

T H R E E

Civic Associations

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Civic associations play a distinctive and vital role in a democratic society, developing core virtues and values that enable individuals to contribute to public life and maintain the political institutions of a free society. When the young French philosopher Alexis de Tocqueville visited the United States in the early 1800s, he observed that democracy in America had been especially strengthened by broad participation in a wide range of civic associations, including clubs, churches, nonprofits, and community groups of all types.¹

1. Alexis de Tocqueville, *Democracy in America*, ed. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), 489. This pattern of American engagement continues. “In 1997, a nationwide poll conducted by the American Association of Retired Persons found that the average American belongs to 4.2 voluntary groups. Two years earlier, an Independent Sector study found that almost 70 percent of American households made charitable contributions annually and that just short of half of the population volunteered. Furthermore, those who did volunteer work in 1995 said that they gave an average of four hours of their time every week.” Moreover, Americans’

Even today, leaders of emerging democracies understand that civic associations, and the qualities of mind and character that they encourage, are an essential part of the infrastructure of a thriving free society.²

In the last decade, however, scholars have expressed concerns about whether civic associations in America have been altered or weakened. Two major national studies have examined the problem, calling for a renewal of civic engagement and voluntary associations.³ Some wonder whether old forms of civic association are giving way to new and different ones.⁴

In the context of these debates, this chapter explores a specific question: How has public policy affected the capacity of civic associations to foster the qualities of mind and character that sustain democracy in America? This requires an appreciation of the historic relationship of three topics: civic associations, which are the independent and voluntary associations of civic life; public policy, which is the collective actions of government, political parties, and other actors that influence the policy sphere; and the virtues and values we recognize as crucial to self-government. These three variables have changed over time and continue to undergo important transformations today.

involvement in civic associations remains comparatively strong in relation to other industrialized nations. According to the 1990–91 World Values Survey, only Iceland, Sweden, and the Netherlands citizen involvement is rated ahead of the United States. The National Commission on Civic Renewal, “Civil Society: Evidence—The Condition of Civil Society,” *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It* (College Park: University of Maryland, The National Commission on Civic Renewal, June 1998), available online at http://www.puaf/umd.edu/Affiliates/Civi...eport/table_of_contentsfinal_report.htm.

2. Jeane Bethke Elshtain, “Will the Real Civil Society Advocates Please Stand Up?” *Chicago-Kent Law Review* 75 (2000): 583.

3. See note 9, below.

4. See text at notes 10 and 11, below.

The Historic Formulation

Civic associations in America are a critical source of social capital, or those “features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit.”⁵ Many associations, such as churches, synagogues, mosques, scouting organizations, and the like, hold the moral, ethical, and spiritual development of their members as a primary mission. In other cases, nonprofit groups have been organized to promote a particular set of moral principles or goods within government and society, such as human or civil rights. Moreover, civic associations can serve as a kind of buffer or intermediary between individuals and public institutions. They provide citizens with an opportunity to give freely and generously, beyond both the obligations of law and the market’s narrower interest in profit.

Alexis de Tocqueville was particularly impressed by the inclination of Americans to form civic associations:

Americans of all ages, all conditions, all minds constantly unite. Not only do they have commercial and industrial associations in which all take part, but they also have a thousand other kinds: religious, moral, grave, futile, very general and very particular, immense and very small. . . . There is nothing . . . that deserves more to attract our regard than the intellectual and moral associations of America.⁶

Tocqueville thought that the “art of association” was critical because it counteracted wayward democratic tendencies, provid-

5. See Robert D. Putnam, “Bowling Alone,” *Journal of Democracy* (January 1995): 67. According to Putnam, “the term *social capital* itself turns out to have been independently invented at least six times over the twentieth century, each time to call attention to the ways in which our lives are made more productive by social ties. The first known use of the concept was not by some cloistered theoretician, but by a practical reformer of the Progressive Era—L. J. Hanifan, state supervisor of rural schools in West Virginia” (Putnam, 19).

6. Tocqueville, 489–92.

ing critical lessons in discipline and cooperation.⁷ Association thus contributes to that moral virtue among citizens—including respect for others, self-restraint, public spiritedness, and the willingness and ability to participate in the give and take of self-government—that *The Federalist* argues democracy depends upon to a particularly high degree.⁸

Recent Questions About Civic Associations and Values

In recent years, Tocquevillian optimism about America's civic associations has given way to a sense of despair. Alarmed by the apparent decline in civic engagement, two commissions have issued special reports in the past decade. The titles of these reports illustrate some of the problems: *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It* and *A Call to Civil Society: Why Democracy Needs Moral Truths*.⁹

Robert Putnam's *Bowling Alone* launched a major debate about whether civic associations are in a period of significant decline in

7. Tocqueville, 491, 492, 497.

8. Hamilton, Madison, and Jay, *The Federalist* 55, ed. Clinton Rossiter (New York: New American, a division of Penguin Putnam, Inc., 1999), 314.

9. The National Commission on Civic Renewal, *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It* (College Park: University of Maryland, The National Commission on Civic Renewal, June 1998), available online at http://www.puaf/umd.edu/Affiliates/Civi...eport/table_of_contentsfinal_report.htm; The National Commission on Civic Renewal, *Update to A Nation of Spectators Report* (College Park: University of Maryland, The National Commission on Civic Renewal, September 1999), available online at http://www.puaf/umd.edu/Affiliates/Civi...inalreport/americas_civic_condition.htm; The Council on Civil Society, *A Call to Civil Society, Why Democracy Needs Moral Truths* (New York: Institute for American Values, 1998). According to *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It*, "America's civic health fell by more than 20 percent between 1984 and 1994. However, the latest statistics show a very significant improvement for 1997."

America, and if so, why. Putnam argues that throughout American history, civic engagement has a record of ups and downs, of renewal and collapse.¹⁰ Pointing to large declines in membership and participation of traditional groups such as the Elks, the PTA, and bowling leagues, he finds that America today is in a period where the pendulum has shifted away from community and toward the individual. Even newer organizations that have arisen are dismissed by Putnam as passive associations in which people participate only by joining and writing a check.¹¹

Not everyone agrees with Putnam's reading of the data. According to Francis Fukuyama, "It is not clear that either the number of groups or group memberships in civil society declined overall in this period as the political scientist Robert Putnam has suggested."¹² While acknowledging that certain associations have declined, Putnam's critics point out that this may simply reflect a failure of old groups to innovate and keep up with changes in society, especially the greater spirit of inclusivism in America today. Local associations such as the Elks Club are giving way to mass-

10. Robert D. Putnam, *Bowling Alone* (New York: Simon and Schuster, 2000), 25.

11. *Ibid.*, 49–52; see also Paul Rich, *The Annals, Civil Society, and Democratization*, vol. 565 (1999), 24.

12. Francis Fukuyama, *The Great Disruption* (New York: Free Press, 1999), 60, 71. In a similar vein, ". . . there is no evidence that the average rate of membership has increased in the last quarter-century. This is a surprise because it is widely believed that rising levels of education are linked to greater associational activity. In fact, it appears that two trends over the past quarter-century have roughly counterbalanced each other: The proportion of high school and college graduates in the population has grown larger, but civic participation at every educational level has declined. People with high school diplomas but no college education have become about 32 percent less likely to join any associations, while there has been a modest increase in the proportion of people who belong to no organizations at all." The National Commission on Civic Renewal, *A Nation of Spectators: How Civic Disengagement Weakens America and What We Can Do About It* (College Park: University of Maryland, The National Commission on Civic Renewal, June 1998).

membership organizations like the National Organization for Women and the American Association of Retired Persons. Whether these shifts result in less civic involvement or civic involvement of a lesser quality continues to be a matter for debate.

To answer these questions it is necessary to examine the changing character of civic associations in America. One dramatic change concerns the relation of civic associations to government. Instead of maintaining independence from government, a host of new associations has been born that essentially responds to a more active federal social agenda by seeking to serve it.

1945–1990: Increasing Government Influence over Civic Associations

Civic associations do not operate in a political vacuum. As much as they might like to be independent of government control and influence, civic associations have been very much subject to the political trends of the larger society as well as to several forms of government oversight. The period following World War II and the Great Society era of the 1960s, for example, saw large expansions of domestic and social programs in America, with a concomitant shift in the role of civic associations and in their dependence upon government. Likewise, the slowdown in federal social programs in the Reagan years had a major influence on civic associations, in both predictable and unexpected ways.¹³

13. While voluntary associations have always been a part of America's fabric, the sheer growth in number of associations over the last thirty-plus years speaks volumes and accentuates their influential status. In 1968, for example, the number of nonprofit organizations of national scope listed in the *Encyclopedia of Associations* totaled 10,200; in 2001, more than 22,000 national organizations were listed and more than 115,000 U.S. associations were identified with interstate, state, intrastate, city, or local scope or membership (*Encyclopedia of Associations* at <http://library.dialog.com/bluesheets/html/bl0114.html>). In addition, according to Stephen Macedo in "Constituting Civil Society: School Vouchers, Religious Nonprofit Organizations, and Liberal Public Values" (*Chicago Kent*

Two of the most important ways in which public policy influenced civic associations were legislated funding and attempts to regulate and control their membership. Membership defines an association and funding provides for its very existence. Indeed, the purpose of a civic association is often rooted in the origin of its financial support. Not surprisingly, then, the story of voluntary associations from 1945 to 1990 largely parallels federal spending patterns and government funding for nonprofits. Another important feature of this period is civil rights legislation and resulting court efforts to control the membership of voluntary associations.

Federal Funding and Unhealthy Dependence on Government

The period following World War II saw a dramatic change in the government-nonprofit relationship and the role of voluntary associations in society. The historic reluctance of the federal government to fund private organizations and the resistance of these associations to accepting public monies began to fade. During this postwar period, the federal government undertook a diversification of its own social agenda, launching new grant programs in education, social welfare (specifically, child welfare), and mental and public health.¹⁴

Indirect federal support for nonprofit associations rose dramatically. For example, the 1946 Hospital Survey and Construction Act, commonly known as the Hill-Burton Act, provided nonprofits with capital funding. More than \$4.6 billion in Hill-Burton grant funds and \$1.5 billion in loans have aided nearly

Law Review 75 [2000], 417, 442–43), there are 1.4 million nonprofit associations in the United States with total income estimated at nearly \$320 billion. Of the American workforce, 11 percent are employed in this sector.

14. Waldemar A. Nielsen, *The Endangered Sector* (New York: Columbia University Press, 1979), 12–18.

6,800 health-care facilities in more than 4,000 communities since enactment.¹⁵ The federal government also offered technical assistance to nonprofit organizations, as well as state and local governments, to reform and upgrade their programs and improve regulations and standards for health and welfare services. These were sweeping changes from the limited prewar government funding that aided nonprofit organizations.¹⁶

Even with greatly increased federal support, most nonprofit associations throughout the 1950s remained dependent upon private donations, endowment income, and fees and continued to see themselves as separate from the public sector. Generally, communities responded to social needs through an infusion of public funds, augmented by a specialized response from private associations.¹⁷

Nevertheless, both public and private social services in the late 1950s and early 1960s met with significant criticism. Activists charged that local hospitals, schools, and volunteer service associations were inefficient, unprofessional, and dehumanizing institutions. Furthermore, they accused private service agencies of having backward social attitudes, neglecting the poor and minorities in favor of the wealthy and middle class, and depriving residents of basic human rights.¹⁸

By the 1960s, the political climate had become conducive to a major expansion of the federal role in social programs, especially

15. The Hill-Burton Free Care Program, U.S. Department of Health and Human Services at <http://www.hrsa.gov/osp/dfcr/about/aboutdiv.htm>.

16. Steven Rathgeb Smith, *Civic Infrastructure in America: Government and the Nonprofit Sector*, Report from the Institute for Philosophy and Public Policy (summer 1998) at http://www.puaf.umd.edu/IPPP/summer1998/civic_infrastructure_in_america.htm.

17. See Nielsen, *The Endangered Sector*.

18. Don Eberly, "The Civil Society Debate: Developments and Prospects, an Institute for American Values Working Paper for the Convening Committee for the Council on Civil Society," Institute for American Values, Publication No. W.P. 53 (New York City: Institute for American Values, 1996), 22.

to President Lyndon Johnson's "Great Society" agenda, with its "war on poverty," major civil rights legislation, and new domestic priorities. Voluntary organizations began providing services that were, for the most part, unavailable prior to the 1960s. Examples include the Economic Opportunity Act, Head Start, the Elementary and Secondary Education Act, community residential programs for the developmentally disabled, outpatient services for the mentally ill, home care, shelters for domestic violence victims, and innovative programs for abused children. In addition, these new federal initiatives encouraged the growth of national advocacy organizations that, in turn, pressed for more funding of nonprofit service agencies.¹⁹

Public funding also caused these civic and nonprofit associations to focus increasing attention on government and public policy. The cultivation of private support and local community ties became secondary or, in some cases, unnecessary. Federal support diminished the pressure for local fund-raising, further limiting nonprofit efforts in building volunteer networks. Once established, these associations tended to protect their existing service niche rather than create ongoing networks of cooperation among public and private service agencies. Ironically, the very strength of these civic associations—their grassroots volunteerism—gave way to professional staffing and the pursuit and management of government grants.²⁰ In his case study of public sector politics, Samuel Beer observed:

19. "The Great Society" at <http://www.pbs.org/johngardner/chapters/4c.html>; Smith, *Civic Infrastructure in America*.

20. Steven Rathgeb Smith and Michael Lipsky, *Nonprofits for Hire, the Welfare State in the Age of Contracting* (Massachusetts: President and Fellows of Harvard College, 1993), 9; Timothy Conlan, *From New Federalism to Devolution* (Washington, D.C.: The Brookings Institution, 1998), 158; Kevin M. Brown et al., *Rhetorics of Welfare* (New York: St. Martin's Press, 2000), 4; Smith, note 17 above; Nielsen, *The Endangered Sector*. In the late 1970s, 95 percent of the budget of

The Great Society acquired a special character by its emphasis upon spending for services provided largely by state and local governments. . . . To a pronounced degree, there was a professionalization of reform. . . . The new programs drew heavily upon specialized and technical knowledge in and around the federal bureaucracy [and] enhanced [the] importance of scientifically and professionally trained civil servants at all levels of government.²¹

The growth in federal social spending slowed dramatically in the late 1970s as “the welfare state” in the United States and other advanced industrial nations was called into question.²² These concerns contributed to Ronald Reagan’s victory in the 1980 presidential election, providing him the opportunity on June 26, 1981, to enact the Omnibus Budget Reconciliation Act (OBRA). Following the Gramm-Latta II amendment, OBRA established nine new or revised block grants, consolidating or eliminating 139 categorical programs. This represented the first major wave of devolution of federal power to state and local governments. Not only were the number of federal aid programs reduced and consolidated into

the Federation of Jewish Philanthropies in New York City was derived from the government. Nielsen, *The Endangered Sector*, 18.

21. Samuel Beer, “The Adoption of General Revenue Sharing: A Case Study in Public Sector Politics,” *Public Policy* 24 (spring 1976), 160, 162.

22. Federal social welfare expenditures between 1950 and 1980 increased dramatically: Using a constant, official definition and constant dollars as the basis of comparison, health and medical costs were 6 times what they were in 1950; public assistance, 13 times; education costs, 24 times their cost in 1950; social insurance, 27 times; and housing, 129 times their cost (Charles Murray, *Losing Ground* [New York: Basic Books, 1994], 14). In the mid-1970s, the total outlays of private nonprofit organizations, excluding churches, were approximately \$80 billion; \$25 billion from private gifts and philanthropy; \$23 billion from government grants, contracts, and purchases of goods and services; and \$32 billion from fees, service charges, and endowment income (*Giving in America: Toward a Stronger Voluntary Sector*, Report of the Commission on Private Philanthropy and Public Needs [1975], 14).

block grants administered outside of Washington, D.C., but also funds for the programs were decreased by 25 percent.²³

Paradoxically, the selected cuts in the public sector—and the simultaneous demand for greater accountability for the expenditure of public funds—created many new opportunities for nonprofits, even as they imposed certain constraints and hard choices. States closed public facilities and transferred responsibilities to nonprofit agencies. Some states shifted the management of services such as child welfare and mental health to third-party, nonprofit (and, in some cases, for-profit) organizations. In response, many agencies adjusted their fund-raising strategies, increased fees, and partnered with for-profit organizations. In addition, they often absorbed losses in revenue with lower salaries, longer queues for service, and fewer personnel.²⁴

The Reagan cuts and devolution policies also created political ferment, prompting many groups to organize and to petition the government. Some of these organizations sought direct funding, but many were issue-oriented in nature and simply wanted to influence government policy. Overall, the competition for public and private funds increased sharply during this period because the number of nonprofit associations outstripped available resources. The increased competition for both public and private funds discouraged active cooperation among nonprofits and civic associations. Indeed, the fact that government funding for nonprofits had become a paramount concern itself constituted a major shift in the relationship between public policy and civic associations.²⁵

23. Conlan, *From New Federalism to Devolution*, 149.

24. Smith, *Civic Infrastructure in America*, 17.

25. Nielsen, *The Endangered Sector*, 14–21; Smith and Lipsky, *Nonprofits for Hire*, 10–11.

Anti-Discrimination Laws and Attempts to Regulate Membership

The expansionist Great Society agenda included civil rights legislation that, in turn, was followed by antidiscrimination laws at the state and local levels. Whether or not originally intended, these laws became tools by which public policy could regulate the membership of voluntary associations. Of course, the membership of a particular association largely defines its purposes, values, and goals. The Girl Scouts, for example, will want to limit their membership to girls, and specifically to girls who are committed to the traditions and values of the Girl Scouts. A religious charity or school may wish to hire only employees who are part of their faith heritage in order to perpetuate their values and continue to make their distinctive contribution. Requiring such associations to accept members who do not share their core commitments alters the values of the organization itself and erodes its distinctive contribution to the values of the larger society.

Historically, clubs and voluntary associations have been free to select members as they wish. Although the United States Constitution does not mention the right of association specifically, the right has generally been recognized as an essential complement to the freedoms of press, speech, assembly, and petition protected by the First Amendment.²⁶ Courts have concluded that the freedom to join with others in pursuing activities of mutual interest is necessary to make the First Amendment freedoms and guarantees “fully meaningful.”

Beginning in 1984 with the case of *Roberts v. Jaycees*,²⁷ however, the U.S. Supreme Court began to codify a series of limitations on the membership rights of civic associations. In that case, the all-

26. Nancy L. Rosenblum, *Membership and Morals* (New Jersey: Princeton University Press, 1998), 6.

27. 468 U.S. 609 (1984).

male Jaycees sued Minnesota, claiming that the state's Human Rights Act, which prohibited discrimination on the basis of sex in "places of public accommodation," violated their freedom of association. The U.S. Supreme Court disagreed, finding that Minnesota could require the Jaycees to admit women.

Rather than confirm a broad constitutional right to free association, the Court in *Roberts* identified two limited associational freedoms protected by the Constitution: freedom of "intimate association" and freedom of "expressive association." Intimate association is recognized as a "fundamental liberty" but its scope is quite narrow, including only relationships "that attend the creation and sustenance of a family-marriage; the raising and education of children; and cohabitation with one's relatives."²⁸ Such family relationships would not include a broad organization like the Jaycees. Expressive association involves the exercise of free speech and related First Amendment rights. In this case, however, the Court concluded that the presence of women as members would not alter the message the Jaycees sought to communicate.²⁹

Subsequent Supreme Court cases have continued to apply these same limits to the membership rights of civic associations. In *Board of Directors of Rotary International v. Rotary Club of Duarte* (1987),³⁰ the Court similarly held that the Unruh Act in California did not unconstitutionally forbid the exclusion of women because Rotary Clubs are neither intimate nor expressive associations. Sometimes the Court seems to go out of its way to avoid the associational issues altogether. In the recent case of *Good News Club v. Milford Central School* (2001),³¹ it held that a public school could not constitutionally open its facilities to other after-school clubs and programs while excluding a Christian club from

28. *Ibid.*, 619.

29. *Ibid.*, 627–28.

30. 481 U.S. 537 (1987).

31. 533 U.S. 98 (2001).

meeting. The Court's reasoning, however, was based strictly on freedom of speech considerations; indeed, freedom of association is not even mentioned.

A case involving membership rights of the Boy Scouts is often cited as upholding the right of civic associations to limit their membership, but even here the Supreme Court did not find a broader freedom of association, but rather concluded that the Boy Scouts' position on membership qualified as protected "expressive association." In *Boy Scouts of America v. Dale* (2000),³² the Court found that the application of New Jersey's public accommodation statute to require homosexual membership in the Scouts violated the First Amendment right of expressive association. The Court elaborated on the nature of expressive associations, noting that they need not be advocacy groups but must engage in "some form of expression, whether it be public or private."³³ By attempting to instill certain values in its members, the Scouts were deemed to be engaged in expressive activity. With Scout values such as "morally straight" and "clean" expressed in the Scout Oath and Law, the Court upheld the Scouts' position that homosexuality was inconsistent with their principles.³⁴

These membership cases are troublesome in several respects. For one thing, they undervalue the purely associational aspects of voluntary organizations, emphasizing heavily the speech and expression components. While courts have focused on the speech element of associations, the rights of assembly and petition would seem to provide equally valid bases for protecting associations. Associations do important things other than speak. Merely by coming together they may form opinions, exercise influence and have a favorable impact on public life, which courts have not adequately acknowledged. Even the wording of the First Amend-

32. 530 U.S. 640 (2000).

33. *Ibid.*, 648.

34. *Ibid.*, 649–50.

ment—that Congress may make no law abridging the freedom of speech, the freedom of the press, or the right of assembly and petition—implies that all of these rights are fundamental and that Congress should be cautious when it seeks to regulate them.

These cases also undervalue the importance of allowing civic associations to control their membership. As one observer recently noted:

A large body of research in the social sciences demonstrates that the ability of high social capital groups to choose their own members, free from any compulsion, is often a vital condition for cohesiveness and effectiveness of the groups as well as for the commitment of members to the group and their trust in each other. . . . [W]hen the government interferes with the selection of an association's members, the group's social capital often diminishes as a result.³⁵

Unless failure to achieve membership in a particular organization denotes some kind of second-class citizenship, the interest of voluntary associations to control their membership policies should prevail.³⁶ Indeed, if groups are not able to maintain some cohesiveness of membership, they are unlikely to agree on a set of values or foster any virtues. And they will not find their voices for free expression without such membership control.

In this area, it would seem that public policy is making the same mistake it has made elsewhere on diversity issues. Rather than allowing for a diversity of different kinds of associations—or educational institutions, for example—government seeks to require a diversity of members within each individual association.³⁷ This tends to dissipate the distinctive values and voice of each

35. Jason Mazzone, "Freedom's Associations," *Washington Law Review* 77 (2002), 639, 762–63.

36. Rosenblum, *Membership and Morals*, 112.

37. Michael W. McConnell, "The New Establishmentarianism," *Chicago Kent Law Review* 75 (2000), 453, 466.

association in favor of a kind of uniformity of association. There should be room in associational life, however, for “bonding” associations, where people of similar backgrounds and interests may assemble, as well as for the “bridging” groups that reach across different types of membership.

Other Governmental Impacts on Civic Associations

In addition to these larger effects on funding and membership, federal policy and legislation has had some indirect, and perhaps even inadvertent, effects on civic associations. For example, although nonprofits are not subject to taxes, tax laws have had an inhibiting effect upon these organizations. In some cases, tax laws have been used as a tool to justify regulation of membership. In other cases, nonprofits have been limited in the scope of their work by claims that some of their programs constitute unrelated business income and are therefore subject to taxation.

Property and zoning laws influence civic associations. In recent years, Congress has passed laws specifically protecting religious associations from governmental interference in their use of land. Even basic laws like the Americans With Disabilities Act may have a dramatic effect on civic associations, requiring them to make expensive accommodations. In many cases, these organizations do not have sufficient funding to meet all the requirements that government may impose.

With increasingly large professional staffs, civic associations must heed employment laws at all levels. Not only their membership but also the ability of civic associations to enjoy preferences in hiring has been affected by antidiscrimination laws and court decisions. Numerous cases raise the question of whether religiously

affiliated civic associations may prefer members of their faith group in hiring.³⁸

In sum, government limits civic associations in many indirect ways, “imposing regulations, meting out benefits like unemployment insurance, and acting in its ever-expanding capacities as proprietor, employer, educator, and patron.”³⁹ This creates an unfortunate climate in which civic associations are excessively hemmed in by the very entity which, in a healthy democracy, they are supposed to check. As one legal expert put it, “To remain free of regulation, civil society’s institutions must remain in government’s good graces. On the whole, they must rely on government’s willingness to refrain from regulating rather than being assured by constitutional law that government cannot regulate them.”⁴⁰

A New Model

Throughout the period of 1945 to 1990, civic associations adopted a new outlook on government. These previously independent, voluntary, grassroots associations began to look more and more to government for their funding and consequently their mission. At the same time, an increasingly active legislative agenda and a flood of litigation have combined to further limit the independence of civic associations. As Amitai Etzioni has said, “the enemy of the civil society . . . is the overbearing state.”⁴¹ During this period, state

38. See *Corporation of Presiding Bishops v. Amos*, 483 U.S. 327 (1987) and *EEOC v. Kamehameha*, 990 F.2d 458 (9th Cir. 1993). Compare *McClure v. Salvation Army*, 460 F.2d 553 (5th Cir. 1972), with *EEOC v. Pacific Press*, 990 F.2d 458 (9th Cir. 1993).

39. Rosenblum, *Membership and Morals*, 87.

40. Mark Tushnet, “The Constitution of Civil Society,” *Chicago Kent Law Review* 75 (2000), 379, 392–93.

41. Amitai Etzioni, “Law in Civil Society, Good Society and the Prescriptive State,” *Chicago Kent Law Review* 75 (2000), 355–56.

regulation has been overbearing and state funding has been seductive.

As a result of the focus of civic associations on government, a second model of the relationship among civic associations, public policy, and values has developed. The traditional model—in which civic associations, rooted in family and community values, both fashioned and checked public policy—still exists. But the huge growth of new associations as well as the restructuring of some of the old ones means that government is now actively shaping the direction of civil society.

Instead of civic associations acting as a check or balance on the state, they are more frequently instruments carrying out government's agenda. In this new model, nearly the reverse of the old, government is acting in a top-down fashion to determine the agenda of civic associations, rather than association members operating from the bottom-up to shape public policy. The driving force has often become funding availability and not membership. In light of these new realities, the ability of voluntary associations to create a distinctive environment, to pursue an independent agenda, and to make their distinctive contribution to democracy in America inevitably declines.

1990–Present:

In Transition to Yet Another Model

The past decades have witnessed continued change in the relationship between public policy and civic associations. Each president has sought to mold the model that emerged in the postwar period. At the same time, a new type of civic association has developed that takes as its primary agenda item influencing public policy and government on a specific issue. There is reason to worry that these changes will further erode the capacity of civic associations to provide ballast against instabilities of democratic political life.

President George H. W. Bush inherited the Reagan slowdown in social spending and devolution of programs from the federal government. Yet he seemed to have a slightly different vision of how this should be carried out. During the campaign, he spoke of a vision for government that was “kinder and gentler.” As president, he talked of seeing “a thousand points of light,” including both individuals and civic associations that were actively reaching out to help those in need. Bush not only recognized civic associations with awards, but also used the bully pulpit of the presidency to encourage citizens and groups to work together to help fellow citizens in ways that government, alone, could not.

Acknowledging at one point that “the era of big government is over,” President Bill Clinton also sought a place for civic associations in augmenting the federal agenda. The Charitable Choice legislation established a new collaboration between government and faith-based organizations. The original Charitable Choice authorization was part of the 1996 federal welfare reform law, and it has now been attached to numerous federal spending programs. Charitable Choice permits religious organizations that receive federal funds to retain their ability to hire on the basis of faith and makes it possible for the government to obtain services from religious organizations.⁴²

President George W. Bush has sought to implement an even more proactive relationship between federal programs and civic associations, especially ones that are religiously based. He has established an office of faith-based programs in the White House and has actively pushed a legislative agenda to release what he calls the “armies of compassion” resident in faith-based civic associations. In 2002, the Senate released its version of the president’s agenda, the Charity Aid, Recover, and Empowerment Act (CARE),

42. The Center for Public Justice, “Charitable Choice,” at [http://www.cpjustice.org/stories/storyReader\\$277](http://www.cpjustice.org/stories/storyReader$277).

addressing the “unlevel playing field” that faith-based organizations encounter when trying to obtain federal funds. The CARE Act also encourages charitable giving through tax incentives and supports initiatives targeted to “vulnerable” populations. It also sets forth provisions regarding the treatment of nongovernmental providers of social services.⁴³

The impact of these developments on citizens’ virtues and values is not yet clear. On one hand, bringing additional faith-based organizations into the social services mix would seem likely to increase the ability of civic associations to contribute a diversity of virtue and values, including traditional virtues and values, to public life. In that respect, it could be seen as an effort to strengthen the traditional model. On the other hand, the legislation makes it clear that faith-based organizations may contribute only services, and not their faith, in carrying out government-funded work. That line may be difficult for some associations to observe. And many leaders in the faith-based arena are reluctant to take the federal funding, fearing it may weaken their own values and independence. Clearly, this important redefinition of the relation between civic associations and the state is still being played out.

At the same time, yet another model has emerged. In many quarters, frustration with bureaucracy and nonresponsive policy players has led to the creation of civic associations that have a single-issue, political focus. In effect, these civic associations are formed for the purpose of influencing government or public policy with regard to one matter, from broader concerns such as campaign finance reform or the creation of an international criminal court to one ballot proposition in a single state. They are so active in governmental processes at all levels that, in order to distinguish

43. White House Office of Faith-Based and Community Initiatives at <http://www.whitehouse.gov/government/fbci/legislation.html>

them from elected representatives, they have come to be called NGOs, or nongovernmental organizations.

These new kinds of civic associations frequently decline to work through normal political processes. Instead, they form their own organizations and often design their own processes. The ease of entry into this domain is appealing. Whereas the traditional political path of change can be long, arduous, and disillusioning, hamstrung by red tape and watered down by compromise, the new politics of the nonprofit is streamlined. All you need is a cause, a 501(c)(3) organization, a membership list, and a good grant writer. The “cause” often is cloaked in language that meets the requirements for a federal grant. Voilà! The new nonprofit now has direct access in the political process for lobbying, political contributions, sponsoring ballot propositions, and the like.

Consider two examples, one domestic and one international. State ballot propositions have exploded along with these new NGOs. Originally designed as a populist option to allow the people to speak occasionally through direct democracy, ballot initiatives have now become a regular end-run around the legislative process. In California alone, there have been an astonishing 279 ballot propositions in the past 20 years, mostly for issues that the legislature should and normally does consider anyway.⁴⁴

Special interest groups have found it easier to sponsor and pass a ballot proposition than to get legislative action through the normal political processes. It was far easier for actor Arnold Schwarzenegger to form a civic association or nonprofit and get the people to vote in favor of devoting part of California’s education budget for after-school programs than to pass such a bill in the state legislature, where there is a huge deficit and priorities must

44. David Davenport, “Proposition Glut,” *San Francisco Chronicle* (November 2, 2002).

be balanced and paid for.⁴⁵ In 1998, nearly \$100 million was spent by Nevada gaming interests, among others, for a ballot proposition about gambling on Indian reservations. The organizations formed to raise money and run advertising for these single-issue propositions exemplify the new model of civic associations.⁴⁶

Similarly, such associations are flexing their political muscle on the international scene. Whereas diplomacy used to be by and between nation-states, NGOs are no longer in the hallways merely advising, rather they are now driving many treaty negotiations. In the recent development of the International Criminal Court, for example, and the Ottawa treaty banning land mines, NGOs played a primary role in establishing a process outside the normal nation-to-nation negotiation, in drafting language, lobbying delegates, and enacting the treaty.⁴⁷ Two Canadian political scientists who observed the leadership of NGOs in the development of the land mines treaty observed that the process was “inexplicable in the context of conventional international relations.”⁴⁸ NGOs active in international affairs have proliferated dramatically, at least quadrupling in the last decade.⁴⁹

What effect does this have on virtues and values? Interestingly, many of these single-issue associations present their case in moral, even moralizing, terms. But the goods are not the broader ones of participation, community spirit, and compromise offered by the traditional civic association, but very narrow ones that support the particular issue at hand. One supporter of the land mines treaty,

45. “Proposition 49,” KTVU News at <http://www.netelection.org/ktvu/Propositions/Prop49.asp>.

46. See David S. Broder, *Democracy Derailed* (New York: Harcourt, 2000).

47. David Davenport, “The New Diplomacy,” *Policy Review*, no. 17 (2002), 116.

48. Michael Dolan and Chris Hunt, “Negotiating in the Ottawa Process,” *To Walk Without Fear*, ed. Maxwell A. Cameron et al. (New York: Oxford University Press, 1998), 393.

49. Davenport, “The New Diplomacy,” 20.

for example, openly described the process used by NGOs as the “mobilization of shame.”⁵⁰

Indeed, part of the agenda of these new civic associations is to convert political issues into moral crusades, promoting absolutist positions that polarize the debate.⁵¹ Mainstream political actors generally take their positions based on outcomes, recognizing the need to compromise and find practical solutions. More radical participants, including many of these new NGOs, pursue change because the conduct they seek to regulate is good or bad in itself.⁵² The passionate single-issue voice is quite different from the broader role formerly played by civic associations.

Conclusion

The story of civic associations and their relationship to public policy and the qualities of mind and character on which democracy depends parallels the larger themes of this volume. America’s founders recognized that the civic virtues developed in what we have been calling civic associations. Alexis de Tocqueville, who saw the consequences of the loss of “core intermediaries” in the French revolution, emphasized the importance of America’s taking a different course.⁵³

When we shift to the present era, observers report a huge loss of those virtues and values in American public life. Daniel Yankelevich, a member of the Council on Civil Society, observed in 1996 that “public distress about the state of our social morality has reached nearly universal proportions: 87 percent of the public fear

50. Ibid., 21.

51. Raymond Tatalovich and Byron W. Daynes, *The Social Regulatory Process, Moral Controversies in American Politics* (New York: M. E. Sharpe, 1998), 259.

52. Theodore J. Lowi, “Forward,” *Moral Controversies in American Politics*, ed. Raymond Tatalovich and Byron W. Daynes (New York: M. E. Sharpe, 1998), XIX.

53. Tocqueville, *Democracy in America*.

that something is fundamentally wrong with America's moral condition," up from 76 percent just a year before. "In general, a widespread feeling of moral decline has sharply expanded within the public over the last two years, regardless of gender, age, race, or geographical area," according to Yankelovich. According to a Gallup Poll, 78 percent of the public rates "the state of moral values in the country" as either very weak or somewhat weak and about 76 percent believe that moral values have deteriorated in the past 25 years.⁵⁴ And the report, *A Call to Civil Society: Why Democracy Needs Moral Truths*, concluded by connecting moral decline to the weakening of civic associations: "[O]ur democracy is growing weaker because we are using up but not replenishing the civic and moral resources that make our democracy possible."⁵⁵

As this chapter has argued, however, it may not be only a decline in membership of civic associations but also a change in the relationship among civic associations and the state that requires closer examination. The first model of this relationship—civic associations fostering grassroots values—prevailed until the post-war period. Although not replaced, these traditional associations began, from the 1960s forward, focusing their agenda increasingly on government funding and responding to government regulation. More significantly, during this same period, a second model and a new generation of civic associations arose, one whose role was primarily defined by the carrying out of the government's social agenda. Its values came not from the grassroots level of its members, but from Washington. The vital roles of civic associations as a check on government and as an intermediary between people and government declined.

More recently, a third model of civic associations has appeared, with NGOs forming to influence government policy on specific issues. Although their work is often couched in the language of

54. The Council on Civil Society, *A Call to Civil Society: Why Democracy Needs Moral Truths* (New York: Institute for American Values, 1998).

55. *Ibid.*

values, these values are quite different. They are not the broad values of participation that make democracy as a whole work, but rather are the narrow values that support a particular point of view on a specific issue. As a result, public policy has become more contentious and less collaborative, and as E. J. Dionne argued in his classic *Why Americans Hate Politics*, this has resulted in great frustration with the political process.⁵⁶

To some degree, the style of this third, more confrontational model fits the nature of the baby-boomer generation that came of age in the 1960s. Studies suggest that the next generation of Americans will be quite different. Surveys show, for example, that today's college students are far less politically active than the baby-boomer generation, a sign to which many point with despair. But what is not much discussed is what this generation finds to be of greater priority: family and community service. When it comes to fostering virtues and values, family and community service (civic associations indirectly) may be the most important contributors.⁵⁷ In other words, some of their strength comes from those same grass-roots areas that fueled the traditional model of civic associations. With the need so great and the stakes so high, there is reason to press forward and consider public policies that will cultivate or at least not erode the forms of civic association that support democratic self-government.

56. See E. J. Dionne, *Why Americans Hate Politics* (New York: Simon and Schuster, 1991).

57. Higher Education Research Institute at UCLA's Graduate School of Education and Information Studies, "2001 CIRP Press Release: CIRP Freshman Survey" at http://www.gseis.ucla.edu/heri/01_press_release.htm; Linda J. Sax, Alexander W. Astin, William S. Korn, and Kathryn M. Mahoney, *The American Freshman: National Norms for Fall 2000* (Los Angeles: Higher Education Research Institute, UCLA, 2000). Results from the "2001 Freshman Survey" recorded all-time high volunteerism rates with 82.6 percent of incoming freshmen reporting frequent or occasional volunteer work, compared with a low of 66 percent in 1989. According to the "2000 Freshman Survey," 72.7 percent ranked "raising a family" as important and only 17.9 percent of freshmen ranked "influencing a political structure" as important.