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## THE RESOURCES OF CIVIL SOCIETY

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### I. THE EMERGENCE OF CIVIL SOCIETY

The notion of civil society arose from the cities of Europe. As the Church asserted its independence from 11th-century monarchs, the burghers asserted their independence from both, and a new way of life began to emerge. The life of the burghers was grounded in commerce: trade and manufacturing. Within city walls, built to fend off Vikings, pirates, and the only slightly more refined princes and knights of the feudal orders, the burghers secured for themselves a new liberty: the freedom to come and go, to run a business, to sell goods.<sup>1</sup>

Antony Black notes, "The crucial point about both guilds and communes was that here individuation and association went hand in hand. One achieved liberty by belonging to this kind of group. Citizens, merchants, and artisans pursued their own individual goals by banding together under oath."<sup>2</sup> Social contracts in many cases were not merely

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<sup>1</sup> Henri Pirenne, *Economic and Social History of Medieval Europe* (New York: Harcourt, Brace, Jovanovich, 1937), p. 50.

<sup>2</sup> Antony Black, *Guilds and Civil Society, in European Political Thought from the Twelfth Century to the Present* (Ithaca, N.Y.: Cornell University Press), p. 65.

hypothetical. Harold Berman describes oath-taking in Ipswich, England, as recorded in *Domesday Book of Ipswich*.

On Thursday, June 29, 1200, the whole community of the town assembled in the churchyard of St. Mary at the Tower. They proceeded to elect, with one voice, two bailiffs, who were sworn to keep the office of provost, and four coroners, who were sworn to keep the pleas of the crown and to handle other matters affecting the crown in the town "and to see to it that the aforesaid bailiffs justly and lawfully treat the poor as well as the rich." . . . On Sunday, July 2, . . . all the townsmen stretched forth their hands toward the Book (the Gospels) and with one voice solemnly swore to obey and assist, with their bodies and their goods, the bailiffs, coroners, and every one of the capital portmen in safeguarding the borough, its new charter, its liberties and customs, in all places against all persons, the royal power excepted, "according to their ability, so far as they ought justly and rationally to do."<sup>3</sup>

Such beginnings led, in Antony Black's words, "to the notion of legal rights (whether or not so called), both in the sense of the right to sue in court on equal terms with everyone else—legal equality—and in the sense of claims, for example to property, recognized and upheld by law."<sup>4</sup> This essay explores the nature of civil society, what it contributes to human flourishing, and what government can do to help.

We understand civil society as a form, or rather, as a variety of forms, of social organization that contrast with government-imposed organization. We need some such marker for conceptually separating communities from the states that provide communities with governance. Loren Lomasky defines civil society as "the realm of voluntary association that stands between individuals (and perhaps their families) and the state."<sup>5</sup>

Classical liberals such as Lomasky tend to think of private and nongovernmental public sectors as jointly constituting society's voluntary sector. They want to see government functions returned to this voluntary sector wherever possible. Yet the array of civil associations standing between family and state are not necessarily voluntary. (For that matter, neither is the family). Civil society tends to be a realm of free association, but how much freedom civil society affords in practice is a contingent matter. It depends on how a civil society evolves, and how it evolves depends on contingent details. Businesses, schools, clubs, unions, media, churches, libraries: there is something presumptively but not necessarily voluntary about those ways of gathering. For that matter, such organizations are only presumptively nongovernmental. Government subsidies often blur the boundary between what is government and what is not.

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<sup>3</sup> Harold Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge: Harvard University Press, 1983), pp. 383-84.

<sup>4</sup> See Black, *supra* 2, p. 32

<sup>5</sup> Loren Lomasky, "Classical Liberalism and Civil Society," *Alternative Conceptions of Civil Society* (Princeton: Princeton University Press, 1999), manuscript p. 2.

None of the particular memberships that a person might have in the different associations that constitute civil society will exhaust a person's connections to civil society. One may be a Muslim and also a businessperson who does business with Muslims and Christians alike, a member of the Parent-Teacher Association and a member of a jazz band. One can resign from any one of these associations without leaving civil society as a whole. Ernest Gellner termed this feature of civil society *modularity*, in contrast to *atomism*. Modular furniture comes in bits. We combine and recombine bits and add new bits and the package remains a coherent whole. "What genuine Civil Society really requires is not modular furniture, but modular man."<sup>6</sup> Gellner's point is that in civil society one forms attachments of one's own choosing. One can withdraw from some without withdrawing from others or from civil society as whole.

Markets are part of civil society. This, unlike the issue of where to classify the family, is not merely an arbitrary classification. Those who see markets as places where people voluntarily exchange the fruits of their labor on mutually agreeable terms will see markets as the heart of civil society, and essentially so. They believe voluntary exchange is a central part of our moral education: an indispensable part of the process by which people become civilized.

We are learning something from the new economies of Eastern Europe about civil society's role as the ultimate engine of long run prosperity. We also are learning about the extent to which the flourishing of a market economy requires and goes hand in hand with the flourishing of civil society more generally. Market orders are never merely market orders.<sup>7</sup> Their proper functioning seems to presuppose a culture that instills a work ethic. Markets exist in virtue of coexisting-existing with a larger civil society of diverse and less inclusive but more intimate groups. A market order is hospitable to nonmarket suborders of civil society in a way central planners can never be. Obviously, though, the support needs to be reciprocal; the efficacy of markets in facilitating human flourishing in turn depends on the legal and cultural frameworks that help teach people to work in mutually advantageous ways. The background framework determines whether entrepreneurs act in *wealth-creating* rather than merely *wealth-capturing* ways. This interaction vastly complicates the work of policy makers. It pays not to be overconfident.

It is easy to "reify" markets. We minimize the problem as best we can by noting up front that civil society is not a natural kind, and especially by not construing civil association as voluntary by definition. Both critics and defenders of markets are mistaken if they see markets as entities rather than simply as a term we may use to discuss the phenomenon of free trade—to discuss how people learn (and why they seek) to respond to each other's needs as they do.

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<sup>6</sup> Ernest Gellner, *Conditions of Liberty: Civil Society and its Rivals* (New York: Penguin Books, 1994), p. 97

<sup>7</sup> See Lomasky, *supra* 5, p. 21.

## II. CLASSICAL AND MODERN LIBERALS

Within the liberal tradition, government is conceived as an agent of the community, appointed by a community to provide the community with governance. Civil society is that community. It delegates authority to government, and is the body within which ultimate authority resides. Civil society retains the right to dismiss those whom it hires to provide it with governance. In this sense, "civil society" refers to anything but government: religious orders (monasteries, convents, mosques, synagogues, temples), business enterprises (individual proprietorships, family enterprises, partnerships, joint-stock corporations, cooperatives), labor associations, and the clubs, associations, neighborhood groups, bowling leagues, kaffee klatches, and the like that have been the topic of so much discussion lately. Civil society in this sense is a cluster concept. It refers to a cluster of things that bear a family resemblance to each other but share no common essence, apart from being nongovernmental forms of association. What makes a society a civil society is not what particular form it happens to take, but rather the rule of law within which societies evolve as civil societies.

The idea that the government is an agent of the community suggests that there can be limits to the government's mandate to act on the community's behalf. Note that government could be limited in two ways. First, there may be goals, even worthy goals, that government ought not to pursue: making sure we get more exercise, for example. Second, there may be restrictions on means. For example, we all think counteracting racism is a worthy goal, and most of us think government should play an active role in counteracting racism, but not everyone thinks that requiring prospective employers to reverse-discriminate on the basis of race is a legitimate way of pursuing that legitimate goal. Likewise, we all think catching and deterring violent criminals is a worthy goal, yet many of us deny that routinely tapping telephones is a legitimate way of pursuing that legitimate end. If we consider only limits on *means*, Thomas Hobbes looks like an absolutist, because he recognized no limits to what government may do to keep the peace. In contrast, if we consider only limits on ends, we get a different picture, because the goals of Hobbes's Leviathan are roughly those of the "night watchman" state.<sup>8</sup>

In his 1819 speech "On the Liberty of the Ancients Compared with that of the Moderns," Benjamin Constant observed,

The holders of authority . . . are so ready to spare us all sort of troubles, except those of obeying and paying! They will say to us: what, in the end, is the aim of your efforts, the motive of your labours, the object of all your hopes? Is it not happiness? Well, leave this happiness to us and we shall give it to you. No, Sirs, we must not leave it to them. No matter how touching such a tender commitment may be, let us ask the authorities to

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<sup>8</sup> As Horacio Spector notes, even the minimal state presupposes not only that individuals have negative rights but also that society and/or the state has some positive obligation to protect those rights. See Horacio Spector, *Autonomy and Rights: The Moral Foundations of Liberalism* (Oxford: Oxford University Press, 1992), p. 3. Lomasky and Spector each work within the classical liberal tradition, broadly construed, yet neither thinker categorically rejects the idea that individuals have positive rights.

keep within their limits. Let them confine themselves to being just. We shall assume the responsibility of being happy for ourselves.<sup>9</sup>

Is Constant right? Or should a government take itself to have a mandate to do whatever would be good? Should we see government as an all-purpose vehicle for pursuing worthy goals? Should a government take citizens to be obligated to comply with whatever demands it elects to impose? May government usurp functions currently performed by civil society, in the process undermining civil society's ability to perform such functions on its own?

The answer to all of these questions is No. The government's proper role is to help construct and enforce the rules of a cooperative game so that people win by helping each other win. Civil society supplies the players and more or less defines a field of opportunities. Government provides the referee, trying to deter those who would seek to win at the expense of other players. That is the general idea. Still, one may respond, is it not a waste for government to be bounded by its role as an impartial referee, when it actively could be identifying the "good guys" and helping them win? Maybe so. But does it matter that the power to help the good guys inevitably must go to those (usually guys) who are best at convincing government officials to take their side? Does it matter that this ability tracks money and political and familial connections rather than the property of actually being one of the good guys? How could it not matter?

In one respect, there is reason for great optimism. Great things happen when people take it upon themselves to stand or fall according to their own merit. In a free society, people are not only willing to help each other; people love to help each other. Freely helping others, including bringing to market products that other people want and need, is one of life's greatest joys.

In another sense, there is reason for profound pessimism. People can be utterly vicious when given power over each other, or when made to feel vulnerable to each other.<sup>10</sup> When bureaucrats take themselves to have a mandate to run other people's lives, as if citizens were pawns on a chessboard, bureaucrats become frustrated and outraged when pawns do not act as they are supposed to. At that point, bureaucrats start caring less about pawn welfare and start caring more about augmenting their power over pawns. The means—the power to run other people's lives—becomes the end.

A classical liberal characteristically is optimistic about a free society's ability to run itself, and pessimistic about the competence and good will of government bureaucrats; a modern liberal characteristically is less optimistic about the former and less pessimistic about the latter. Even if modern and classical liberal *ideals* were identical, there would remain a difference: if we gave government more power, would it use that power to

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<sup>9</sup> Benjamin Constant, *Political Writings*, Biancamaria Fontana (ed.), (Cambridge: Cambridge University Press, 1988), p. 326.

<sup>10</sup> We have in mind here vulnerability to each other's political influence, but the point might be extended to personal relationships in which people are not, or feel they are not, free to leave.

realize liberal ideals? Modern liberals say yes. Classical liberals say no. Accordingly, classical liberals insist on small government, while modern liberals want their governments big.

There is, of course, another reason why modern liberals embrace the big government that classical liberals reject. They have different ideals. Liberal egalitarians conjoin the classical position on equal and expansive civil liberty to a commitment to equalizing economic opportunity, and perhaps outcomes as well. Thus, their political agenda is far more expansive and aggressive than classical liberalism's. In particular, they embrace schemes for equalizing people economically, not just politically, and classical liberals consider this additional commitment to be dubious even were it achievable, and in any case to be unachievable by political means. It is unachievable by political means because the political machinery required for economic leveling is a machinery that itself requires hierarchy, and political hierarchy never leads to economic leveling, no matter what its official rationale.) Accordingly, classical liberals deny that justice requires any particular distribution of economic goods. Civil society does not guarantee any particular distribution, but classical liberals have no problem with that. Such economic leveling as is practically achievable will be produced not solely or even mainly by politics but rather by a properly governed system of commerce in which people flourish by manufacturing and distributing products that improve the lives of people in general.

Radical egalitarians aside, liberals quite generally are in favor of vertical mobility, but a political commitment to equal opportunity as a platform for government interference can make it harder rather than easier for people at the bottom to move up. Classical liberals believe in vertical mobility, but not in paying lip service to vertical mobility by creating income-leveling programs that obstruct such mobility in actual practice. Since both modern and classical liberals profess to be in favor of vertical mobility (again, radical egalitarians aside), it is conceivable that focussing on the question what it takes to make people vertically mobile might lead to important convergences on policy prescriptions.<sup>11</sup>

A modern liberal envisions government as a machine that would achieve what he or she wants it to achieve, if only it had enough power. When classical liberals think of government, though, they find it obvious that government, even democratic government, does not do what voters want. It does not do what liberal academics want. Most tellingly, it does not even do what politicians want.<sup>12</sup> It is bureaucracy at best and dictatorship at worst. At best, human productivity disappears in a haze of filling out forms, standing in line, being put on hold, lobbying, lawyering, tax sheltering, outright bribery, and simply giving up.

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<sup>11</sup> For information regarding vertical mobility in the contemporary United States, see David Schmidtz and Robert Goodin, *Social Welfare and Individual Responsibility* (New York: Cambridge University Press, 1998), section 1.2.3.

<sup>12</sup> In real life, even people who run governments find government endlessly frustrating. After few years ago, a reporter asked Bill Clinton what surprised him the most about his first two years as President. Clinton said his biggest surprise was finding out how little power a President has.

In contrast, classical liberals believe that while the point of having a society is to enable people to flourish, the point of having a government is to secure specific prerequisites of flourishing, and not to guarantee that people actually flourish. When government assumes the role of "provider of guarantees," it *prevents* human flourishing. (Of course, *that* is not guaranteed, either. Of course government does not *always* fail.) While we all have a plethora of worthy goals, there are relatively few goals that it is the government's job to achieve. That people need a certain item does not even begin to suggest that government is a good provider of that item.

John Stuart Mill (generally regarded as transitional between classical and modern liberalism) came to see that switching from monarchy to democracy did not fix the problem: that is, the problem of being subject to the arbitrary will of other people. Unlimited democracy does not solve the problem with unlimited monarchy. The solution is limited government, one whose aims are limited to doing what it reasonably can do to ensure that the community is and remains a place where people are not subject to each other's arbitrary will.

Classical liberals have been champions of democracy, even while acknowledging that democracy is not utopia.<sup>13</sup> Compared to monarchy, democracy is a move toward voluntarism, but how voluntary it turns out to be in practice is a contingent matter. This is why classical liberals regard democracy as something to be embedded within a framework of constitutionalism, which limits the powers of majorities no less than of minorities.

Civil society is at best imperfect, and always will be. Undoubtedly, civil society and the state can and in some places do correct and contain each other. Civil society may also be an obstacle to an activist, progressive government, because it will moderate and resist attempts to impose rapid revolutionary change. It seems fair to say civil society in the United States has been gradual in its embracing of racial and gender equality. Sometimes it has been slow to change despite government efforts; other times it has been slow precisely because it had to work against government efforts on *behalf* of segregation, preferential treatment, and so on. The USA's Jim Crow laws are a notorious example.<sup>14</sup> A decentralized society makes the work of repressive governments more difficult. Does it also make the work of progressive governments more difficult? Perhaps. Suffice it to say that classical liberals are not against progress. They are against repression. Classical

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<sup>13</sup> See Stephen Holmes, "The Secret History of Self-Interest," *Beyond Self-Interest*, Jane Mansbridge (ed.) (Chicago: University of Chicago Press, 1990), pp. 267-86.

<sup>14</sup> Several papers by David E. Bernstein are instructive. See his "Licensing Laws: A Historical Example of the Use of Government Regulatory Power Against African-Americans," *San Diego Law Review* N° 31 (1994), pp. 89-104. See his "The Law and Economics of Post-Civil War Restrictions on Interstate Migration By African-Americans," *Texas Law Review* N° 76 (1998), pp. 781-847. See his "Roots of the Underclass: The Decline of Laissez-Faire Jurisprudence and the Rise of Racist Labor Legislation," *American University Law Review* N° 43 (1993), pp 85-138. See also Jennifer Roback's classic paper "The Political Economy of Segregation: The Case of Segregated Streetcars", *Journal of Economic History* N° 46 (1986), pp. 893-918.

liberals see the curbing of state power as overwhelmingly to the advantage of citizens in general.

The state cannot carry the burden of maintaining a healthy culture and a healthy citizenry.<sup>15</sup> The state cannot succeed on its own (and on its own, tends to devolve into a bureaucracy of self-serving dictators). If its own operation is to be compatible with society's flourishing, it needs to be able to rely on a robust civil society. States help to meet needs by fostering civil society's ability to meet needs.

People tend to flourish by being actively engaged in civil society, understood as including the marketplace. Civil society enables people to take responsibility for their lives and to develop meaningful social roles. States enforce conditions that make possible this flourishing. Roughly speaking, states are the background for this flourishing; civil associations are the foreground.<sup>16</sup> Responsibility for making life worthwhile ultimately has to lie with ordinary citizens, not with the state.

### III. COMMUNITARIANS AND LEFT-WING LIBERTARIANS

Classical liberals like Loren Lomasky in the North and Horacio Spector in the South tend to feel (not without reason) that the extrapolitical realm is where we have a chance to be free.<sup>17</sup> Communitarians like Charles Taylor worry (not without reason) that the extrapolitical realm can be too free, thereby limiting our ability to make decisions as a community about what our community should look like.<sup>18</sup> Where communitarians *identify* community with the realm of political decision making, classical liberals see politics as an *alien intrusion*, something that converts us from a peaceful community into Hobbesian factions trying to impose our political will on the community as a whole, lest someone else's will be imposed upon us.

When government sees civil society as an independent source of moral authority, the stage is set for a relationship that can be beneficial for citizens of that society. In contrast, when government thinks of itself as necessarily expressing the General Will, such that dissenters automatically become enemies of the "People," the stage is set for humanity's

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<sup>15</sup> Developing China recognizes such realities. Xu Xinhai, an official in Shanghai's Communist Party, says, "We encourage people to take responsibility in building a civil society. Our central aim now is to support economic development, not interfere in people's personal lives" (*New York Times*, June 22, 1998).

<sup>16</sup> But the distinction is only a rough one. Government and civil associations each provide citizens with an array of public goods, and some of these public goods (national defense) are part of the background while others (a free press, say, or even more fundamentally, a common language) are very much in the foreground.

<sup>17</sup> By 'extrapolitical' we mean the nongovernmental realm, but more broadly the realm in which people can act without needing to reach large-group consensus.

<sup>18</sup> See Loren Lomasky, *Persons, Rights and the Moral Community* (New York: Oxford University Press, 1987); Spector, *supra* 8; Charles Taylor, *Philosophical Arguments* (Cambridge: Harvard University Press, 1995).



most notoriously vicious acts of repression and exploitation. Charles Taylor seems to concur when he acknowledges that "A strange and horrifying reversal has taken place, whereby an idea whose roots lie in a prepolitical concept of society can now justify the total subjection of life to an enterprise of political transformation. And in less spectacular form, the power of the state has often been enhanced by its self-definition as an instrument of the national will" (p. 221). With this, we agree. The state needs to grasp that it is not the "People."

Left-libertarians<sup>19</sup> hold that government is indeed a threat to our liberty and for that reason should be small, other things equal. But other things are not equal. *Any* large organization is a concentration of power, and thus any large organization is a threat to our liberty. Accordingly, left-libertarians insist that government must be empowered to contain such other concentrations of power as are likely to emerge over time. Self-described left-libertarian Ellen Willis says, "At best the contemporary left, with few exceptions, defends particular liberties and challenges particular repressive laws and policies while ignoring the structures of unfreedom built into institutions like the state, the corporation, the family, and the church. At worst it attacks 'excessive' liberty as a mere extension of capitalist individualism. ... Most leftists are uncritically statist, merely complaining that the government is controlled by the wrong people."<sup>20</sup>

There is no point in denying the legitimacy of left-libertarian concerns about the threat posed by big business. However, we ought to be realistic about what this threat means in practice. Large corporations have done deplorable things, but when it comes to perpetrating large-scale tragedies, most classical liberals will say the history of corporations is nothing compared to the history of governments, and that in any case the greatest crimes of corporations have been the fault not of corporations per se but of government-corporate partnerships. Corporations, like churches, become truly dangerous when, and perhaps only when, they are able to purchase or otherwise co-opt the power of government. In either case, when civil associations merge with government, there no longer is a truly voluntary sector.

Needless to say, civil society need not be innocuous. Left-libertarians insist that organized religions in particular are forces for good in some measure, but that they are a threat as well. Realistically, though, although the threat posed by big business may not be trivial in an absolute sense, it surely has historically been trivial compared to that posed by church or state.<sup>21</sup> Communitarians deplore the social disintegration they see as following from the freedom of individual atoms to detach themselves from oppressive molecules and float away in search of a better deal. By contrast, the left-libertarian worry is not that civil society is too weak but rather that civil associations, especially the

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<sup>19</sup> The label is catchy and several authors have appropriated it to describe positions that have nothing in common with libertarianism or classical liberalism. We are using the term in Ellen Willis's sense, as discussed below. Like libertarianism, what Willis calls left-libertarianism is recognizably a departure from classical liberalism, starting from common roots.

<sup>20</sup> See Ellen Willis, "Their Libertarianism—And Ours," *Dissent* (Fall, 1997), pp. 111-118.

<sup>21</sup> See Lomasky, *supra* 18, p. 19.

church, remain (or could again become) too strong. Still, the history of occasions when liberal societies were in danger of being obliterated suggests the threat almost always comes from governments, occasionally from organized religion, and never from corporations.<sup>22</sup>

#### IV. CIVIL SOCIETY, INCORPORATED

The distinction between state and civil society may be fundamental in theory, yet there are ways in which state and civil society tend to merge in practice. Within a society are structures whose emergence, evolution, and ongoing function is influenced by their interaction with the government. In particular, many institutions are to varying degrees subsidized by, but not administered by, the state. Civil society and the state interpenetrate each other. For example, systems of education are intermediate institutions between family and state. But many schools are state-funded, making them at once an organ of both state and civil society. These more or less blurry boundaries between state and civil society change over time, so that, for example, health care services once private are now, for better or worse, the business of government.

*Corporatism* is the idea that the merging of civil society and state is desirable. Charles Taylor extols the virtues of corporatist culture, where civil institutions merge with the state and lose their separate identities, and boundaries are for practical purposes obliterated. He says, "The really successful economies in the late twentieth century are resolutely corporatist, for instance, Germany and Japan" (p. 207). The idea is that as government and business merge and form partnerships, industrial policy will be determined not in a piecemeal and chaotic way but rather by government ministries staffed by political appointees and working closely with business leaders. Such ministries frame policy for entire industries, thereby avoiding wasteful competition, setting and maintaining prices at rational levels, etc. So the story goes.

But one of the things that proponents of corporatism ignore is the fact that civil society can stop short of a nation's borders and also can extend beyond them. Commerce is increasingly global in scope. De facto power increasingly is devolving into private and corporate hands. States have increasingly limited power to set interest rates, currency exchange rates, and so on. Civil society is more than one thing. It is not necessarily contained within any particular state's borders. It has a variety of boundaries, but in any case its boundaries are rapidly evolving, and the boundaries of the state are becoming less relevant. Regardless of whether we favor free movement of people and capital across national boundaries, we have to face the reality of such mobility. Competitive and innovative businesses migrate to areas where government is less meddlesome.

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<sup>22</sup> We do not mean to suggest this is a necessary truth. It is easy to imagine society being brought down by a plague or by a "Y2K" computer glitch.

Meanwhile, less competitive and less innovative businesses welcome and indeed clamor for government assistance in regulating their industry. They succeed not by making better products but by out-maneuvering rivals in the market for government patronage. The result is an unholy alliance between government and the worst of private industry. This is the true nature of corporatism. This is how it works in practice.

Corporatist thinking is becoming more glaringly obsolete as civil society leaves national boundaries behind. From a classical liberal perspective, corporatism is an attempt to remake a society in the image of the Titanic. In theory the thing is unsinkable; in practice, it is ponderous, blind, and eventually paralyzed as decision makers become increasingly out of touch with workplaces and marketplaces where the action is, and increasingly fall under control of people who (to put it mildly) are not committed to acting in the community's interest. The ability to cope with or even perceive changing tides is lost. When people try to make decisions for whole sectors of the economy, there are no small mistakes. There are only disasters, followed by cover-ups and bailouts, all on a titanic scale. The ongoing crash of "Japan, Incorporated," now in its second decade, is no fluke.

## V. CONTAINING GOVERNMENT

Classical liberals believe the core functions of a minimal state are the best examples of where state/civil society partnership is relatively benign: armed forces, police forces, and courts that succeed in maintaining a rule of law (as courts fail to do in military dictatorships). Obviously, these functions are liable to abuse, but they are less prone to abuse in a society that gives its government a tightly limited mandate, rather than a general mandate to do whatever seems worth doing. A minimal state is the kind of state most likely to do its patient no harm.

Although it is possible for institutions of civil society to be oppressive, government nevertheless has a liability that civil society does not; namely, government has an inherently expansionist dynamic. Limited government does not tend to stay limited. It tends to grow. New arms of government are created as time goes by. Each new office is populated by managers who naturally view their own functions as of utmost importance and who spend their time trying to expand their power and mandate. Thus, whatever its limits, government cannot be trusted to stay within those limits. It increasingly assumes responsibility for running people's lives, without consent. Does civil society have any similarly expansionist dynamic? It would seem not. Churches try to spread their word, to be sure, but it doesn't seem the same. One can say "No, thanks" to the church (when it does not have the power of the state behind it), but when government bureaucrats think up more forms for small business people to fill out, there is nothing to do but either hire another lawyer or give up and shut down. Even those governments that began life as honest attempts to complement and nourish civil society have quite naturally evolved into attempts to supplant it.

Some problems have no solution. This expansionist dynamic is one of them. It is not possible to ensure that government will be powerful enough to protect us from ourselves and from foreign aggressors without itself becoming a threat. We may need for our governments to have significant power, yet the more they have, the more they abuse. Government programs create revenue streams. The streams are profitable in the first instance for government employees. Over time, it becomes imperative to employees that revenue streams do not dry up. In turn, it becomes imperative that problems meant to be solved by these revenue streams get bigger, not smaller.<sup>23</sup> We might concede we would be unsafe without government, but at the same time doubt we ever will be safe from government. People need to be part of a civil society that at least tries to hold the state in awe, and thereby contain the liability that goes with having a government.

Like governments, civil associations are capable of bigotry, corruption, and other systematic evils. The state can contain these evils, or can be the vehicle that lets them run wild. Government can and sometimes does contain associations that undermine civil society's tendency toward voluntarism, even while itself standing as the greatest threat to the tendency toward voluntarism.

## VI. GROUPS AND INDIVIDUALS

Lately, feminists have been criticizing states for recognizing the family as a private sphere within which states have only limited license to meddle. Feminists distrust the distinction between private and public spheres because they worry that the distinction is a license to abuse women within the so-called private sphere.<sup>24</sup> Those who defend group rights are vulnerable to a version of the feminist critique, for they are defending new instances of what appear to be the same distinction between private and public. To recognize a group's right to organize itself according to its own principles can be tantamount to licensing a group's leadership to abuse rank and file members. Thus, Quebec has asserted its right to sovereignty within its domain. Indian tribes within Quebec have repudiated that right, asserting a sovereign right to secede from Quebec if Quebec should secede from Canada. Meanwhile, members of the Indian tribes, female members in particular, have warned Canada it had better not neglect to protect them as individuals against the abuse permitted and even encouraged by tribal custom.

It would seem what we need today is balance. To recognize a group's right to treat its internal relations as a private matter is to liberate members of that group from *government* interference, which is good. But that benefit comes at the cost of making group members more vulnerable to *fellow members*. Will Kymlicka distinguishes

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<sup>23</sup> One example concerns how incredibly seldom the Environmental Protection Agency uses Superfund money to clean up designated Superfund sites. See Todd Zywicki, "Environmental Externalities and Political Externalities: The Political Economy of Environmental Law," *Common Law and the Environment*, Roger Meiners and Andrew Morriss (eds.) (Lanham: Rowman & Littlefield, 1999).

<sup>24</sup> See especially Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).

between a minority group's freedom from external interference and its freedom to suppress internal dissent. As a liberal, he defends the former but not the latter.<sup>25</sup> The problem, of course, is figuring out how to do the former without ipso facto doing the latter. As Kymlicka notes, to prohibit internal suppression often would amount to qualifying rights "in such a way that they no longer correspond to the real aims of minority groups" (p. 153). Should a government ought to be guided by the need to manage that tradeoff to the best advantage of individual members? We wish the answer were a mere platitude, but it is not. Those who endorse "politics of identity" insist that government's objective should be to act on behalf of (favored) groups as such rather than on behalf of group members considered as individuals.

In principle, ethnic diversity makes the world a more intellectually and culturally vibrant and creative place. Moreover, ethnic groups are among the preeminent creators of civil society. They can order their internal relations in a way that facilitates internal monitoring and feedback, and enforcement of social norms, all without denying their members a right to exit if and when membership begins to cost more than it is worth.

Ideally, society would look like this: it would be notably multicultural. People would be proud of their own cultural heritage, and would be delighted to live in a society that exposed them to people whose backgrounds were very different. They would view cultural differences as fascinating and enriching. They would feel some commitment to preserving what is best in their own heritage, but not at a cost of providing their children with anything less than maximal freedom of choice. Their vision, rather, would be that their children would grow up multicultural, then autonomously return to the fold as young adults, having developed an informed appreciation both of their own ethnic heritage and also of the larger society that enables their culture and others to flourish side by side.

That is the dream. Is it remotely realistic? One thing seems sure. It will not come about by force. It will happen only where people are confident that, first, other cultures are not a threat, and second, interaction with other cultures is an opportunity for enrichment: financial, spiritual, aesthetic, etc.. There is no guarantee of happy results when government interacts directly with individuals in an attempt to ensure that they have a meaningful right to exit, but government must take this risk. Government must do it for the sake of the principle of (individual) voluntarism, and for the sake of possibilities for human flourishing that go with voluntarism. To that extent, citizenship has to trump membership.

The right to exit is meant to help secure voluntarism *within* groups. A second kind of "group versus individual" issue concerns the nurturing of voluntarism in interactions *between* groups. Most people want to live in a society that not only facilitates reasonable diversity, but also reasonable integration. What does it take to induce members to venture beyond the confines of their own ethnic groups, and to do so without fear? Are there

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<sup>25</sup> See his *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Clarendon Press, 1995), p. 37. See also Chandran Kukathas, "Multiculturalism as Fairness: Will Kymlicka's Multicultural Citizenship," *Journal of Political Philosophy* N° 5 (1997), pp. 406-27.

circumstances where a kind of integration that is healthy for individuals will occur if and only if the process initially is set in motion by force? This is in part an empirical question. A variety of political theorists have insisted, sometimes in the name of defending individual autonomy and dignity, that the appropriate bearers of rights may be not individuals, but groups.

Will Kymlicka, for example, defends group rights on grounds that group rights can undergird the cultural infrastructure without which individual autonomy is not possible. "Liberal values require both individual freedom of choice and a secure cultural context from which individuals can make their choices."<sup>26</sup> Group rights may take the form of entitlements as against other groups in the wider society or rights of the group as against members of the same group, or both. Will Kymlicka endorses only the former—entitlements to benefits from the larger group—and opposes the group's right to restrict the activities of its own members. "Protecting people from changes in the character of their culture can't be viewed as protecting their ability to choose" (p. 167). But he cannot help sliding toward the latter. "The viability of Indian communities depends on coercively restricting the mobility, residence, and political rights of both Indians and non-Indians"<sup>27</sup> (p. 146).

It should not be surprising that group rights have a history of provoking violent conflict, with unsettling consequences for the stability of liberal constitutional orders. The group rights that Kymlicka endorses (or something remarkably like them) have already been tried in Europe and have been criticized by the Hungarian Josef Eötvös. Eötvös was a participant in the revolution of 1848. He went on to become influential in central European politics and a learned writer on problems of nationality.

The particular nationality may demand a separate territory in order to secure its freedom. It may further demand the standardization in law of its sphere of rights in a way that grants the rights of each single person regarding the use of his national language, not as something to which he is entitled as an individual, but rather as a member of a specific nationality. Moreover, it may be demanded that the offices of the country are to be divided according to nationality, and that in particular areas only members of a certain nationality should be eligible for office. In short, there may be a movement that started in the name of freedom and equality, and afterwards everyone demands only privileges, and endeavors that those privileges be as plentiful as possible. None of this is truly new, and every person who knows history knows how in times past the various religious confessions stepped forth under the same pretext and with the same demands against the others. . . . And what was the result of all these rules and measures in those places where the solution of the religious question was sought in this way? What else, than endless frictions between the various confessions, the suppression of those who were a minority in a

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<sup>26</sup> Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Oxford University Press, 1989), p. 164.

<sup>27</sup> *Ibid.*, pp. 167 and 146, respectively.

particular area, unbounded intolerance on the side of those to whom opportunity was offered and, as a consequence of all this, a century of continuous bloody struggle, which shattered the most powerful states, brought about a not-yet-healed cleavage in one of the greatest nations of Europe and everywhere hindered the advance of civilization! . . . The citizens of each such country, segregated according to confessions, stood in hostility against one another, and religious peace and harmony was achieved the less, the more numerous and detailed were such laws—all created to secure religious peace and harmony.<sup>28</sup>

## VII. FREEDOM WITHOUT GUARANTEES

What guarantees that individual rights will be respected by the groups within which individuals associate? The answer is: nothing at all. The more relevant question is a question of probability. What makes it more likely that the rights and dignity of members will be respected? One answer: the right of exit.

Unfortunately, the trend among welfare-state liberals in recent years, however, has been to restrict even exit from and entry into even the territory of a state. Yael Tamir invokes the classical liberal prescription of freedom of trade and travel as a *reductio ad absurdum*, a theory so bizarre that no serious person could entertain it.<sup>29</sup> Brian Barry recently asserted, without argument, that

A counterfactual America combining state-level controls over immigration and strong federal policies to bring economic development to the South while ensuring legal and political rights to the Blacks would surely be a better one than that which actually exists. And that is, in broad terms, the formula that I advocate for the world as a whole.<sup>30</sup>

Barry evidently is unaware that his proposal for restriction of inter-state mobility of African-Americans had already been put into practice under the state-enforced "Jim Crow" system, and that such restrictions were justified on the grounds of the well being of African-Americans themselves, for without such restrictions, "a wicked and corrupt agent" could "come into a community and at the dead hour of midnight, by promises and

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<sup>28</sup> Josef Freiherrn von Eötvös, *Die Nationalitätenfrage*, (trans. From the Hungarian to German by Dr. Max Falk (Pest: Verlag von Moritz Ráth, 1865), pp. 145-47. Translation from German to English by Tom Palmer.

<sup>29</sup> Yael Tamir, *Liberal Nationalism* (Princeton: Princeton University Press, 1993), p. 127.

<sup>30</sup> Brian Barry, "The Quest for Consistency: A Sceptical View," in Brian Barry and Robert E. Goodin (eds.), *Free Movement: Ethical Issues in the Transnational Migration of People and of Money* (University Park: Pennsylvania State University Press, 1992), pp. 284-5.

persuasions, induce an ignorant and wholly irresponsible (financially speaking) population to leave their peaceful homes and thereby disrupt the labor conditions."<sup>31</sup>

The right to move from state to state in search of better work and higher pay is a right that Brian Barry has used to enrich himself, and so have we. Oddly, though, Barry would deny that right to African-Americans. Even more oddly, he would do it in the name of justice! In any case, the thing to avoid—the thing that is a recipe for the antithesis of peaceful integration—is acting so as to create a perception that government is sponsoring one group at another group's expense.<sup>32</sup> To put it mildly, neither the Jim Crow laws nor Barry's reprise of them would avoid creating an impression that government is sponsoring one group at another group's expense.

Most people find fulfillment in their families and communities, but those who do not are free to seek alternative associations to which they can make a more satisfying contribution.<sup>33</sup> Or at least, a right to exit confers a formal freedom to seek other arrangements. Formal (or negative) freedom is not the same thing as genuinely substantive (or positive) freedom, where the latter is construed as implying an ability actually to exercise the right at reasonable cost. Still, giving people the formal freedom goes a long way toward creating conditions under which people have substantive freedom. Sometimes, when we try to give people more, they end up having less. Loren Lomasky suggests that a willingness to let civil society evolve according to its own logic under conditions of formal freedom is the truest expression of appreciation for civil society.<sup>34</sup> It is a vote of confidence in bonds and associations freely formed through civil association.

But this vote of confidence is not blind faith. While civil society can be wonderful, it is not necessarily so. The tendency toward voluntarism may uncontroversially be good; however, civil association's tendency toward voluntarism is not guaranteed. There sometimes may be things a state could or even needs to do to secure or augment that tendency. But it is so very easy to do too much. A civil association is a response to a challenge, as is the feeling of solidarity that infuses organizations that develop in response to challenge. The shape taken by civil society depends in part on the particular set of challenges to which it is a response. Social capital accumulates in response to challenges. Take away the challenge that creates the proximate need for some aspect of civil society, and that aspect of civil society withers away. Thick community is not something that grows out of bowling leagues. It grows out of people coming together when stakes are high and when it is up to them to get the job done. When government

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<sup>31</sup> In the words of Colonel Butler, prosecuting emigrant agent R. A. "Peg Leg" William, for violating Georgia's emigrant-agent law. In David E. Bernstein, "The Law and Economics of Post-Civil War Restrictions on Interstate Migration by African-Americans," *Texas Law Review* Vol. 76, N° 4 (March, 1998), pp. 781-847, here p. 809.

<sup>32</sup> See Jennifer Roback on government enforcement of ethnic economic cartels in "Racism As Rent Seeking," *Economic Inquiry* N° 27 (1989), pp. 661-81.

<sup>33</sup> See Lomasky, *supra* 18, p. 7 reaches a similar conclusion.

<sup>34</sup> *Ibid.*, p. 9.



does not trust them to get the job done and takes over, community cannot survive. When government gives up being a referee and starts playing, it does not turn its people into team players. It turns them into a nation of spectators. There is a cliché: necessity is the mother of invention. The cliché is true. And necessity equally is the mother of solidarity.

Those with communitarian conservative leanings might find this worrisome. We might worry (as classical liberals have not) that as life in market society becomes ever easier, civil society becomes ever more attenuated. There is less challenge in response to which civil society can take shape. A classical liberal might claim that if the withering away of civil society is a genuine problem, then people will respond by taking steps to preserve it. There is some truth in that; it is a robust feature of human nature that we seek what we take to be best for us.

Unfortunately, it is an equally robust feature of human nature that we seek what is easiest. The trouble is, what is best and what is easiest can be two different things. Thus, communitarian conservatives are afraid to put their faith in voluntarism, for they see we are capable of laziness and procrastination even when we know perfectly well that we need to take action. Television makes it easier for us to lead passive and solitary lives. Being a "couch potato" is not a good life, but it is easy, which for many people makes it an attractive alternative to the effort and emotional risk involved in trying to be social. Civil society might wither away not because it has no value, but rather because the kind of value it has to communitarians is not the kind of value that drives people to take action.

The upshot, though, is simply that there are no guarantees. The right to exit from bad arrangements carries with it the right to exit from good arrangements. Society will evolve, like it or not. Wherever there is evolution, something decays and is left behind. We will of course lament what we are losing even as we take for granted what we are gaining. (Some people think the middle and lower classes have not prospered in market society. That is preposterous. Our life expectancy today is over three decades longer than it would have been if we had been born a mere century earlier.) After all, we are only human. Nothing in this world can guarantee that we will be happy. As Lomasky says, "A liberal order can be viewed as the standing wager that people who guide their own projects rather than consign these to the putative wisdom of technocrats, benevolent despots, and philosopher-kings will do better than their more coddled cousins. And like any genuine wager, it is one that can be lost."<sup>35</sup>

Put it this way: we should look before we leap into a world of maximal guarantees. What would we really gain? What would we lose? Guarantees are expensive. There is no guarantee that guarantees will be worth their cost. The formal guarantees embodied in rent controls, for example, may or may not produce their intended substantive result. They symbolize a community's commitment to affordable housing, but they also have a history of making it harder rather than easier to find low-rent accommodations.

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<sup>35</sup> Ibid., p. 14.

## VIII. WELFARE WITHOUT GUARANTEES

In this section, we discuss a cluster of historical examples that illustrate how civil associations evolve in response to problems, and solve those problems precisely because people do not think of themselves as having a right that government solve their problems for them. Institutions of collective responsibility per se are nothing new. They seem to have taken a new and government-mediated shape, though. Collective responsibility once manifested itself almost exclusively in family-based and community-based norms—norms that evolved in response to a lack of social guarantees. Those norms sustained neighborhoods and a rich network of mutual aid and thus helped people to prosper. People took responsibility for themselves and for their neighbors. Although the charitable sector remains enormous, at least in the United States, people have come to associate the concept of collective responsibility with a distant bureaucracy. Too many people have come to think of their welfare, and also their neighbors' welfare, as the government's problem.

Conservatives often accuse welfare states of eroding norms of individual responsibility. That may not be the worst of it. The more damaging consequence may lie in how welfare states warp our sense of collective responsibility. David Green says that, in recent times, "socialists have not seen the good person as someone who gave his own time and energy in the service of others, but as the individual who demanded action by the state at the expense of other taxpayers."<sup>36</sup> In many countries, though, there once flourished organizations known as friendly societies. According to Green, these societies historically shared with trade unions an older kind, a self-help kind, of socialist philosophy.<sup>37</sup>

Through the trade unions workers would win the wages necessary to sustain a decent existence, and through the friendly societies they would organize their own welfare services—social insurance, medical care, even housing loans. The profit motive, too, was to be supplanted: in the factory by the mutuality of the workers' co-op; and in retailing by the co-op store. Not all of these working-class hopes were realized, but the friendly societies, the trade unions, and the co-op stores were successful and offered a fraternal alternative to the sometimes cold world of commercial calculation. Particularly striking is the success of the friendly societies, whose social insurance and primary medical care schemes had attracted at least three-quarters of manual workers well before the end of the nineteenth century. Until the 1911 National Insurance Act every neighborhood of every town was dotted with friendly society branches,

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<sup>36</sup> David G. Green, *Reinventing civil society: the rediscovery of welfare without politics* (London: IEA Health and Welfare Unit, 1993), p. 3.

<sup>37</sup> David G. Green, *Working class patients and the medical establishment: self-help in Britain from the mid-nineteenth century to 1948* (Aldershot: Gower, 1985), pp. 1, 4-5.

each with their own doctor, who had usually been elected by a vote of all the members assembled in the branch meeting.<sup>38</sup>

How *expensive* was participation in such societies? Access to club medical care was inexpensive to the point of being an outrage to the organized medical profession. David Beito writes that, in America in 1900, a lodge member "could acquire a physician's care for about \$2 a year; approximately a day's wage for a laborer at the time."<sup>39</sup> Green and Cromwell report that, in Australia in the 1830s and 1840s, fees charged by private doctors were sometimes over ten shillings per visit—well beyond the means of most people. By 1869, friendly societies had emerged, providing medical service at a rate of ten shillings per year for members, plus an additional ten shillings per year for a member's wife and children. (Members were all men back then. Active recruitment of female members began a decade or two later, followed by the emergence of friendly societies catering exclusively to women.) To win election to a post as club doctor, would-be club doctors submitted to questioning by the assembled members regarding their training and experience. Candidates offered competitive rates and perks such as free house visits within three or four miles of the lodge.<sup>40</sup>

Health care is more expensive today, of course. Higher prices presumably have much to do with the real cost of late twentieth century medical technology. On the other hand, technological advance hardly entails rising prices. As already mentioned, prices dropped during the period when friendly societies were emerging. In fact, the explosion in health care costs began not with some technological innovation but rather with the 1911 National Insurance Act. The Act gave panels staffed by representatives of insurance companies and doctors' unions the authority to regulate fees paid by friendly societies. As a result, fees more than doubled within two years.<sup>41</sup>

How *widespread* was participation in friendly societies? Beito reports that according to surveys taken in 1919, 93.5 percent of African-American households in Chicago had at least one insured member.<sup>42</sup> In Philadelphia that same year, 98 percent of African-American families had at least one insured member. In England, Green estimates that by 1911, "at least 9 million of the 12 million originally included in the National Insurance scheme were already members of friendly societies offering medical care."<sup>43</sup>

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<sup>38</sup> Ibid., p.1.

<sup>39</sup> David T. Beito, "The "lodge practice evil" reconsidered: medical care through fraternal societies, 1900-1930," *Journal of Urban History* N° 23 (1997a), pp. 569-600, here p. 580.

<sup>40</sup> David G. Green, and Lawrence Cromwell, *Mutual aid or welfare state: Australia's Friendly Societies* (Sydney: Allen & Unwin, 1984), pp. 76-80.

<sup>41</sup> See Green, *supra* 37, p. 113.

<sup>42</sup> David T. Beito, "Mutual aid for social welfare," *Critical Review* N° 4 (1990), pp. 711-36, here pp. 718-19.

<sup>43</sup> See Green, *supra* 37, p. 95.

How *adequate* was the care provided by such societies? Green reports disputes between the societies and the organized medical profession over the societies' refusal to exclude wealthy members; means-testing was contrary to the principle that all joined on equal terms.<sup>44</sup> Evidently, so many wealthy members were using the service that their business was worth fighting over. The care must have been quite good—good enough to attract the wealthy. Part of its attraction was that lodge doctors were pioneers in preventive medicine. For doctors on yearly contracts, effective prevention was one cost-cutting measure that would be praised rather than punished at the lodge's annual meeting. All told, health care inside the friendly societies was not only cheaper but probably of higher quality than that available outside the societies, especially to people of modest means (although competition with friendly societies eventually did force regular fees for service down to levels that most people could afford).<sup>45</sup>

For what it is worth, friendly societies were a remedy for exploitation as well. When there are multiple providers of relevantly similar services, people who dislike terms offered by one provider can look elsewhere, which minimizes their dependence on and consequent vulnerability to any particular provider. No particular provider, nor any coalition of providers, was in a position to dictate terms to clients. The plethora of friendly societies, together with free hospitals and provident dispensaries,<sup>46</sup> decentralized collective responsibility for medical care without turning it into a strictly individual responsibility. Individually and collectively, they gave people a range of choices at prices that almost anyone, even then, could afford. (A Royal Commission assigned to investigate whether the poor were systematically deterred from joining friendly societies found that, in 1901-02, "registered friendly society membership was highest in rural areas where wages were lowest."<sup>47</sup>)

They served as a welfare safety net too. In 1855, for example, the Grand Lodge of Maryland provided aid to nine hundred orphans of deceased members.<sup>48</sup> The following, gleaned by Beito from the 1916 minutes of the Ladies Friends of Faith, seems to have been typical.

At nearly every meeting, the society heard at least one plea from a member unable to pay because of unemployment or poor health. One of

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<sup>44</sup> Ibid., pp. 19-21.

<sup>45</sup> In the early 1900's, spokespersons for the IOF [International Order of Foresters] "repeatedly contrasted the death rate of members (6.66 per 1000) with that of the same age group in the general population (9.30)" (See David T. Beito, *supra* 39, p. 585). Again, though, I would caution against being too impressed by numbers. Presumably, the mortality gap was due in part to superior health care within the lodge, but also in part to lodge prohibitions of high-risk vices such as drunkenness.

<sup>46</sup> Unlike free hospitals, provident dispensaries charged "a low annual contribution, felt to be within the means of the very poor, and the balance was supplied by the honorary members." See Green, *supra* 36, p. 73.

<sup>47</sup> Ibid., p. 68.

<sup>48</sup> David T. Beito, "This enormous army: The mutual aid tradition of American fraternal societies before the twentieth century," *Social Philosophy and Policy* N° 14 (1997b), pp. 20-38, here p. 33.

the most desperate of these concerned a woman who was "out of doors, and had no money." In such cases, the society was generally ready to extend help. It allowed twenty-four members extra time to pay off their debts, while it passed the hat for ten others. Not once did the Ladies Friends of Faith reject any of these appeals outright.<sup>49</sup>

Lodges were able to contain costs and minimize abuse apparently because the safety nets were administered, and paid for, by neighbors.

So, what happened? Several factors contributed to the friendly societies' decline. First, as taxes rose, employer-provided tax-free benefit packages became an increasingly attractive form of compensation compared to taxable wages. Also, during periods of wage and price controls, employers sweetened benefit packages as an alternative to straightforward wage hikes. As those packages became common, they made friendly society services redundant. There was less reason for workers to pay society dues for services already provided through employers.

Meanwhile, professional medical associations hated the friendly societies, correctly believing that friendly societies gave medical consumers the bargaining power they needed to undermine price collusion by doctors. By the early 1900s, medical associations had become a powerful political force, especially when they joined forces with for-profit insurance companies (which also viewed friendly societies as an obstacle to higher profits). Together, they were an active and highly visible cause of the friendly societies' decline. In England, they played a major role in amending early drafts of the 1911 National Insurance Act so that the final legislation would do maximum harm to friendly societies.

Two features of the Act are crucial. First, the Act established price floors that made it illegal for friendly societies to offer health care at lower prices. Second, the Act compelled male workers earning less than a certain income to purchase government medical insurance, thereby making it more difficult if not pointless to pay friendly society dues—which the price floors had made more expensive—on top of compulsory fees for government services. (Interestingly, in some respects, the Act hardly even pretended to be providing national insurance. For example, the Act made no provision for the care of widows and orphans, because insurance companies felt such provision would make it harder to sell life insurance.<sup>50</sup>)

Similar forces were at work in the United States. David Beito reports that medical associations warned members that if they worked for lodges, they faced forfeiture of membership or, just as seriously, a boycott by other medical providers.

In 1913, for example, members of the medical society in Port Jervis, New York vowed that if any physician took a lodge contract they would "refuse

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<sup>49</sup> See Beito, *supra* 39, p. 575.

<sup>50</sup> *Ibid.*, p. 99.

to consult with him or assist him in any way or in any emergency whatever." In this instance, and many others, boycotts extended to patients as well. One method of enforcement was to pressure hospitals to close their doors to members of the guilty lodge.<sup>51</sup>

Their decline notwithstanding, friendly societies seem to have had many of the features that we wish our health care systems had today: the ability to contain costs, to provide clients with an effective voice, to provide state of the art service with a personal touch, and to effectively reach all segments of society. They also provided services like old-age pensions, unemployment insurance, life insurance, workmen's compensation, day care, and so on, at the same time serving as a form of community association.

Is it realistic to think friendly societies in the twenty-first century could emulate their earlier success? Realistically, they could never be like they were, simply because they would be responding to needs that are not the same as the needs of nineteenth century lodge members. Also, in their time, they were a kind of direct democracy; doctors were directly accountable to annual member assemblies. If members were not satisfied, doctors were not re-elected. That feature may or may not be reproducible today. Today such organizations might become more like health maintenance organizations, where doctors are directly accountable to insurance companies or boards of directors rather than to the collective voice of clients. (Health maintenance organizations are new, of course. They will continue to evolve. In time, some may become more like friendly societies.) Or the cost of malpractice insurance may rise until it rules out low-cost medical care regardless of delivery mechanism. We do not know. Times change. The future is bound to surprise us. No matter what we do, there will be an element of risk.

A nice thing about the friendly societies, though, is that they are not a thought experiment. They are not a utopian dream. As recently as the 1960's, fraternal hospitals in rural Mississippi provided state-of-the-art medical coverage. Adults paid thirty dollars per year. The yearly fee for children was four dollars. At one hospital, run by the Knights and Daughters of Tabor (an African-American fraternal society), that same fee covered thirty-one days of hospitalization, major and minor surgery, basic examinations, routine tests, and drugs. There were extra fees of two dollars for an EKG, four dollars for an X-ray, and fifteen dollars for a normal childbirth.<sup>52</sup>

Although that recent experience is encouraging, it does not change the basic fact that conditions essential to an institution's history of success may no longer be operative, and we may not realize that until after we try and fail to replicate its success in another time and place.<sup>53</sup> We have to live with that uncertainty, and we should not ignore it.

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<sup>51</sup> Ibid., p. 592.

<sup>52</sup> David T. Beito, "Our temple of health: black fraternal hospitals in the Mississippi delta, 1942-1967," *Journal of Southern History* Vol. # 65 (1999), p. 137.

<sup>53</sup> Friendly societies would have an advantage today that they lacked a century ago, namely modern actuarial and accounting techniques.

We should not blow it out of proportion, either. I do not know how to make a toaster. Not many people do. But that uncertainty is no reason to stop people from making toasters, or from inventing better ones. Nor is it a reason to ignore alternatives to government-funded or government-provided health care, social security, and even unemployment insurance, especially when those alternatives have been tried with success.

Although some think the state is the only thing keeping communities intact, we have long histories of organizing ourselves spontaneously, unless a totalitarian dictator stops us. We organize as the need arises. We always have, since long before there was any such thing as what we now call the state.<sup>54</sup> As Loren Lomasky playfully but accurately observes, humans may be atoms, but they are everywhere found in molecules.<sup>55</sup> The legacy of free association is community, not atomic isolation. Healthy civil societies have increasingly well-documented histories of meeting their needs spontaneously, unless and until government takes over.

## IX. CITIZENSHIP

What is the role of civil society in forming good citizens, citizens who can handle their responsibilities to themselves and to their communities? There seem to be two answers, and they seem to contradict each other. The first: keep government out of communities. Let communities develop spontaneously, forming new generations of citizens as they will, with whatever understandings of rights and duties they are going to have. Such groups will not be politically correct, but a genuine liberal hates the idea of political correctness anyway.

The second answer: this kind of neutrality is a utopian mirage.<sup>56</sup> If a liberal society really cares about liberalism and wants to sustain itself as a liberal society, it needs to do whatever it takes to make sure children get an education that prepares them for life in mainstream liberal society. If those children grow up and autonomously opt to return to their fundamentalist roots, that is fine. But their parents have no right to deprive children of the intellectual and psychological tools for autonomously choosing what kind of life they want to live.

Part of the point of liberal freedom is to enable people autonomously to join communities that make them more than merely free. Conservatives deplore liberal society's failure to make whole populations conform to their particular conservative conception of the good life, but there is a reason why those same conservatives choose to live in free societies. It is liberal societies, and only liberal societies, that make it safe to be the kind of

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<sup>54</sup> See Christopher Morris, *An Essay On the Modern State* (New York: Cambridge University Press, 1998).

<sup>55</sup> See Lomasky, *supra* 5, p. 6.

<sup>56</sup> Against grounding liberal neutrality in skepticism about our ability to assess relative merits of differing conceptions of the good, see Steven Scalet, "Making Do Without Doubt," *Journal of Value Inquiry* (1999), in press.

conservatives they want to be. Free societies, not authoritarian regimes, make possible the autonomous embracing of thicker communities that as a matter of fact flourish within free societies. A fully consistent communitarian conservative would say, "I believe in the kind of state and the kind of civil society that makes enables me to work toward my vision of a good community. Which is to say, I believe in liberal society, because that is the kind of society that does not force me to belong to the soul-destroying sort of community from which my ancestors fled."

However, those thick communities sometimes can become a liability, in terms of values they impart or fail to impart in succeeding generations, which raises the question of whether we need to take steps to ensure that children receive an education that equips them for citizenship in a liberal society. Perhaps letting people raise their children as they see fit is incompatible with what we need to do to promote liberal society. We want children to grow up free and autonomous. We also want people to be able willingly to participate in thicker social and spiritual communities. Does that mean we need to force parents to provide their children with a non-crippling education?

A fully consistent liberal would say, "I believe in liberal toleration. I also believe in the robust tendency of the practice of liberal toleration to sustain itself over generations." But we seem to have lost that kind of faith in liberalism, if we ever had it. In the best of all worlds, we would have more faith, and more faith would be justified. But if the faith is not justified, we may have to choose between promoting liberal toleration and practicing it. Practicing liberalism may not be compatible with doing what we need to do to preserve and promote it.

Any liberal has a hard choice to make when a government has to decide whether to interfere with parents' rights to exercise their judgment in deciding how best to raise their children. Which brings us back to the topic of group rights: Jehovah's Witnesses who try to deny their children life-saving blood transfusions are not villains. When governments intervene to overrule parents, they are not protecting children against criminals. In the parents' eyes, people's souls reside in their blood. Polluting the blood pollutes the soul, thereby robbing their child of a chance at the afterlife. (Jehovah's Witnesses do not believe in hell. When the "unsaved" die, they simply die.) Perhaps we can dismiss such beliefs as ridiculous. But we do not rescue our liberal credentials merely by convincing ourselves that those who need to be forced to raise children our way are unreasonable.

Similarly, if a fundamentalist community decides secular liberal education is a destroyer of souls, not to mention its being a repudiation of fundamentalist culture, and if the fundamentalist community undertakes to provide an education that (in our eyes) deliberately stunts the children, we have a problem. Should we stand silent, tacitly accepting the parents' illiberal commitment to preventing their children from acquiring the tools to freely choose among alternative ways of life? Or should we force-feed their children a liberal education? If we do, we tacitly repudiate their parents' way of life. Perhaps we tacitly repudiate our own as well. After all, we're liberals. We're supposed to stand for freedom of choice. But when it comes to educating children, it is hard to know what that means. Do we stand for the parents' freedom of choice, or the children's?



Perhaps we should think of the right to raise one's children by one's own lights as a prerogative grounded in the presumption that children will one day have a meaningful opportunity to make their own choices. So, we could say the presumption that grounds the right also grounds the limits of that same right. In other words, parents do not have a right to raise their children in a way that renders the presumption false. Instead, parents have a right to prepare their children as best they can for membership in liberal society (which need not rule out preparing their children to autonomously embrace fundamentalism), but they have no right to try to render their children incapable of such membership. If parents try to do the latter, then it is not the fault of liberal society if its only options, interference and noninterference, are both awful.

## X. CONCLUSION

Government has to take responsibility for trying to work with communities rather than against them. Government should try to provide a rule of law framework that facilitates commerce and mutual aid, rather than try to replace commerce and mutual aid with some centrally planned alternative. Agents of the government must avoid thinking of themselves as the community's heart and soul and must realize that others may have ample reason to view them as unwelcome guests. Such agents ought to practice respect just as visitors to a foreign country ought to practice respect. They need to let civil society evolve. If such evolution leads to fragmentation, that is good, up to a point, if the result is that a plurality of conceptions of good community can flourish side by side.

Opportunities to cooperate for mutual advantage do not always translate into mutually advantageous outcomes. Nevertheless, it remains the case that good things come from limiting opportunities to profit at other people's expense, and from creating opportunities for people to secure their own advantage in mutually advantageous ways. Decentralized decision-making (combined with robust exit-rights) and limited government is our best hope for living good lives.