populations and encourage them to vote are charities; yet because of the prohibition against charities engaging in political campaign activities,³⁹⁸ they risk losing their exemptions if their registration and get-out-the-vote activities are found to be partisan under the tax law.

³⁹⁸ See *supra* note 335. There is no *de minimis* exception to the provision prohibiting charities from participating or otherwise intervening in a political campaign. See *United States v. Dykema*, 666 F.2d 1096, 1101 (7th Cir. 1981). In practice, however, the Service appears to take into consideration whether the violation is intentional. See Internal Revenue Service, 1992 CPE Text, *supra* note 393, at 418-19. See also Lee A. Sheppard, *Big Bird Is a Democrat and the Consequences*, 25 EXEMPT ORG. TAX REV. 373, 375 (1999) (describing two Technical Advice Memoranda in which organizations that violated the prohibition repeatedly were fined under section 4955 rather than losing their exemptions).

It thus appears that the Code's regulation of exempt organizations may as a practical matter be tilted against increased representation of the needy in the political process. The asymmetry in treatment between charities and other exempt organizations is accentuated by the fact that charities are not allowed to establish PACs or affiliated organizations exempt under section 527 of the Code to engage exclusively in political activities.³⁹⁹ Thus, charities do not have a vehicle for avoiding the prohibition against political campaigns, as do section 501(c)(4) organizations. This apparent tilt against charities in the tax law regulation of exempt organizations is, however, largely offset by the fact that a charity can usually form an affiliated section 501(c)(4) organization to engage in political campaign activities or to set up a PAC as long as the charity prevents any of its funds from being used by the affiliate of its PAC.⁴⁰⁰ The net effect, then, of the asymmetry in regulatory regimes appears to be that charitable contributions entitling taxpayer-contributors to deduction from income cannot be used to fund political campaign activity directly or indirectly, but they can be used by charities to engage in nonpartisan voter registration and GOTV efforts.

³⁹⁹ See S. Rep. No. 93-1374, at 30 (1974).

⁴⁰⁰ The leading case in this area involved lobbying, not political campaign activities. See *Regan v. Taxation with Representation of Washington*, 461 U.S. 540 (1983).

One way for Federal tax law to create the socioeconomic conditions that are correlated with participation would be to encourage the flow of funds to charitable entities actively engaged in improving the lives of needy populations. This could be achieved by treating contributions to entities engaged in direct services to the needy more favorably than other contributions, for example, by allowing a tax credit rather than a deduction for such contributions or for charitable contributions earmarked for direct services to any charity committed to thus using them.⁴⁰¹ The Code already contains provisions favoring donations to public charities as compared with private ones. Section 170 contains a two-tier system that allows individuals to lower their taxable income by deducting a maximum of 50 percent of their contribution base for donations made to public charities, as compared with 30 percent of that base for private foundations.⁴⁰² The rationale for the law as written appears to be favoring charities with public support over those funded by a single high-wealth individual or family. In practice, however, it takes very little in the way of public support to qualify an entity for public charity status.⁴⁰³ More importantly, nothing in any of the public support formulas ensures that a charity thus funded will be devoted to activities on behalf of chronically

⁴⁰¹ For a legislative proposal to this effect, see H.R. 673, 107th Cong., 1st Sess., Feb. 14, 2001 (Charity To Eliminate Poverty Tax Credit Act of 2001).

⁴⁰² See I.R.C. §170(b)(1)(A), (B). See also IRC §170(b)(1)(E) (authorizing the higher limit for certain foundations). For charitable contributions by corporations, see I.R.C. §170(b)(2).

⁴⁰³ See Chisolm, *Exempt Organization Advocacy*, *supra* note 338, at 285 (noting that public charity status can be obtained when there are fewer than 20 contributors annually). See also Treas. reg. §1.170A-9(e)(3) (providing that an alternative to the usual public support formula can be satisfied if only 10 percent of the annual revenue of a charity is from public support as long as certain facts and circumstances are met). If the facts and circumstances are met, the 10 percent public support test could be satisfied with a minimum of five donors.

underrepresented groups.⁴⁰⁴

For political reasons it is unlikely that the present, generous treatment of charitable contributions could be changed to privilege certain charities based upon their mission rather than their source of support. Nonetheless, allowing tax credits rather than deductions for contributions to charities devoted to helping needy populations might well be politically feasible, as would linking an increase in the contribution cap to funding of such charities.⁴⁰⁵ Similarly, a tax credit be linked to donations segregated by charities to fund direct services to needy populations (earmarking), rather than requiring the charities themselves to devote themselves to such services to the exclusion of other types of activities, could attract political support.

⁴⁰⁴ See Chisolm, *Exempt Organization Advocacy*, *supra* note 338, at 284-87. Professor Chisolm's proposal is to deny charities the ability to lobby unless they represent underrepresented groups.

⁴⁰⁵ If the charitable contribution deduction limit for people entitled to the credit was correspondingly reduced, the savings would partially offset the cost of the credit, thereby shifting charitable dollars into charities for the needy from other charities described exempt under section 501(c).

Tax law could also encourage more direct service charitable activities by permitting noncharitable exempt organizations to receive charitable contributions deductible to the donors for funding direct assistance to needy populations groups as long as such funds were segregated from the organizations' other funds and used only for such purposes. A chamber of commerce exempt under section 501(c)(6) would, then, be able to use tax favored contributions to establish or assist a training program for unemployed or unskilled workers, a food program, a homeless shelter, or the like. The Code already contains a precedent for conferring special tax treatment on funds targeted for certain charitable activities by entities that are not themselves charities. Under current law, donors can take charitable contribution deductions for contributing to certain types of fraternal societies as long as the contributions entitled to this treatment are earmarked for use exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.⁴⁰⁶ To encourage charitable efforts to help needy populations, a comparable activities-based deduction could be introduced and made available to select categories of noncharitable exempt organization.

⁴⁰⁶ See I.R.C. §170(c)(2)(E)(4).

The optimal strategy for encouraging exempt organizations and their donors to address social and economic inequalities would thus be for tax law to connect the deduction for charitable contributions as closely as possible to certain types of activities rather than to certain types of entities, in particular, activities of direct assistance to the unemployed, the working poor, the hungry, the homeless, the abused, the disabled, and the sick. For efforts of this kind to have long-term effects, they should be designed to enable the recipients to acquire the skills and experience necessary to become self-supporting, increase their job and income levels, and have more stable homes. Social service programs in the wake of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provide a few models of comprehensive support, including transportation, health, and child care subsidies during the transition from welfare to work, that have enabled large numbers of individuals and families formerly receiving welfare payments to improve their standard of living.⁴⁰⁷

⁴⁰⁷ See, e.g., <http://www.dwd.state.wi.us/dws/w2> (describing Wisconsin's benefits program available to employed or engaged in employment-related activities individuals and their families; and <http://www.mdrc.org/PressReleases/MFIPSummary.htm> (summary by the Manpower Demonstration Research Project describing the Minnesota Family Investment Program, Minnesota's pilot welfare reform program in effect from 1994 to 1998). The positive long-term effects of PRWORA on reducing poverty have been mixed. See CHRISTINE DEVERE, *WELFARE REFORM RESEARCH: WHAT DO WE KNOW ABOUT THOSE WHO LEAVE WELFARE?* (2001) (Cong. Res. Serv.); Melissa G. Pardue, *Sharp Reduction in Black Poverty Due to Welfare Reform*, BACKGROUND No. 1661, June 12, 2003 (published by The Heritage Foundation) and sources cited, *available at* <http://www.heritage.org/research/welfare/bg1661.cfm>. At the same time, the situation of black children in extreme poverty has worsened. See *Children's Defense Fund*, *Analysis Background: Number of Black Children in Extreme Poverty Hits Record High*, April 2003. Of course, the fact that the minimum wage has not changed since 1997 and the recession, among other factors, make it difficult for those at the bottom of the economic ladder to climb up very many rungs.

In sum, society as a whole and individual communities must address the types of inequalities that undermine the representativeness of the political process. Exempt organizations, including but not limited to charities, are well suited to play an important role in this effort. Optimally, these organizations as a group need to be better educated so that they recognize the potential they have to improve the circumstances of low-status individuals and educate them about effective ways to influence the political process or other aspects of civic life.⁴⁰⁸

D. Civic Reform and the Moral Foundation of Civil Society

⁴⁰⁸ For example, charitable entities desiring to help lessen economic and social inequalities could add to in their mission statements increasing opportunities for members of under-represented groups to acquire civic skills and attitudes, preferably through participation in the management or operations of the charitable entities themselves.

According to the fourth perspective on civic engagement, civic renewal will never succeed in the absence of concurrent moral renewal, and participation in voluntary associations by itself is inadequate to develop the necessary moral foundation of civic life.⁴⁰⁹

The moral renewal project is far more controversial than other aspects of civic renewal because of the wariness in a democratic society of using legal institutions to encourage values or attitudes linked to one or more specific understandings of human well-being or fulfillment. Democratic societies and especially liberal democratic societies tend to demand substantive neutrality from public policy and government actors in situations where moral and other human purposes are at issue.⁴¹⁰

Those who advocate invigorating the moral culture in the United States believe that there exists a core of common values that the vast majority of Americans accept, or could be persuaded to accept, without acting contrary to their existing beliefs, including those associated with their religion or other comprehensive views.⁴¹¹ As a consequence, these thinkers seek to identify the elements of a secular moral consensus that is capable of commanding widespread allegiance without sacrificing the country's commitment to the separation of church and state or imposing a specific idea of goodness or well-being on the

⁴⁰⁹ See *supra* Part II.D.

⁴¹⁰ See, e.g., BRUCE ACKERMAN, *SOCIAL JUSTICE AND THE LIBERAL STATE* (1980). *But see supra* notes 73-74 and accompanying text.

⁴¹¹ See *supra* 114-131 and accompanying text.

population as a whole. To be successful, these efforts must influence people's behaviors as well as their values and opinions.

The civic renewal perspective advocating moral renewal exhibits a range of views concerning the degree to which government actions and public officials, as contrasted with private parties, can or should seek to encourage particular moral beliefs and practices. Some civic renewal advocates emphasize the role of institutional or governmental actions. Among these are efforts to use tax incentives and appropriations to encourage individuals and companies to adopt practices deemed beneficial to the moral fabric of society, especially in the area of family policy.⁴¹² The Earned Income Tax Credit ("EITC"), for example, has been widely hailed for increasing employment among the poor and enhancing family stability in addition to its direct economic effect of alleviating poverty.⁴¹³ Since employment and family stability are themselves civic goods with potential ripple effects on the noncivic and civic well being of the individuals involved as well as on their families and neighborhoods,

⁴¹² Using the tax code to promote public policy has long been controversial. See Charles A. Borek, *COMMENT: The Public Policy Doctrine and Tax Logic: The Need for Consistency in Denying Deductions Arising from Illegal Activities*, 22 U. Balt. L. Rev. 45, 46-59 (1992)

⁴¹³ The credit provides a cash wage supplement to low-income working individuals and families. It was initially enacted in 1975, Pub. L. 94-12, Title II, § 204(a), 89 Stat. 30, § 43, and greatly expanded in 1993. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13131, 107 Stat. 312, 433-35 (1993) (codified at IRC § 32). See NICHOLAS JOHNSON, A HAND UP: HOW STATE EARNED INCOME TAX CREDITS HELP WORKING FAMILIES ESCAPE POVERTY IN 2001 6 (Center on Budget and Policy Priorities, Dec. 2001) (noting that EITCs have been enacted in states with Republican, Democratic, and bipartisan leadership); Ann L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533 (1995).

continuing and enlarging the program's scope has attracted bipartisan support⁴¹⁴ and induced at least sixteen states to design similar credits.⁴¹⁵

⁴¹⁴ See ROBERT GREENSTEIN, SHOULD EITC BENEFITS BE ENLARGED FOR FAMILIES WITH THREE OR MORE CHILDREN? 1 (Center on Budget and Policy Priorities 2000); JOHNSON, A HAND UP, *supra* note 413.

⁴¹⁵ As of the end of 2001, sixteen states had enacted state EITC credits. See JOHNSON, A HAND UP, *supra* note 413.

Marriage and divorce concerns have also given rise to repeated attempts on the part of state legislatures to adopt family-friendly policies. For example, Louisiana, Arizona, and Arkansas have passed legislation creating an alternative, lifetime commitment marriage license that requires those who elect it to undergo extensive preparation before getting married, sign a legally enforceable document binding the parties to seek counseling to preserve the marriage if marital difficulties develop, and agree to an extended waiting period for a divorce except in extreme cases, e.g., when one spouse abuses the other or the children or one spouse goes to jail for a serious crime.⁴¹⁶ Less controversial⁴¹⁷ are state efforts to include a course on marriage skills as part of the high school curriculum.⁴¹⁸ In one county in Michigan, the mayor, college

⁴¹⁶ See LA. REV. STAT. §§ 9-272 to 9-273 (covenant marriage), 9-307 (divorce from a covenant marriage) (enacted in 1997); ARIZ. REV. STAT. §§25-901 (covenant marriage), 25-903 to 25-904 (dissolution; decree of separation) (enacted in 1998); ARK. CODE ANN. § 9-11-801 *et seq.* See generally Comment, *Louisiana's Covenant Marriage Law: A First Step Toward a More Robust Pluralism in Marriage and Divorce Law?*, 47 EMORY L.J. 929 (1998); Katherine Shaw Spaht, *Louisiana's Covenant Marriage: Social Analysis and Legal Implications*, 59 LA. L. REV. 63 (1998). Similar bills have been introduced in numerous state legislatures, so far with little success. See *id.* at 973 (noting twelve states in which covenant marriage bills were introduced in 1998); H.J. Cummins, *Lawmakers Push Vows to Make Marriages Last*, HOUS. CHRON., Jan. 12, 2000, at 9 (noting that bills were considered by the legislatures in 17 states in 1999, although none was enacted). For a current and comprehensive list of bills introduced, see <<http://www.divorcereform.org/cov.html#anchor1274910>>. Estimates are that only three percent of couples marrying in Louisiana or Arizona have chosen covenant marriages. See Pam Belluck, *States Declare War on Divorce Rates, Before Any 'I Dos'*, N.Y. TIMES, Apr. 21, 2000, at A1. Ten percent of those who participate in state sponsored counseling break the engagement, and in one town, the divorce rate dropped forty percent in ten years. See *Louisiana's Covenant Marriage Law*, at 977.

⁴¹⁷ The Louisiana law has been criticized by clergy, feminists, the ACLU, and constitutional scholars. See Comment, *Louisiana's Covenant Marriage Law*, *supra* note 416, at 952-67.

⁴¹⁸ In Florida, for example, a course on marriage and relationship skills is a requirement for graduation. See Marilyn Gardner, *An 'I Do' that Lasts*, CHRISTIAN SCI.

presidents, judges, attorneys, business leaders, and clergy have established a community marriage policy that seeks to raise public awareness regarding the value of marriage as well as to provide counseling and other services similar to those provided in other states.⁴¹⁹ Perhaps the most well known legislative efforts to strengthen families are the various federal and state family and medical leave laws.⁴²⁰ Government efforts to increase civic values directly through education have also been undertaken repeatedly in the last two decades, especially at the local level, through changes in the curriculum⁴²¹ and public service requirements.⁴²²

MONITOR, June 23, 1999, at 15. Utah insures that marriage education courses are available in high schools, but does not make them mandatory. See Belluck, *States Declare War*, *supra* note 416, at A1 (discussing efforts in several states to strengthen marriage through educational measures). One state currently offers financial incentives to encourage low-income married couples to stay married by relieving some of their financial distress. See W. Va. Stat. § 9-9-6 (authorizing an extra \$100 a month in aid to married parents who receive cash assistance from the state). In its 2001 budget request, the Bush administration included \$100 million for state programs to encourage welfare recipients to get or stay married. See WORKING TOWARD INDEPENDENCE 19-21 (2002), *available at* <<http://www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book-all.html>>; H.R. 4 (§ 103), S.5 (§ 103). Opponents of such programs believe that the financial incentives may lead abused wives to stay in abusive relationships. Supporters argue that the marriage education classes funded by the programs will reduce the amount of domestic abuse. See Patricia Harrison, *Marriage Initiatives Deserve Our Support*, Greenville News, Oct. 6, 2002, at 3G.

⁴¹⁹ See Roger Sider, *Grand Rapids Erects a Civic Tent for Marriage*, 6 POL'Y REV. 1 (1998). This marriage strengthening project is unusual in concluding that success depends in part on persuading professionals to recognize their role in strengthening or weakening marriages. The Michigan effort has asked divorce attorneys to reflect upon the potential tension between their economic self-interest and the interests of children and other members of the community, and it has sponsored educational events for mental health professions to increase their awareness of their potential role in educating their clients about their responsibilities to other members of their families. See *id.*

⁴²⁰ See Family and Medical Leave Act of 1993, 29 U.S.C. 2601 *et seq* (federal law) and <<http://www.ncsl.org/programs/employ/fmlachart.htm>> (digest of all state laws).

⁴²¹ One trend in this connection are proposals to increase character education

among children by expanding the moral content of school curricula, e.g., by introducing service learning as a component of the curriculum. See KEVIN A. RYAN AND KAREN E. BOHLIN, *BUILDING CHARACTER IN SCHOOLS: PRACTICAL WAYS TO BRING MORAL INSTRUCTION TO LIFE* (1998); B. DAVID BROOKS, FRANK G. GOBLE, FRANK GOBLE, *THE CASE FOR CHARACTER EDUCATION: THE ROLE OF THE SCHOOL IN TEACHING VALUES AND VIRTUE* (1997); Thomas Lickona, *The Decline and Fall of American Civilization: Can Character Education Reverse the Slide?*, 11 *WORLD & I MAGAZINE* 284 (1996) and sources cited. See also <<http://www.ceai.org/character.html>> (listing links to web sites with character education materials). Character education has been described as “not a separate course...rather, it’s a whole school effort to create a community of virtue where moral behaviors, such as respect, honesty, and kindness are modeled, taught, expected, celebrated, and continuously practiced in every-day interactions.” Lickona, *Decline and Fall, supra*, at PIN.

⁴²² Hundreds of school boards or municipalities now have mandatory public service requirements for students in primary or secondary school. See Sumathi Reddy, *Helping Out Is Required to Graduate*, *NEWS AND OBSERVER* (Raleigh, NC), May 22, 2000, at B3; Marina Dundjerski & Susan Gray, *A Lesson in Mandatory Service*, *CHRON. OF PHILANTHROPY*, September 10, 1998, at 1. See also Thomas Janoski et al., *Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering*, 13 *SOC. FORCES* 495, 516 (1998). To date, the only state to mandate community service as a condition of graduation is Maryland. See Code of Maryland Regulations, Title 13A, Subtitle 03, Chapter 01.02.F(11) (providing that each local high school system should include activities, programs, and practices that “provide appropriate opportunities for students to participate in community service”). This mandate, passed in 1992, was first applied to the high school classes graduating in 1997. In implementing the mandate, the Maryland State Board of Education gave all twenty-four school districts the option of having students complete seventy-five hours of service, including “preparation, action, and reflection components and that, at the discretion of the local school system, may begin during the middle grades” or devising their own student service program, subject to approval by the Superintendent of Schools. See <<http://www.mssa.sailorside.net/require.html>>, which also includes details of the variety of models chosen by the local school districts.

Many advocates of moral renewal prefer private solutions to civic concerns, whether on grounds of efficiency or ideology. Legislation and other official acts seem especially unsuited to the core problem of increasing the pervasiveness of public spirited attitudes.⁴²³ This strand of the moral renewal perspective views parents as potentially the most potentially effective and the appropriate repository of moral education of any kind.⁴²⁴ Groups of concerned parents have, in fact, been the driving force behind numerous projects to improve the moral climate of the neighborhoods in which they live and their children grow up. Regardless of whether they turn to market⁴²⁵ or legal⁴²⁶

⁴²³ For example, many camps, scout groups, and little league teams communicate the importance of good character and behavior by conferring honors upon children who are known for their tendency to help others alongside of those who excel in sports or other skills. Many primary and secondary schools similarly reward with public praise or a trophy children who stand out for their helping behaviors alongside of those who excel in academics. It is hard to imagine a governmental entity competing successfully with the opinion of one's peers.

⁴²⁴ See NAT'L COUNCIL, NATION OF SPECTATORS, *supra* note 114, at 6, 8, 9-10, 12-13; COUNCIL, CALL TO CIVIL SOCIETY, *supra* note 111, at 7, 19-20; *supra* note 146 and accompanying text.

⁴²⁵ The software industry has responded to parents' desire to keep pornography, violence, or other offensive material out of the surroundings of their children by marketing special computer filtering software. Examples of such efforts include rating systems for movies, records, books, television, and computer games to enable adults to screen these items before permitting their children to see or hear them. See <<http://www.parentalguide.org>> for links to voluntarily adopted ratings systems for movies, television, records and CDs, and computer, video, and internet games.

⁴²⁶ The Federal Trade Commission monitors annually the entertainment and other industries' compliance with their self-regulating standards, including the standards against advertising R-rated products in magazines and other media with a significant under-age audience. See FEDERAL TRADE COMM'N, MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A TWENTY-ONE MONTH FOLLOW-UP REVIEW OF INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES (2000). The State

strategies, such efforts are animated by a belief that some materials are inappropriate for non-adults if they are to grow into morally healthy adults. Another recent private initiative, the public journalism movement, resulted from a collaboration among parents, community leaders, and the media. By making a commitment to give more prominent coverage to topics such as community efforts to solve local problems and profiles of individuals who are active on behalf of their communities, this movement has attempted to combat public cynicism and increase people's sense of responsibility, awareness of public problems, and confidence in their ability to influence the quality of their surroundings.⁴²⁷

These brief observations illustrate how complex and multidimensional the civic response to any aspect of child, family, or moral public policy must be. They also raise in a concrete fashion a question as to utility of participation in voluntary associations in contributing to the moral renewal enterprise.

of Michigan and some Federal entities fund an internet site listing alphabetically commercial and noncommercial filtering software for a variety of purposes. See <http://mel.lib.mi.us/internet/INET-filtersoft.html>.

⁴²⁷ See, e.g., Peter Levine, *Public Journalism and Deliberation*, in READINGS FOR AMERICAN GOVERNMENT (Theodore Lowi, ed. 2000). On the subject of public journalism generally, see ASSESSING PUBLIC JOURNALISM (Philip Meyer, Edmund Lambeth, & Esther Thorson eds. 1998).

1. Impact of voluntary associations on moral values and practices. The empirical evidence relating to the impact of participation in voluntary associations on the moral values and behaviors of participants lends support to the view of civic renewal advocates who believe that participation in voluntary associations (other than families) does not necessarily produce or nurture moral values and practices of members. Rather, it appears that people's moral values and attitudes are learned primarily at home or in school and then become a significant determinant of the likelihood that people will participate in civic life. Helping and community oriented behaviors in particular, as contrasted with self-interested behaviors, were found to be the product of friendship and other social ties as well as socialization by parents.⁴²⁸ Research also showed that altruistic and ideological motivations were better predictors of civic activity than was economic self-interest or professional advancement.⁴²⁹

Research did, however, confirm the correlation between participation in nonpolitical associations and certain types of involvement in political life. In general, however, the causal link turned out to be not values or attitudes of public spiritedness or citizen responsibility learned from participation in civil associations. Rather, it seems that self-selection by those who join civil associations in the first place coupled with mobilization of members after they

⁴²⁸ See *supra* pp. 72, 75.

⁴²⁹ See *supra* pp. 74-75.

join a group by other members are the primary reasons for the correlation between participation in civil associations and political participation.⁴³⁰

⁴³⁰ See *supra* Part III.C.2-3.

Nonetheless, there is some evidence that participation in voluntary associations can have a positive impact on members' moral values or public spiritedness, in particular, those whose mission includes character building. First and foremost, churches and religious institutions typically teach congregants the importance of helping those in need, whether within or outside the religious community.⁴³¹ Several studies showed that, as a result of participation in non-religious voluntary associations, participants experienced an increase in empathy, nurturing, and self-confidence, although this effect was found only in participants exhibiting altruistic behavior prior to joining.⁴³² Further, other studies have concluded that through associational life members pre-joining attitudes can be amplified and that members' attitudes change only when a significant majority of the other members of the group exhibit a particular attitude.⁴³³ Thus, moral socialization within voluntary associations depends on the

⁴³¹ See *supra* III.B.2. Faith-based institutions also provide occasions for adults with children to have the values instilled at home reinforced by other members of the community and for adults to meet socially with others who share similar moral values. Sometimes such entities organize mixed social and helping activities geared especially to pre-teens or teens, further reinforcing these values.

⁴³² See *supra* note 253 and accompanying text. See also *supra* notes 280-281 (empirical data suggesting that self-interested people are more likely to join instrumental voluntary associations, whereas people with helping orientations are more likely to be members of expressive organizations).

⁴³³ See *supra* notes 292-294 and accompanying text.

prior existence of moral values outside of organizations, *i.e.*, members' pre-joining attitudes and values. Based upon the empirical evidence to date, in other words, given its goals the fourth perspective is correct in focusing predominantly on the creation and cultivation of moral and community-oriented values and practices outside associational settings.

In sum, although the importance of participation, as such, for character building has not yet been demonstrated, voluntary associations can have a positive effect on the cultivation of moral values, both directly and indirectly.

2. The regulation of exempt organizations. The previous section has argued that voluntary organizations are most useful for the maintenance or cultivation of civic health from the fourth perspective to the extent that they assist members of families and schools in conveying the basic moral norms essential for civic life. Apart from religious or religiously affiliated institutions, very few voluntary associations further this goal directly. Similarly, the policy of the Internal Revenue Service is to refrain from evaluating applications for charitable or other categories of exempt status based upon substantive moral considerations. Thus, both organizations that support and those that oppose a position or objective with moral implications will receive exempt status, unless they advocate violence, criminal behavior, or other forms of lawlessness. The few occasions in the past when the Service did deny charitable or exempt status based upon its notion of moral norms, it was widely condemned and eventually retreated.⁴³⁴ Given the pluralistic nature of American democracy, the Service's present practice can be defended as moral as well as administratively and politically realistic. In this respect, to tinker with federal tax law and its enforcement would

⁴³⁴ See *supra* note 362.

risk weakening the regulatory regime's contribution to the commitment to pluralism that is part of the moral foundation of civic life in the United States.

Given that churches and other faith-based institutions are voluntary associations that engage in character building, some might consider that federal tax law should privilege them as compared with other voluntary associations. In point of fact, the Code already does privilege churches in various ways, e.g., by not requiring them to apply for recognition of exempt status,⁴³⁵ exempting them from certain unemployment taxes,⁴³⁶ restricting the government's ability to examine financial records,⁴³⁷ exempting them from the requirement to file annual information returns,⁴³⁸ among other exceptions to the rules governing other charitable exempt organizations.⁴³⁹

⁴³⁵ I.R.C. § 508(c).

⁴³⁶ I.R.C. § 3309(b).

⁴³⁷ I.R.C. § 7611.

⁴³⁸ I.R.C. § 6033(a)(2)(A)(i).

⁴³⁹ For other examples of federal and state tax law exceptions for churches and certain religious institutions, see Edward A. Zelinsky, *Are Tax "Benefits for Religious Institutions Constitutionally Dependent on Benefits for Secular Entities?",* 42 B.C.L. REV. 805 (2001) and sources cited .

Privileging religious organizations always raises concerns, and lawmakers must walk a fine line between the establishment and free exercise clauses of the First Amendment. The most heated controversy at present has to do with what is known as “charitable choice,” *i.e.*, legislative authorization permitting faith-based entities to compete for federal social service contracts alongside of other charitable organizations.⁴⁴⁰ In regard to the taxation of exempt organizations, the most controversial proposal is to relax the rules on advocacy engaged in by religious organizations. As is the case with other organizations described in section 501(c)(3) of the Code, religious organizations are only permitted to lobby if their lobbying activities are not substantial.⁴⁴¹ They are not permitted to make the section 501(h) lobbying election; however, their exclusion from this provision was requested by the organizations themselves.⁴⁴² Bills have been introduced to enable churches and other religious entities to lobby up to an annual expenditure cap of 20 percent of gross revenues, but none has been enacted.⁴⁴³ Like other charitable exempt organizations, religious institutions are absolutely prohibited from engaging in electioneering or campaign activities.

⁴⁴⁰ See H.R. 3734, Pub. L. No. 104-193, 101 Stat. 2105 (1996) (amending 42 U.S.C. 601-1399 (1996)) (Personal Responsibility and Work Opportunity Reconciliation Act of 1996).

⁴⁴¹ See *supra* notes 333-336 and accompanying text.

⁴⁴² See H.R. REP. NO. 1210, 94th Cong., 2d Sess. 15-16 (1976); James H. Nix, *Limitations on the Lobbying of Section 501(c)(3) Organizations—A Choice for the Public Charities*, 81 W. VA. L. REV. 407, 415-16 (1979).

⁴⁴³ See H.R. 2931, 107th Cong., 1st Sess. (2001) (Bright Line Act of 2001) (permitting such organizations to spend a maximum of 20 percent of gross revenues for all forms of advocacy, *i.e.* for lobbying and electioneering combined). The limit for charitable exempt organizations making the section 501(h) election is 20 percent of the organization’s exempt purposes expenditures, up to a maximum of \$ 1,000,000 for organizations with exempt purpose expenditures in excess of \$10,000,000. I.R.C. § 4911(c). There was no dollar maximum proposed in H.R. 2931. Thus, the bill would authorize religious institutions to engage in more lobbying than is possible for other

There have also been recent attempts to except these organizations from this restriction as well.⁴⁴⁴

It is doubtful whether these bills are desirable from a civic renewal perspective that emphasizes the foundational role of moral renewal. Although a reasoned evaluation of such measures must await research into the likely effect of allowing churches and other religious entities to devote a substantial amount of time, effort, and money to partisan advocacy,⁴⁴⁵ it would seem to risk drawing such organizations away from their spiritual mission and draining resources that might otherwise be devoted to religious activities, direct services, and educational programs.

VII. CONCLUSION

This article has argued that the civic renewal movement contains within itself multiple understandings of the nature of civic health. It has also taken the position that these understandings are sufficiently distinct that civil society theorists need to reflect more on the

exempt charities.

⁴⁴⁴ See H.R. 2357, 107th Cong., 1st Sess. (2001) ((Houses of Worship Political Speech Protection Act) (introducing a “no substantial part” political campaign activity standard for churches); H.R. 2931, *supra* note 443 (permitting religious institutions to spend 5 percent of their gross revenues on campaigns, but prohibiting aggregate spending on lobbying and campaigns in excess of 20 percent of gross revenues).

⁴⁴⁵ As was noted earlier, if legislative advocacy is nonpartisan, it is not counted as lobbying for federal tax purposes.

precise nature of their goals before advancing public policy objectives, especially in light of the potential conflict among the goals given priority by the different perspectives. Further, given the empirical findings explored in this article, it no longer seems reasonable or useful for civic renewal advocates to continue to portray associational life as critical for cultivating public spiritedness in individuals or promoting attitudes and practices necessary for reflective self-governance. In general, voluntary associations can at most serve as a vehicle for harnessing and directing their members' existing public spirited orientations; and small, highly participatory associations may provide a forum for deliberation in some civil and political settings. Thus, those who give priority to the deliberative or public spirited aspects of civic health would do well to revise their expectations of the potential benefits of voluntary associations and recognize that increases in the "robustness of civic life," without more, could contribute to a civic climate at odds with the substantive civic values they seek to promote.