CIVIC RENEWAL AND THE REGULATION OF NONPROFITS

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INTRODUCTION

Ever since John F. Kennedy urged Americans to "ask not what your country can do for you—ask what you can do for your country,"[1] public figures and private citizens alike have expressed concern about the level of civic commitment in the United States. In the view of many, civic life is an untapped, or insufficiently tapped, resource for addressing many of America's most serious ills, whether political, social, economic, or even medical. If you were to ask these commentators about the current condition of civic life in America, you would get a wide assortment of views as to its strengths and weaknesses.[2] And if you were to ask about the

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[1] President John F. Kennedy, Inaugural Address (Jan. 20, 1961), *available at* http://www.bartleby.com/124/pres56.html (last visited Mar. 14, 2004).

[2] The most well known and thorough argument in support of the view that civic life needs dramatic improvement because it has declined significantly in the last three decades is developed in ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF COMMUNITY (2000) [hereinafter BOWLING ALONE] (expanding on a previous article with a similar name: Robert D. Putnam, *Bowling Alone: America's Declining Social Capital*, 6 J. DEMOCRACY 65 (1995) [hereinafter *Bowling Alone*]). *See also* CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL (Robert K. Fullinwider ed., 1999) [hereinafter CIVIL SOCIETY]; DON E. EBERLY, AMERICA'S PROMISE: CIVIL SOCIETY AND THE RENEWAL OF AMERICAN CULTURE (1998) [hereinafter AMERICA'S PROMISE] (describing the decline in social capital). For arguments at the opposite end of the spectrum, see MICHAEL SCHUDSON, THE GOOD CITIZEN: A HISTORY OF AMERICAN CIVIC LIFE 294 (1998) [hereinafter GOOD CITIZEN] (concluding that citizenship in America has added new forms but has not declined); Everett C. Ladd, *The Data Just Don't Show Erosion of America's "Social Capital,"* 7 PUB. PERSP. 1 (1996) [hereinafter *Data Just Don't Show Erosion*] (arguing that the level of civic participation has actually increased); James A. Morone, *The Corrosive Politics of Virtue*, 26 AM. PROSPECT 30, 36–37 (1996) [hereinafter *The Corrosive Politics of Virtue*] (arguing that we do not have a moral crisis, a divorce culture, or a crime rate higher than it was in 1970). For an overview of the literature on all sides of this issue, see Dietlind Stolle and Marc Hooghe, Emerging Repetoires of Political Action? A Review of the Debate on Participation Trends in Western Societies, April 13-18, 2004 (on file with the author).

reasons for the strengths and weaknesses of civic life in America, you would also elicit a considerable array of responses.[3]

If, however, you were to ask about the importance of participation in voluntary associations[4] for producing, maintaining, or strengthening the quality of civic life, you would discover a substantial consensus that, for civic life to be strong, individuals need to take an active role in governance, and that participation in voluntary associations is one of the principal methods for assuring an active citizenry of this kind.[5] Consequently, a significant part of the civic renewal debate revolves around issues such as the nature of voluntary associations, the reasons people join them, the bonds they foster among members, and the ways in which such associations promote the well-being of their communities. These discussions are both important and pervasive.

The purposes and activities of many such associations are highly regulated by provisions of the Internal Revenue Code (the "Code")[6] that developed without regard to the civic concerns of the last several decades. This Article examines to what extent and in what respects the Code influences the civic potential of voluntary associations. Several obstacles threaten any attempt to evaluate the tax law's impact on civic engagement. First, civic renewal theory is far from uniform. Rather, it is animated by a variety of sometimes competing goals and understandings of the nature of civic well-being as well as by differing views about the nature of groups, the proper role of government, and the potential for fruitful cooperation between the private and public sectors. Second, for many civic renewal advocates, the most salutary effects of broadening and deepening participation in voluntary associations stem from their

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[3] *See infra* Part I.

[4] For the meaning of this phrase, *see infra* Part II.A and note 310.

[5] *See* ROBERT D. PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY 89-91 (1993) [hereinafter MAKING DEMOCRACY WORK]; Benjamin R. Barber, *Clansmen, Consumers, and Citizens: Three Takes on Civil Society*, in CIVIL SOCIETY, *supra* note 2, at 9, 19–22, 23–24; John Brehm and Wendy Rahm, *Individual-Level Evidence for the Causes and Consequences of Social Capital*, 41 AMER. J. POL. SCI. 999, 1017 (1997); William A. Schambra, *Is There Civic Life beyond the Great National Community?*, in CIVIL SOCIETY, *supra* note 2, at 89, 94-96, 107–09, 117–19; Theda Skocpol & Morris P. Fiorina, *Making Sense of the Civic Engagement Debate, in* CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY 1, 4-5, 9-10, 13-15 (Theda Skocpol & Morris P. Fiorina eds. 1999) [hereinafter CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY]; SIDNEY VERBA, KAY LEHMAN SCHLOZMAN & HENRY E. BRADY, VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS 112–19, 309–13, 319–20, 333, 336, 338, 369–90 (1995) [hereinafter VOICE AND EQUALITY]; PETER L. BERGER & RICHARD JOHN NEUHAUS, TO EMPOWER PEOPLE (1977), *reprinted in* TO EMPOWER PEOPLE: FROM STATE TO CIVIL SOCIETY 157–64, 194–201 (Michael Novak, ed. 2d ed. 1996). For an overview of the literature linking voluntary associations to positive civic outcomes, see Dietland Stolle, *The Sources of Social Capital*, in GENERATING SOCIAL CAPITAL: CIVIL SOCIETY AND INSTITUTIONS IN COMPARATIVE PERSPECTIVES 19, 22–28 (Marc Hooghe and Dietland Stolle, eds 2003) [hereinafter GENERATING SOCIAL CAPITAL].

[6] All references to the "Code" are to the Internal Revenue Code (2000).

role in creating generalized interpersonal trust and the inclination of association members to cooperate with people outside their circle of friends and acquaintances in order to improve the surrounding communities.[7] However, the provisional empirical findings discussed in this Article suggest that the hoped-for ripple effects of participation in voluntary associations have been greatly overstated.[8] Although the empirical research examining the effects of participation in associations on members is still in an embryonic state, most of the available evidence suggests that the attitudes and habits acquired by people prior to joining an association constitute the larger part of the *causal* explanation for many of the well-known positive *correlations* between those who participate in voluntary associations and those who display a high level of civic engagement.

In response to these difficulties, this Article begins by identifying and analyzing four different civic renewal theories, highlighting their different assumptions and goals and connecting these features of the theories to the character of the recommendations for civic reform made by each.[9] Based upon an analysis of the empirical data, the Article then seeks to clarify important limits to the productive uses of voluntary associations to achieve the goals advanced by each of the four theories.[10] Finally, the Article applies the analysis to the Code's regulation of exempt organizations, both to clarify the ways in which existing tax rules further or undermine one or more civic goals and to recommend changes to make tax law more effective in promoting the goals that it can realistically advance.[11]

Part I distinguishes and elaborates four perspectives on civic health that, alone or in combination, inspire most discussions about civic renewal. These four perspectives emphasize as the core attributes of civic health: (1) cooperation, (2) self-governance, (3) representative institutions, and (4) the moral character of the community. This Part elaborates the idea of civic well-being developed by each perspective, contrasts the four perspectives along several dimensions, and identifies areas in which their priorities may be different or their policies in conflict. I argue that both the cooperation and representative institutions perspectives are consistent with political theories predicated upon the priority of the private, self-interested purposes of individuals over societal or communal claims. Both seek to invigorate civic life to promote such interests more accurately and effectively. However, the immediate agendas of the two perspectives are likely to differ because of the belief on the part of the

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[7] *See infra* Part I.A.

[8] *See infra* Part II.

[9] *See infra* Part I.

[10] *See infra* Part II.

[11] *See infra* Part III.

representative institutions perspective that inequities in political influence have to be tackled directly and urgently, rather than indirectly and incrementally, through the medium of greater participation.

In contrast, the self-governance and community morality perspectives are each predicated upon substantive assumptions about the attributes of individual and societal well-being rather than relying exclusively on individuals' preferences as the baseline for public policy decisions. For the self-governance perspective, individual autonomy and reasoned self-governance are critical ingredients of civic health. For the community morality perspective, a commitment to moral and public-spirited civic norms and practices is a necessary, and often overlooked, prerequisite of civic well-being. Although many policies would be endorsed by proponents of both perspectives, this Article discusses potential conflicts between them arising from the circumstance that the former emphasizes reasoned decision making, whereas the focus of the latter is on the moral character of individuals and communities.

Part II reviews the empirical findings of social scientists to assess the degree to which and ways in which voluntary associations contribute to the goals of the four perspectives. In brief, active participation in associational life may well promote coordinated and effective collective action on behalf of a group's specific goals and, under certain conditions, may lead members to engage in additional acts of civic engagement. In contrast to the expectation of civil society theorists, associations typically do not seem to generate norms of cooperation among their members that are generalized to persons outside the group. Rather, the primary reason for their impact appears to be that associations provide occasions for the recruitment and mobilization of like-minded individuals and are themselves vehicles that enable such groups to engage in effective group activity or influence others who can help them. I thus question the accuracy of portraying associational life as a critical potential source of increased public spiritedness or of the attributes necessary for reflective self-governance, as contrasted with their much better documented utility for enhancing cooperation and effective collective action on behalf of the interests of their members of underrepresented groups. The alternative for those who see self-governance or community morality as indispensable to civic well-being is to recognize that these goals are unlikely to be the by-product of participation in associations and to concentrate on nurturing the civic values critical for their civic goals in other areas of familial and social life.

Part III examines the regulation of exempt organizations under federal income tax law. This Part evaluates existing and proposed tax rules regulating the lobbying and electoral activities of exempt organizations in light of both the goals of the four perspectives on civic health dis-

cussed in Part I and the empirical findings described in Part II. This analysis highlights tax law provisions likely to further the goals of a particular perspective while simultaneously posing a threat to the goals of one or more of the other perspectives. I argue that legislative and regulatory tax rules are most suited to supporting the cooperation and representative institutions perspectives, whereas the objectives of the self-governance and community morality perspectives are the least amenable to tax law interventions. Part III and the Conclusion offer several suggestions for changes in the Code and tax regulations to achieve one or more civic purposes, but cautions that many of the most beneficial improvements are not amenable to regulatory interventions and must await widespread changes involving the acceptance of civic norms.

I. PERSPECTIVES ON CIVIC HEALTH

The expression "civic life" can be used in several ways. It can be defined narrowly to refer to direct involvement in politics (such as voting, working for political parties or committees, attending political rallies, and registering or leafleting voters) and indirect involvement (such as reading newspapers or having discussions about public issues). Construed as engagement in the political process or political institutions, "civic life" is distinct from "civil life," which is commonly understood to include group activity, whether of *ad hoc* or informal associations, on the one hand, or formal organizations, on the other. In general, commercial entities are not included within the purview of civil society.[12] In addition, some commentators consider the family as too private an association to be part of civil society.[13] This exclusion, however, is controversial, especially among those who are concerned about the moral dimension of civic life.[14]

The term "civic" can also be used more broadly to include both the political and civil domains. The following discussion will use civic in this generic sense. "Civil" will be used in contradistinction to both political and economic, but it will include family life. The phrases "civic decline," "civic renewal," "civic engagement," and "civic disengage-

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12 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 22–23 (arguing that most economic entities lack the personal loyalty, spirit of cooperation, or capacity for self-sacrifice associated with civil society). *But see* FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES AND THE CREATION OF PROSPERITY (1995) [hereinafter TRUST].

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

14 For a review of the civil society literature that classifies the family as a voluntary association and part of civil society, see Jean Cohen, *Trust, Voluntary Association and Workable Democracy: The Contemporary American Discourse of Civil Society*, *in* DEMOCRACY AND TRUST 208, 232–33 (Mark E. Warren ed., 1999) [hereinafter *Trust, Voluntary Association and Workable Democracy*] (stating that family is widely considered to be the most important voluntary association in civil society).

ment" will thus be used with reference to the entire spectrum of social, cultural, civil, and political aspects of communal life, without differentiating among the component parts.

A. THE COOPERATION PERSPECTIVE

Several discussions of civic renewal converge in the view that many economic[15] and social[16] problems persist primarily due to the failure of individuals, groups, and communities to engage in cooperative and effective collective action to solve them, although commentators posit different foundational reasons for this failure. Robert Putnam, a champion of this view,[17] attributes the failure to a decline in "social capital,"[18] a term

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[15] The primary economic ills discussed are poverty, child poverty, unemployment, and underemployment. Although poverty and child poverty appeared to be at historic lows in the United States in 2000, there were still more than 30 million people, many of them children, still living in poverty. The downward trend reversed after 2000, and poverty increased during the last two years. BERNADETTE D. PROCTOR & JOSEPH DALAKER, U.S. DEP'T OF COMMERCE, U.S. CENSUS BUREAU, POVERTY IN THE UNITED STATES: 2002, at 1 (2003) (showing that 1.7 million more people were in poverty in 2002 than in 2001, with African-Americans hardest hit), *available at* http://www.census.gov/prod/2003pubs/p60-222.pdf (last visited Apr. 2, 2004). For the view that the decline in poverty was overstated in the first place, see Robert Kuttner, Editorial, *The Boom in Poverty*, BOSTON GLOBE, Mar. 21, 1999, at E7 (arguing that homelessness and hunger have increased and the real purchasing power of the poor was less in 1997 than in 1979 despite the improvement in poverty reported in the media).

[16] Social problems range from the high rates of divorce and crime to the persistence of racial discrimination into the twenty-first century. Although the rate of crime, including violent crime, improved in the 1990s, the absolute levels of crime are excessive even after the decline: between 1960 and 1998, the total crime index increased almost threefold and the violent crime rate increased more than 350%. *See* U.S. DEPT. OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Estimated Number and Rate (Per 100,000 Inhabitants) of Offenses Known to Police*, FBI SOURCEBOOK, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS ONLINE 275-76 (2002) [hereinafter FBI SOURCEBOOK], *available at* http://www.albany.edu/sourcebook/1995/pdf/t3109.pdf (last visited Apr. 2, 2004). Despite the disappearance of legal obstacles to citizenship in the United States and the apparent nationwide consensus about the fundamental equality of races, minorities continue to experience discrimination daily, e.g., when they buy a home, purchase a car, drive a car, or try to hail a cab. *See, e.g.*, Diana B. Henriques, *Review of Nissan Car Loans Finds That Blacks Pay More*, N.Y. TIMES, July 4, 2001, at A1; Editorial, *Taxi Discrimination*, N.Y. TIMES, Nov. 12, 1999, at A32.

[17] *See* PUTNAM, MAKING DEMOCRACY WORK, *supra* note 5, at 140–41, 148–49; Putnam, *Bowling Alone*, *supra* note 2, at 67; Robert D. Putnam, *The Prosperous Community: Social Capital and Public Life*, 13 AM. PROSPECT 35, 35–37 (1993) [hereinafter *Prosperous Community*]; Robert D. Putnam, *Tuning In, Tuning Out: The Strange Disappearance of Social Capital in America*, 28 PS: POL. SCI. & POL. 664, 666 (1995) [hereinafter *Tuning In, Tuning Out*].

[18] PUTNAM, BOWLING ALONE, supra note 2, at 287. The belief that social capital has declined is based largely on a comparison of national survey findings in the 1960s and 1970s with those in the 1990s. The measurement of social capital was based upon the General Social Survey question: "Generally speaking, would you say that most people can be trusted, or that you can't be too careful in dealing with people?" Putnam, *Tuning In, Tuning Out*, *supra* note 17, at 681 n.3. *But see* Dora L. Costa & Matthew E. Kahn, *Understanding the Decline in Social Capital, 1952-1998*, at 33 (National Bureau of Econ. Research, Working Paper No. 8295, 2001) (finding a minimal decrease in some measures of volunteering during the last three decades of the twentieth century, a slightly larger decrease in the probability of holding a membership in an association, and a large decline in the probability of entertaining at home),

often used as a shorthand for a cluster of relationships among members of a community that motivate how they behave toward and with one another, the expectations they have of one another, and the range of attitudes, feelings, or bonds that account for these relationships, behaviors, and expectations.[19] Authors who believe in the importance of social capital for civic health argue that it makes collective action both more likely and more efficient because, in the presence of social capital, people cooperate with one another based upon trust rather than the threat of legal or other formal sanctions.[20] The lack of social capital, in contrast, results in collective action and free rider problems and, relatedly, to excessive reliance on government and public entities to solve community problems.[21] For example, economists have observed that economic markets that need to police compliance are less efficient than those with high levels of interpersonal trust because it is expensive for participants in

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available at http://www.nber.org/papers/w8295.pdf (last visited Apr. 2, 2004); Pamela Paxton, *Is Social Capital Declining in the United States? A Multiple Indicator Assessment*, 105 AM. J. SOC. 88, 104, 114–16, 121–22 (1999) [hereinafter *Is Social Capital Declining?*] (arguing that social capital can be disaggregated into interpersonal trust and associational activity, that the level of associations remains unchanged, and that trust in specific institutions has declined but the general level of trust in institutions has not). For a critique of the assumption that answers to the survey question quoted are reliable indicators of people's "disposition . . . to be trusters or distrusters," see Kenneth Newton, *Trust, Social Capital, Civil Society, and Democracy*, 22 INT'L POL. SCI. REV. 201, 203 (2001) (arguing that trust is not "a generalized personality trait" and that different forms of social and political trust should be distinguished).

19 On the meanings of social capital, see JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 300–21 (1990); JANE JACOBS, THE DEATH AND LIFE OF GREAT AMERICAN CITIES 138 (1961) (stating that continuity in a neighborhood's networks is necessary because the "networks are a city's irreplaceable social capital"); Andrew Greeley, *Coleman Revisited: Religious Structures as a Source of Social Capital*, 40 AM. BEHAV. SCI. 587, 587–90 (1997); Kenneth Newton, *Social Capital and Democracy in Modern Europe*, *in* SOCIAL CAPITAL AND EUROPEAN DEMOCRACY 3, 3–8 (Jan W. van Deth et al. eds., 1999); Paxton, *Is Social Capital Declining?*, *supra* note 18, at 91–97; Dietlind Stolle & Jane Lewis, *Social Capital—An Emerging Concept*, *in* KEY CONCEPTS IN GENDER AND EUROPEAN SOCIAL POLITICS 195 (B. Hobson et al. eds., 2002). For a critique of the use of the term by Putnam and others, see Michael W. Foley & Bob Edwards, *Escape from Politics? Social Theory and the Social Capital Debate*, 40 AM. BEHAV. SCI. 550, 550–54 (1997).

20 *See, e.g.*, Robert Wuthnow, *The Role of Trust in Civic Renewal*, *in* CIVIL SOCIETY, *supra* note 2, at 209–10; Kenneth Newton, *Social Capital and Democracy*, 40 AM. BEHAV. SCI. 575, 576 (1997).

21 *See* Edward L. Glaeser, *The Formation of Social Capital*, *in* THE CONTRIBUTION OF HUMAN AND SOCIAL CAPITAL TO SUSTAINED ECONOMIC GROWTH AND WELL-BEING: INTERNATIONAL SYMPOSIUM REPORT 381, 383 (John F. Helliwell ed., 2001) [hereinafter CONTRIBUTION OF HUMAN AND SOCIAL CAPITAL], *available at* http://www.oecd.org/dataoecd/5/17/1824983.pdf (last visited Apr. 2, 2004); PUTNAM, BOWLING ALONE, *supra* note 2, at 288; Claus Offe, *How Can We Trust Our Fellow Citizens?*, *in* DEMOCRACY AND TRUST, *supra* note 14, at 42, 45; Eric M. Uslaner, *Producing and Consuming Trust*, 115 POL. SCI. Q. 569, 574 (2000) (stating that "[g]eneralized trust leads people to get involved in their communities, even if they don't expect reciprocity"). *See also* James S. Coleman, *Social Capital in the Creation of Human Capital*, *in* ORGANIZATIONS AND INSTITUTIONS, 94 AM. J. SOC. S95, S118 (Supp. 1988) (arguing that because social capital is itself a public good, subject to free rider problems, it typically emerges as a "by-product[i] of other activities").

economic transactions to "protect themselves from being exploited" by writing contracts "specify[ing] every possible contingency," monitoring "partners, employees and suppliers," and seeking redress in the courts rather than through negotiation.[22] Comparative statistics from several countries reveal a positive correlation between economic and social development, on the one hand, and a country's traditions of trust and cooperation, on the other.[23] Based upon such data, Francis Fukuyama, an economist and social theorist, argues that Americans today risk losing their economic prosperity because of certain intellectual trends and cultural developments that have lessened people's spontaneous feelings of trust for one another.[24]

Other civic renewal advocates attribute an important part of the fragility or ineffectiveness of civic life in America today to the fact that large numbers of people do not participate in decisions that determine the conditions of their everyday lives, relying instead upon government officials, government institutions and government-funded institutions, and other outsiders to provide for their well-being. They trace this situation primarily to the expansion of the welfare state in the second half of the twentieth century.[25] The welfare state, according to these authors, failed in its stated goal of eliminating poverty and its consequences, such as hunger, bad or non-existent healthcare, inferior education, and substandard housing.[26] More insidiously, these critics argue, it has altered the attitudes and behaviors of welfare recipients in ways that reinforce a cycle of poverty, *e.g.*, by creating expectations of entitlements and providing incentives for economic dependency and political passivity.[27]

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22 Stephen Knack, *Trust, Associational Life and Economic Performance*, *in* CONTRIBUTION OF HUMAN AND SOCIAL CAPITAL, *supra* note 21, at 172, 173; Stephen Knack & Paul J. Zak, *Building Trust: Public Policy, Interpersonal Trust, and Economic Development*, 10 SUP. CT. ECON. REV. 91 (2002). *See also* FUKUYAMA, TRUST, *supra* note 12, at 27, 51, 151, 310–11.

23 *See generally* FUKUYAMA, TRUST, *supra* note 12 (arguing that the prosperity in the United States, Germany, and Japan is a consequence of the three countries' strong civic traditions as compared with the less prosperous economies of China, France, and Italy, which have less robust civic traditions).

24 *See id.* at 51; *see also infra* note 37. Fukuyama uses the phrase "spontaneous sociability," a generalized form of trust, to describe people's willingness "to form new associations and to cooperate within the terms of reference they establish." *Id.* at 27.

25 *See* Michael J. Horowitz, *Law and the Welfare State*, *in* TO EMPOWER PEOPLE: FROM STATE TO CIVIL SOCIETY 67, 68–71 (Peter L. Berger & Richard John Neuhaus eds., 2d ed. 1996) [hereinafter TO EMPOWER PEOPLE]; CHARLES MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, 1950-1980 178–91 (1984).

26 *See* MURRAY, LOSING GROUND: AMERICAN SOCIAL POLICY, *supra* note 25, at 135.

27 Some critics have also argued that welfare benefits encouraged the increase in unwed mothers and fatherless homes. Given the statistical predictions of impoverished life chances for children raised in single parent homes (all other things being equal), this ripple effect of welfare benefits, if true, would be among the most destructive consequences of the welfare state because of its intergenerational consequences. For the contrary view, namely that wel-

Civic decline has also been traced to what some civic renewal advocates refer to as the "therapeutic state." As it is used in the civic renewal literature,[28] the term refers to the proliferation of therapeutic professionals and the increasing tendency to explain or justify behavior in psychological terms.[29] Critics believe that these developments have contributed to a "culture of narcissism and self-indulgence"[30] and that the medical metaphor which provides the conceptual foundation for the legitimacy of the therapeutic state undermines people's sense of responsibility for their actions and even for their situation in life.[31] When used properly, therapeutic interventions and attitudes have the potential to motivate people to take control of, and assume responsibility for, their own behaviors. When therapeutic insights are misused, however, the result may be to deprive people of a moral compass or erode their sense of personal responsibility for their actions or the quality of their lives.[32]

Some civic renewal advocates have linked the contemporary lack of civic engagement to the frequent and excessive regard for the opinions of experts, even in situations where the judgments of citizens may be more useful.[33] This deference to experts dates to the Progressive era,[34] when

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fare benefits have not been shown to encourage illegitimacy, see Charles Murray, *Does Welfare Bring More Babies?*, 115 PUB. INT. 17 (1994).

28 The phrase "therapeutic state" was initially coined in response to the growing practice of the medical and other professions to characterize socially undesirable or illegal behaviors as products of mental illnesses with organic (brain) causes. *See* THOMAS S. SZASZ, THE THERAPEUTIC STATE: PSYCHIATRY IN THE MIRROR OF CURRENT EVENTS 13–14 (1984). For Szasz, this tendency arose, in part, to lessen the severity of criminal sanctions for such behaviors and "to expand the scope of noncriminal social controls (to compensate for the inadequacy of criminal sanctions as a means of controlling distressing conduct, such as depression)." *See* Thomas Szasz, *Myth of Mental Illness*, 2 ENCYCLOPEDIA OF MENTAL HEALTH 743, 745 (1998).

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

30 *See* JAMES L. NOLAN, JR., THE THERAPEUTIC STATE: JUSTIFYING GOVERNMENT AT CENTURY'S END 1–21 (1998) [hereinafter THERAPEUTIC STATE]e

31 These critics single out members of the therapeutic professions who encourage their clients to see their situations or problems as caused by illegitimate familial, institutional, or moral authorities *See id.* at 2–4. *See also id.* at 15–17; William A. Schambra, *By the People: The Old Values of the New Citizenship*, 69 POL'Y REV. 32 (1994) [hereinafter *By the People*] (deploring the assumption that people are "helpless, pathetic victims of social forces that are beyond their understanding or control").

32 *See* Derek L. Phillips, *Authenticity or Morality?*, *in* THE VIRTUES: CONTEMPORARY ESSAYS ON MORAL CHARACTER 23, 27 (Robert B. Kruschwitz & Robert C. Roberts eds., 1987). In addition, when superficial versions of therapeutic concepts and strategies come to permeate popular culture, as they do in many parts of the U.S. today, the potential for their misuse is magnified because such concepts derive from and perpetrate a questionable theory of human identity. *See id.* at 34.

33 *See, e.g.*, Michael S. Joyce & William A. Schambra, *A New Civic Life*, *in* TO EMPOWER PEOPLE, *supra* note 25, at 11, 28.

34 For the ideas expressed in this and the next paragraph, *see id.* at 15–18; William A. Schambra, *Progressive Liberalism and the American "Community,"* 80 PUB. INT. 31, 36 (1985) [hereinafter *Progressive Liberalism*]. *See also* THOMAS BENDER, COMMUNITY AND SOCIAL CHANGE IN AMERICA 35–36 (1978). For a concise description of the ascendancy of rule by experts as a public policy ideal and as a political reality, see SCHUDSON, GOOD CITIZEN,

the judgments of experts informed by the sciences, especially the social sciences, came to be valued over judgments grounded in experience and common sense.[35] At the same time, the Progressives entertained the hope that experts would govern in the national interest, in contrast to ordinary citizens, who are too uninformed, disorganized, or selfish to govern properly, or too timid to counter the influence and self-serving interests of others, particularly powerful corporations.[36] The theoretical basis for these developments is attributed to the contemporary expansion of rights doctrines,[37] the preference for solutions involving big, centralized government,[38] or the ascendancy of the idea of a national community that vies with local communities for citizens' loyalty.[39]

Whatever their view of the cause of the decline, many civic renewal advocates concerned with civic passivity believe that increases in people's participation in voluntary associations will be useful, even critical, to counter the collective action problems America currently faces. Viewed from this perspective, civic participation is sought instrumentally, for the sake of enabling private parties to work together to improve living conditions in their neighborhoods, cities, regions, and states.[40]

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supra note 2, at 211–19, 219–23 (describing the efforts made during the period between the two world wars to preserve face-to-face communities).

35 *See* Joyce & Schambra, *A New Civic Life*, *supra* note 33, at 20.

36 *See id.* at 11, 14, 15–18. *See also* Richard Hofstadter, *The Meaning of the Progressive Movement*, *in* THE PROGRESSIVE MOVEMENT 1900-1915, 11, 14 (Richard Hofstadter ed., 1963). The national government was also expected to facilitate social justice, for example, by redistributing national wealth and income through a progressive tax system. Joyce & Schambra, *A New Civic Life*, *supra* note 33, at 14.

37 *See*, e.g., FUKUYAMA, TRUST, *supra* note 12, at 314–16 (arguing that American's uncompromising "rights-based individualism" and "rights culture" are greater threats to a healthy civil society that is the welfare state). *See also* MARY ANN GLENDON, RIGHTS TALK: THE IMPOVERISHMENT OF POLITICAL DISCOURSE 5 (1991) (asserting that the entrenchment of rights doctrine in America is one reason for the weakening of local government, political parties, and political participation since World War II).

38 *See* MICHAEL TANNER, THE END OF WELFARE: FIGHTING POVERTY IN THE CIVIL SOCIETY 2 (1996); DAVID FRUM, DEAD RIGHT 4 (1994).

39 *See* William A. Schambra, *Is There Civic Life Beyond the Great National Community?*, *in* CIVIL SOCIETY, *supra* note 2 [hereinafter *Beyond the Great National Community*] (describing Herbert Croly's call for a genuine national community); Joyce, *On Self-Government*, *supra* note 29, at 43; Schambra, *Progressive Liberalism*, *supra* note 34, at 33–34, 37 (arguing that the idea of a national community also inspired the presidencies of Franklin Roosevelt and John F. Kennedy and reached its heyday with the programs proposed by Lyndon Johnson). By "national community," these two authors do not mean simply the existence of a strong national government. Rather, they are referring to the idea popularized by Progressives at the end of the nineteenth and beginning of the twentieth century in America of a community at the national level that mirrors—and rivals— small, local communities in demanding citizens' sense of belonging, loyalty, and sacrifice.

40 Not all analysts concerned with the impoverishment of civic life agree that the federal government and its policies are the primary cause of civic decline or that civic decline can be reversed by eliminating big government. *See* Don E. Eberly, *Building the Habitat of Character*, *in* THE CONTENT OF AMERICA'S CHARACTER: RECOVERING CIVIC VIRTUE 41 (Don E. Eberly ed., 1995) [hereinafter CONTENT OF AMERICA'S CHARACTER]; EBERLY, AMERICA'S

Cooperation perspective authors have been at pains to explain how voluntary associations impact collective action problems. In some formal and informal voluntary associations, members may be willing to expend time, energy, and other resources because of their belief in the power of pooled group resources, peer group pressures, acceptance of group norms of cooperation, the visibility of each member's conduct, the desire for approval or respect within the group, the reluctance to disappoint other members, experience with or knowledge about others in the group suggesting that they will not defect, or other motives deriving from the internal dynamics of small groups.[41] However, the success of civic renewal also depends upon cooperative action between and among groups of varying sizes and among individuals in communities too large for all members to know, or know about, one another directly or indirectly. These settings pose different challenges for effective collective action than do small groups because of the need for people to cooperate with strangers in situations that lack the motivational factors common in small group dynamics.[42]

Robert Putnam and other theorists argue that in-group bonds and attitudes will develop into generalized cooperative dispositions and behaviors. Putnam's account of the manner in which participation in voluntary associations contributes to the genesis of cooperation and well-being is instructive.

> [S]ocial capital undergird[s] good government and economic progress[.] First, networks of civic engagement foster sturdy norms of generalized reciprocity: I'll do this for you now, in the expectation that down the road you or someone else will return the favor. "Social capital is akin to what Tom Wolfe called the 'favor bank' in

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PROMISE, *supra* note 2, at 66–67; John J. Dilulio, Jr., *The Lord's Work: The Church and Civil Society*, in COMMUNITY WORKS: THE REVIVAL OF CIVIL SOCIETY IN AMERICA 50, 55–56 (E.J. Dionne, Jr. ed., 1998) [hereinafter COMMUNITY WORKS] (citing Lester M. Salamon, Sen. Daniel Coats, and William J. Bennett, who argue that government and non-government sectors must work together).

41 *See* Jack Knight, *Social Norms and the Rule of Law: Fostering Trust in a Socially Diverse Society*, *in* TRUST IN SOCIETY 354, 356-57 (K. Cook ed., 2002); Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481 (1985). *See also infra* Part II.C.3 (discussing the sociological concept of integration).

42 *See, e.g.*, Dietlind Stolle, *Clubs and Congregations: The Benefits of Joining an Association*, *in* TRUST IN SOCIETY, *supra* note 41, at 202, 211 [hereinafter *Clubs and Congregations*] (demonstrating that small groups show more in-group trust than do large groups and that strong in-group trust and generalized trust are not positively correlated); Toshio Yamaghishi & Kaori Sato, *Motivational Bases of the Public Goods Problem*, 50 J. PERSONALITY & SOC. PSYCHOL. 67 (1986); *see also below* Part II.C.2-3.

> his novel *The Bonfire of the Vanities*," notes economist Robert Frank.[43]

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

Putnam's account also makes clear that the conditions of civic health are grounded in personal or mutual benefit, and in community benefit insofar as it furthers personal or mutual benefit.[44] An association member's expectation of a future benefit underlies the habit of cooperation ultimately formed, and it supplies the psychological basis for the habit to endure. The end result is a society characterized by generalized reciprocity or interpersonal trust, in which people associate their private interests with the private interests of others and with the interest of the community in cooperation among the various groups and individuals.

The portrait of civic life suggested by the passage quoted above may at first seem a somewhat crass formulation of the golden rule. At one level, there is an overarching sense of *quid pro quo*. Civil society theorist Robert Wuthnow, however, argues that the reciprocity-based sense of community common at earlier times in America's history was in fact superior to notions of sacrifice advanced by some today because it gave rise to a deep and natural sense of caring and camaraderie.[45] According to Wuthnow, people's willingness formerly to take time off from work to help a neighbor, attend weddings and funerals, and participate in small-town life was better not only because it was natural, but because it had the effect of "restrain[ing] individual greed and ambition."[46] He argues that because caring was mutually beneficial, it was neither egoistic

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[43] Putnam, *Prosperous Community*, *supra* note 17, at 37; Robert D. Putnam, *The Prosperous Community: Social Capital and Economic Growth*, 356 CURRENT 4, 5 (1993). *See also* JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 306–08 (1990) (describing reciprocity in terms of "credit slips" created by helping others and assumed to entitle the bearer to assistance in the future). In BOWLING ALONE, Putnam repeats most of the passage quoted from two of his earlier works, but he omits the adjective "generalized" and the phrase "down the road." PUTNAM, BOWLING ALONE, *supra* note 2, at 20. This may mean that by 2000, he had come to believe that the dynamic described in the quotation accounts only for the specific form of reciprocity that anticipates a benefit in the short-term.

[44] Putnam's earlier work emphasizes the importance of economic prosperity and governmental integrity as the primary goals of civil society. *See generally* Putnam, *Prosperous Community: Social Capital and Economic Growth*, *supra* note 43; Putnam, *Prosperous Community*, *supra* note 17. In BOWLING ALONE, *supra* note 2, at 326–35, Putnam discusses a broader range of individual and social goals, such as physical and mental health and stable families.

[45] *See* Robert Wuthnow, *Rediscovering Community*, 31 VA. SOC. SCI. J. 1, 1 (1996) (noting that, in earlier times, "[t]ime spent helping a sick neighbor might well be repaid tomorrow when the tables were turned").

[46] *Id.* at 1–2.

nor altruistic. In contrast, community activities and volunteering today have acquired a moral symbolism that, in Wuthnow's view, arose because of, and makes sense only against the backdrop of, a materialistic and individualistic baseline.[47] Thus, he argues that the generalized reciprocity of former times promoted a stronger, purer sense of community than do community activities today, which are tainted by virtue of originating in a sense of emotional neediness and guilt.[48]

If Wuthnow is correct,[49] the reflexive sense of cooperation that Putnam applauds would be desirable because of its impact on people's character as well as for its economic and social consequences. However, the concept of self-interest *rightly understood*, like the concept of reciprocity, does not imply the desire to do something for its own sake, *i.e.*, because it is the right thing to do.[50] At least for some theorists, a habit of helping that originates in self-interest would fall short of the ethic of caring Wuthnow and Putnam seem to attribute to it.[51]

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

48 *See id.* at 7–8.

49 Some aspects of Wuthnow's discussion raise questions. First, he frequently cites June Cleaver and at-home housewives in his anecdotes about people who used to be available to take care of neighbors' children, help the sick, and have personal knowledge of goings-on in the neighborhood (although he also mentions working activists and people who stay home from work to help others). *See id.* at 1–4. *Cf.* William A. Galston, *Won't You Be My Neighbor*, 26 AM. PROSPECT 16, 18 (1996) (observing that "I cannot help thinking that, as a matter of history, the term 'social capital' refers in significant measure to the uncompensated work of women outside the domains of both home and market"). Second, Wuthnow states that most people today "vehemently deny that guilt has anything to do with their community service activities." Wuthnow, *Rediscovering Community*, *supra* note 45, at 8. This statement seems to be contrary to the facts as I know them. Above all, Wuthnow's argument depends upon a preference for what is natural (understood as spontaneity) over what is chosen as the basis for behavior. *See id.* at 4. This is an important philosophical perspective; yet its superiority to philosophical perspectives ranking virtues that are chosen as superior to those that are natural, is not self-evident. Without some justification (which Wuthnow does not provide), this part of his argument for a reciprocity-based sense of community is weak.

50 Wuthnow appears to base his equation of the two concepts on the naturalness or spontaneity of old-style caring and community participation. *See* Wuthnow, *Rediscovering Community*, *supra* note 45, at 2 (normal, natural), 6 (basic to our nature). The contrast is with much new-style charitable and volunteer activity that, in his view, is calculated to counter our emotional voids or is driven by guilt. Even if Wuthnow's assessment of the origin of contemporary volunteering is accurate, he may be wrong about the past.

51 A habit ultimately based upon notions of reciprocity, in other words, is not the same thing as a habit based upon beliefs about what is right for its own sake (or because of a divine command). Actions based upon both appear to be sought for their own sake; only in the latter case, however, is the origin of the habit also a belief about the intrinsic rightness of actions of a certain kind. Wuthnow seems to acknowledge this point elsewhere, in discussing the etiology of trust, when he says that "trust is not simply a matter of making rational calculations about the possibility of benefiting by cooperating with someone else." Robert Wuthnow, *The Foundations of Trust*, REP. FROM INST. FOR PHIL. & PUBLIC POL'Y, Summer 1998, at 3, 7 (contrast-

The assumption of cooperation theorists that interpersonal trust within an association will lead to the creation of generalized interpersonal trust toward people outside the group[52] has generated much commentary and criticism. In addition to challenges based upon empirical data,[53] some critics have pointed to the failure of cooperation theorists to explain convincingly the genesis of interpersonal trust that transcends the boundaries of a particular group.[54] According to one commentator, "interpersonal trust . . . is by definition specific and contextual," and is qualitatively different from the "impersonal phenomenon" that Putnam, for example, labels "generalized trust."[55] In his later writings, Putnam attempts to address this issue by distinguishing between "bonding" groups, which can achieve their objectives without interacting with outsiders, and "bridging" groups, which facilitate the formation of interpersonal trust across group lines because they seek a goal that is unattainable without the help of outsiders.[56]

More than a few commentators have described Putnam's "bonding" groups less charitably than he does, noting that they can "foster invidious stereotypes" and engage in "subordination" of outsiders.[57] Such critics point out that a significant number of traditional associations favored by Putnam and other civic renewal advocates were exclusionary and that, at times, the bonds created or reinforced among group members were based on hostility toward outsiders—women or blacks or anyone who was not Irish (or Italian, or Jewish, or Armenian). There is thus the possibility that membership in the type of small voluntary associations often seen as fertile grounds for the growth of social capital and trust could well have the opposite effect, *i.e.*, it could reduce the level of trust toward people outside the group while simultaneously increasing the trust among members of the group.[58] Other authors have recognized a distinction similar

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ing trust based upon calculation with trust based upon a moral belief in the intrinsic goodness of trust).

52 Generalized interpersonal trust is also referred to as "community-wide social capital." The term "community" can be ambiguous, however, since a single group constitutes a community in one sense. As used in the following discussion, "community" will refer to relatively large aggregates of groups having potentially different interests, such as a ward, precinct, town, county, state, region, or nation. Communities are not necessarily based upon geography. *See* BENDER, COMMUNITY AND SOCIAL CHANGE IN AMERICA, *supra* note 34, at 7, 10, 144–45. *See also infra* note 59 (distinguishing between private and public social capital).

53 *See infra* Part II.C.

54 *See, e.g.*, Cohen, *Trust, Voluntary Association and Workable Democracy*, *supra* note 14, at 219-223 and sources cited at 219–22 nn.10–12.

55 *Id.* at 221.

56 *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 22–24, 134–44.

57 *See, e.g.*, Deborah L. Rhode, *Association and Assimilation*, 81 NW. U. L. REV. 106, 109 (1986); sources cited *infra* at note 59.

58 *See* Margaret Levi, *Social and Unsocial Capital: A Review Essay of Robert Putnam's* Making Democracy Work, 24 POL. & SOC'Y 45, 47–48 (1996). *See also* MARY DOUGLAS, HOW INSTITUTIONS THINK 1 (1986) (noting that cooperation and solidarity within a group

to that of Putnam's bridging and bonding groups, and, like him, they fail to explore the relationship between the two forms of social bonds, which are arguably in tension with each other.[59]

A question remains whether participation in voluntary associations actually produces any norms of community-wide social capital or generalized interpersonal trust with regard to people outside the group.[60] If it does not, participation in traditional voluntary associations will not necessarily turn members' hearts and minds toward collective action with outsiders or other groups much less toward public welfare, and it might even reinforce conflicts that inhibit cooperation among heterogeneous groups. This possibility, coupled with the other difficulties discussed in this section, constitute serious practical impediments to constructing coherent public policies that will invigorate and elevate the level of civil society.

Political theorist Nancy Rosenblum challenges the assumptions of cooperation theorists from a different direction. Unlike other commentators who have observed that participation in voluntary associations could promote social bonds and cooperation among criminals and malcontents, Rosenblum argues that, unless a group engages in illegal activities, the psychological benefits to members of secret societies and some paramilitary groups may have a positive societal effect by reducing the members' most extreme tendencies.[61] She maintains more broadly that even exclusionary groups, such as homeowners' associations, are desirable, although the cooperation they foster does not coincide with the specific

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imply rejection and mistrust of outsiders); Robert W. Jackman & Ross A. Miller, *Social Capital and Politics*, 1 ANN. REV. POL. SCI. 47 (1998) (noting that there are "thriving voluntary associations in ethnically divided societies" engaged in activities that are not socially desirable); Alejandro Portes & Patricia Landolt, *The Downside of Social Capital*, 26 AM. PROSPECT 18, 19 (1996) (noting that "[t]he same strong ties that help members of a group often enable it to exclude outsiders"); Rhode, *Association and Assimilation*, *supra* note 57, at 108–09 (discussing all-male associations and their deleterious effects—such as discrimination, fostering social stereotypes, and denying individual women opportunities that go with membership–and early all-female organizations, some of which challenged while others reinforced women's traditional roles); Peter Y. Hong, *Bowling Alley Tour Refutes Theory of Social Decline*, L.A. TIMES, Mar. 18, 1996, at A1.

59 For example, Dietlind Stolle and Thomas Rochon acknowledge a distinction between "private social capital" and "public social capital." *See* Dietlind Stolle & Thomas R. Rochon, *Are All Associations Alike?: Member Diversity, Associational Type, and the Creation of Social Capital*, 42 AM. BEHAV. SCI. 47, 48–50 (1998) [hereinafter *Are All Associations Alike?*]. They describe private social capital as the "capacity for collective action, cooperation, and trust within the group, enabling the collective purposes of the group to be achieved more easily." *Id.* at 48. Public social capital, in contrast, facilitates such things as tolerance and working toward community based goals. *Id.* at 48–50. However, these two authors do not assert a causal (or other) relationship between the two forms of social capital.

60 This question is examined *infra* Part II.C.

61 *See* NANCY L. ROSENBLUM, MEMBERSHIP AND MORALS: THE PERSONAL USES OF PLURALISM IN AMERICA 273–75 (1998) [hereinafter MEMBERSHIP AND MORALS].

interests of the larger communities in which they reside, because all groups engaged in lawful activities contribute to the "moral uses of pluralism."[62]

Sociologists Michael Foley and Bob Edwards criticize this civil society perspective based upon radically different premises. They argue that the "cooperation theorists" have a tendency to "suppress the conflictive character of civil society, seeking in society and its inner workings the resolution of conflicts that politics and the political system in other understandings are charged with settling or suppressing."[63] This challenge amounts to a frontal attack on one of the most basic principles of the first perspective in the civil society debate, namely, that the proper forum for airing and settling what are essentially public disputes should be outside the boundaries of formal political institutions. So conceived, the disagreement is profoundly theoretical. Curiously, however, it calls to mind a practical shift in attitude voiced by increasing numbers of teenagers and young adults, namely, that they view formal political structures as less relevant to democratic input and resolution of community problems than are local, community-based institutions, charities, and informal local initiatives.[64]

Foley and Edwards also argue that strong non-political voluntary associations have the potential to undermine, and not just strengthen, democratic institutions. They note that such associations often promote the parochial needs of their members and, as a consequence, "[e]stablished interests may lock up social resources and block society's ability to meet the demands of the dispossessed. . . ."[65] In their view, Putnam and other cooperation theorists who fail to address the seriousness of potential conflicts between the special interests promoted by such voluntary associations and community interests give a partial and overly optimistic account of the role of these groups in a healthy civic society. A complete account, for Foley and Edwards, would examine, from both

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62 *See* Nancy L. Rosenblum, *The Moral Uses of Pluralism*, *in* CIVIL SOCIETY, *supra* note 2, at 255; *see also* Peter Swords, Pluralism As a Public Good (Feb. 2002) (unpublished manuscript, on file with the author).

63 Foley & Edwards, *Escape from Politics? Social Theory and the Social Capital Debate*, *supra* note 19, at 551.

64 *See, e.g.*, LAKE SNELL PERRY & ASSOC. & THE TARRANCE GROUP, INC., SHORT-TERM IMPACTS, LONG-TERM OPPORTUNITIES: THE POLITICAL AND CIVIC ENGAGEMENT OF YOUNG ADULTS IN AMERICA 10–12 (2002) (noting that young adults tend to see political activism and community activism as separate categories and to prefer the latter) (report prepared for the Center for Information and Research in Civic Learning & Engagement, the Center for Democracy & Citizenship, and the Partnership for Trust in Government at the Council for Excellence in Government) (on file with author).

65 Michael W. Foley and Bob Edwards, *The Paradox of Civil Society*, 7 J. Democracy 38, 45 1996, at 38. They argue that Robert Putnam fails to confront this issue sufficiently because his definition of relevant associations emphasizes "broad, horizontally structured groups capable of 'cutting across' salient social cleavages." Id. at 44.

theoretical and empirical perspectives, the relationship between non-political and political organizations since the salutary effects of non-political groups ultimately "depend upon the prior achievement of both democracy and a strong state."[66]

B. THE SELF-GOVERNANCE PERSPECTIVE

A second perspective animating the civic renewal discussion emphasizes a different aspect of collective action undertaken through voluntary associations. Civic well-being, as depicted by this perspective, consists in the aggregate conditions that make possible or encourage self-governance and autonomy. According to this view, people engage in self-governance when they obtain control over their own lives by taking part in decisions that will affect how they live. As a result, this perspective emphasizes the importance of local governing boards, town hall meetings, and neighborhood associations for nurturing and giving expression to an active citizenry.[67] Purely private voluntary organizations are also considered essential because they provide opportunities for people to learn the skills needed in decision-making contexts in general.[68]

Some versions of this perspective also posit that the process of reaching decisions should be deliberative, as well as participatory, so that "a wide range of competing arguments is given careful consideration in small-group, face-to-face discussion."[69] This approach rejects the identification of self-governance with "negative freedom," *i.e.*, freedom from external interference or constraints[70] and equates it with some form of positive freedom, such as the freedom to pursue an affirmative goal like self-fulfillment or self-realization.[71] So understood, self-governance entails personal self-mastery and civic responsibility.[72] As a consequence, "[d]ecentralization alone will not automatically lead to a revival of civic virtue; it is a necessary, though not a sufficient, condition thereof."[73] If autonomy over one's life without more were sought, the result could be

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66 Id. at 47.

67 *See* Joyce & Schambra, *A New Civic Life*, *supra* note 33, at 20. The authors mention "small groups, family, neighborhood, church, and ethnic and voluntary associations" as components of the type of "face-to-face, participatory community" that citizens need. *Id.* at 28.

68 *See* sources cited *infra* at notes 186, 273.

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

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

71 *See* Charles Taylor, *Whatès Wrong with Negative Liberty, in* THE IDEA OF FREEDOM: ESSAYS IN HONOUR OF ISAIAH BERLIN 175, 176–77 (Alan Ryan ed., 1979).

72 *See* Joyce, *On Self-Government supra* note 29, at 46–47. *See also* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 13, 135, 164–65.

73 Joyce, *On Self-Government*, *supra* note 29, at 47.

to legitimize and reinforce the push toward atomism, privacy, and separation, which prevent or erode social and communal bonds.[74]

The self-governance perspective is espoused by political conservatives as well as political liberals. For political conservatives, the necessity for self-governance is the theoretical basis for their disparagement of the welfare state, the idea of a national community, centralized government, and the therapeutic orientation of our legal, educational, and popular cultures. In their view, these twentieth century developments have created institutional and legal barriers to individuals taking part in public decisions affecting their lives, and they have contributed to psychological or internal barriers that tend to discourage people from taking active control of their lives.[75]

Some liberal theorists have also rejected the equation of self-governance with freedom from interference, arguing that the idea of purely negative freedom is inherently incoherent[76] and that a liberal state devoid of affirmative purposes is neither possible nor desirable.[77] The purpose may be to realize "our highest capacities as rational and moral agents" through political engagement.[78] Alternatively, the purpose can be cast in private terms, e.g., as "deliberative autonomy," which one legal theorist equates with "citizens . . . apply[ing] their capacity for a conception of the good to deliberating about and deciding how to live their own lives."[79] Self-governance may also be identified with associational opportunities for people to express their fundamentally social natures

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74 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 140, 154.

75 *See* Joyce, *On Self-Government*, *supra* note 29, at 45.

76 *See* Taylor, *What's Wrong with Negative Liberty*, *supra* note 71, at 179, 181–87, 191–93 (arguing that the idea of negative freedom itself presupposes valuations about purpose).

77 *See* WILLIAM A. GALSTON, LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE 81–82 (1991) [hereinafter LIBERAL PURPOSES]; Russell Hittinger, *Varieties of Minimalist Natural Law Theory*, 34 AM. J. JURIS. 133, 149–52, 163–167 (1989). Of course, not all liberal thinkers would agree. *See* JOHN STUART MILL, ON LIBERTY 55 (Edward Alexander ed., Broadview Press 1999) (1859) (asserting that "[t]he only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it"); Morone, *The Corrosive Politics of Virtue*, *supra* note 2. The classical doctrine of contract in American law is likewise premised upon the autonomy of the individual and his right to obligate himself to others, or obligate others to himself, as long as the parties to the contract consent. *See, e.g.*, Chad McCracken, Note, *Hegel and the Autonomy of Contract Law*, 77 TEX. L. REV. 719, 729–30 (1999) and sources cited therein.

78 *See* Michael Walzer, *The Idea of Civil Society: A Path to Social Reconstruction*, *in* COMMUNITY WORKS, *supra* note 40, at 123, 125 [hereinafter *The Idea of Civil Society*].

79 James E. Fleming, *Securing Deliberative Autonomy*, 48 STAN. L. REV. 1, 2-3 (1995) (describing deliberative autonomy as one of the "bedrock structures" of the American constitution).

through communal pursuit of their partial goods coupled with a profound sense of their collective responsibility for one another.[80]

Some civil society authors have concluded that private groups, such as voluntary associations, are well-suited to the development of publicly responsible and deliberative policies because their focus is located somewhere between purely public and purely private concerns. In a public yet non-political sphere, people can congregate and debate contested issues in an open and collective forum without the pressure, felt by political officials, to reach a final decision capable of attracting a legislative majority. Thus, according to this approach, voluntary associations are more likely than formal political institutions to be the locus of frank and deliberative discussions and to govern through compromise and consent.[81]

In addition, their role of providing a forum for collective decision making outside formal political institutions enables associations (through their members) to act as a check upon actions contemplated or taken by formal political institutions and actors. In particular, because of the skills, confidence, and other resources their active members acquire, voluntary associations have the potential to empower their members to make salutary demands on decision makers, such as requiring them to justify their decisions publicly and in terms acceptable to diverse groups.[82] Some have also argued that the need for officials to convey explicit and public justifications of their actions has a tendency to induce them to articulate their actions in terms of public purposes. Even in situations where this public articulation is largely rhetorical, it may still have what one commentator calls the "civilizing force of hypocrisy."[83]

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

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80 *See* Walzer, *The Idea of Civil Society*, *supra* note 78, at 131–43.

81 *See* Jean L. Cohen, *American Civil Society Talk*, *in* CIVIL SOCIETY, *supra* note 2, at 55, 71 (arguing that deliberation plays a greater role in the "civil public" than in the "political public").

82 *See id.* at 74.

83 *See id.* (citing Jon Elster, *Equal or Proportional?: Arguing and Bargaining Over the Senate at the Federal Convention*, *in* EXPLAINING SOCIAL INSTITUTIONS 145 (Jack Knight & Itai Sened eds., 1995)). *See also* Cass R. Sunstein, *Interest Groups in American Public Law*, 38 STAN. L. REV. 29, 78, 81 (1985) (arguing that requiring Congress to state the public purpose of legislation would tend to make it more deliberative and responsible, despite the risk of legislators advancing boilerplate statements of public purposes).

voluntary associations, where they will learn or reinforce attitudes and skills necessary for the active exercise of self-government.

In sum, this perspective advocates civic engagement so that citizens will be equipped to enjoy freedom through self-governance. The focus of this perspective is on informed and responsible participation in decision making in addition to the goal of coordinated and effective collective action—the hallmark of the first perspective. As a result, the self-governance perspective differs from the cooperation perspective by conceiving of civic engagement as both the means to and an indispensable ingredient of civic health. Thus, the cooperation perspective sees civic life as predominantly instrumental, whereas the self-governance perspective values civic engagement both instrumentally and as an intrinsic good. Finally, the cooperation perspective is consistent with either an interest-group or a more deliberative model of political life, whereas according to the self-governance perspective, part of the essence of civic activity is its potential to transform individuals into thoughtful decision makers who, in the best case, will be the architects of their own freedom.

C. THE REPRESENTATIVE INSTITUTIONS PERSPECTIVE

A third perspective on civic health centers on the goal of strengthening representative institutions and democratic practices and values. At a minimum, the democratic idea of political equality entails the right on the part of all adult citizens to participate in making decisions likely to affect their lives in a material way, the right to equality of representation, or a combination of these two. Civic renewal advocates writing from this perspective emphasize the extent to which and the ways in which political equality so understood is currently lacking in the United States and argue that it is unlikely to be achieved through minor adjustments to existing political arrangements. All the data show that there are large disparities in political participation that track individuals' socioeconomic status. For example, although voting is currently the *least unequal* form of political participation, voting rates also tend to reflect socioeconomic differences.[84] The disparity between the participation rates of the more and less affluent is even greater with other types of political participation.[85] Considering that constituent influence is an important factor af-

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[84] See the sources cited in Henry E. Brady et al., *Beyond SES: A Resource Model of Political Participation*, 89 AM. POL. SCI. REV. 271, 271 n.4 (1995) [hereinafter *Beyond SES*]; *see also* SIDNEY VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 189–90 (citing statistics showing that those who earned $15,000 or less in 1988 were roughly 3/5 as likely to vote as those earning $75,000 or more).

[85] This is partially due to the circumstance that contemporary political campaigns increasingly seek contributions of money rather than time. *See* Louis J. Ayala, *Trained for Democracy: The Differing Effects of Voluntary and Involuntary Organizations on Political Participation*, 53 POL. RES. Q. 99, 101 (2000) [hereinafter *Trained for Democracy*]; Sidney

fecting the agendas set by public officials, the asymmetry in participation rates creates the danger that decision makers will be more concerned with taking actions responsive to the views of those who participate most.[86] This possibility threatens the legitimacy of representative institutions because there is evidence that different socioeconomic groups voice different concerns: those at the lowest part of the socioeconomic spectrum "are more than twice as likely . . . to discuss concerns about basic human needs such as poverty, jobs, housing, and health," whereas those at the high end are more likely to be "inspired by economic issues such as taxes, government spending, or the budget, or by social issues such as abortion or pornography."[87]

Thus, low levels of political participation can both reflect and contribute to civic decline by skewing public policies toward the interests of those classes with high turnout and participation rates. In addition, asymmetries in representation violate one of the basic axioms of democratic theory, which presupposes the equal worth of every citizen, namely, that "[t]he needs and preferences of no individual should rank higher than those of any other."[88] According to this perspective on civic health, therefore, persistent political inequalities undermine the moral legitimacy of democracy in America.[89]

Representative institutions are also problematic to the extent that democratic political processes seek to reflect the will of the people. Although voting for candidates for public office is typically the primary mechanism for transmitting the will of the people in a representative system, it conveys little specific information about the content of the will of

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Verba et al., *The Big Tilt: Participatory Inequality in America*, 32 AM. PROSPECT 74, 75 (1997) [hereinafter *Big Tilt*]; Arend Lijphart, *Unequal Participation: Democracy's Unresolved Dilemma*, 91 AM. POL. SCI. REV. 1, 2 n.1 (1997) [hereinafter *Unequal Participation*] (noting that public financing could eliminate this source of inequality).

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

87 Verba et al., *Big Tilt*, *supra* note 85, at 78; *see also* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 247–51, 263–64; Lijphart, *Unequal Participation*, *supra* note 85, at 4–5. *But see* Michael M. Gant & William Lyons, *Democratic Theory, Nonvoting, and Public Policy*, 21 AM. POL. Q. 40 (1993) (arguing that, at least at the level of electing Presidents, research suggests that the views those who are eligible to vote but stay home mirror the views of those who in fact vote); RUY A. TEIXEIRA, THE DISAPPEARING AMERICAN VOTER 100 (1992); RAYMOND E. WOLFINGER & STEVEN J. ROSENSTONE, WHO VOTES? 108–14 (1980) (finding no significant difference between the candidates favored by voters and nonvoters). Arend Lijphart, who agrees with the point of view expressed in the text, specifically challenges several aspects of Teixeira's analysis. Lijphart, *Unequal Participation*, *supra* note 85, at 4.

88 *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 10.

89 *See id.* at 10–15. *See also* Burt Neuborne, *Making the Law Safe for Democracy: A Review of "The Law of Democracy Etc.,"* 97 MICH. L. REV. 1578, 1588–89 (1999) (reviewing SAMUEL ISSACHAROFF ET AL., THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS (1998)) (concluding that the consequence of "wealth driven political inequality" is a "democratic process that is formally equal in theory, but dramatically unequal in practice").

the people given that most candidates campaign by declaring their support for a wide range of policies. A vote for a particular candidate thus underspecifies the popular support for each of the policies raised during the campaign, not to mention the positions a candidate adopts after being elected.[90] Civic renewal thus also requires citizens to take advantage of additional ways of communicating their ideas and preferences to lawmakers, *e.g.*, writing letters to members of Congress or state or local officials, attending and speaking at hearings, submitting grass roots testimony, inviting representatives to a neighborhood meeting, writing an opinion piece for a newspaper and forwarding a copy to an official's office, and requesting a meeting with the official's staff to discuss certain issues (including preparing materials to send in advance of the meeting). Because voluntary associations are established to promote one or a few goals common to their members, they have the potential to convey more concrete and detailed information about the will of their members than is possible through elections alone. These organizations thus have the potential to serve an important democracy-enhancing function, *i.e.*, to enable citizens who make use of such nonpolitical vehicles of civil society to communicate with lawmakers in a more precise manner than is possible when they vote. Regardless of whether one believes that lawmakers are obligated to promote constituents' preferences to the greatest extent possible or, rather, that their input is part of the total mix of considerations a lawmaker should consider, representation will better reflect the equal worth of citizens if the above measures become widespread.

In addition to expressing concerns about political equality, observers of American political life emphasizing the representative institutions perspective have also argued that the health of such institutions depends as much on the existence of dispersed, non-governmental centers of power as it does on governmental institutions such as majority rule, the separation of powers, and the system of checks and balances.[91] Dispersed sources of power, according to this view, are essential to a strong democracy because the quality of democratic processes depends, in part, upon citizens' ability to monitor the performance of governmental entities and demand transparency and accountability. Voluntary associations

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[90] For other critiques of the adequacy of the system of representation judged by democratic principles that have been put forward independent of the current civil society debate, see BRUCE ACKERMAN, WE THE PEOPLE: FOUNDATIONS 236, 255, 260, 263 (1993) (arguing that the will of the people is not expressed during ordinary representative politics because during ordinary politics, the People do not speak); Cohen, *Trust, Voluntary Association and Workable Democracy*, *supra* note 14, at 216 (arguing that the "deliberative genesis and justification of public policies or decisions deeply affecting the public . . . must be seen as *constitutive* of the modern form of democracy").

[91] For the ideas in this paragraph, see RICHARD A. COUTO & CATHERINE S. GUTHRIE, MAKING DEMOCRACY WORK BETTER: MEDIATING STRUCTURES, SOCIAL CAPITAL, AND THE DEMOCRATIC PROSPECT (1999); VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 30–31.

are well-suited to promote these goals by keeping their members informed and providing a vehicle for them to influence or hold government actors accountable more effectively than can isolated individuals.[92]

Finally, a democracy must be stable for its institutions to operate effectively. Although concern about the stability of democracy is more frequently expressed in relation to emerging democracies than for the United States, it is not uncommon for political scientists and social scientists to argue that the creation and survival of democratic institutions depend, in important part, upon both the existence of social and attitudinal factors and a certain level of economic prosperity, in addition to the formal structure of political institutions. The causal sequence between economic development, civic attitudes, and the stability of democratic institutions is contested. According to some, interpersonal trust and other civic attitudes are necessary preconditions of stable institutions and processes.[93] Others have isolated the preference for gradual political reform as the critical civic attitude for ensuring democratic stability, and they argue that there is no relationship between that preference and the possession of interpersonal trust.[94] Interpersonal trust, for these authors, is an effect, not a cause, of the longevity and level of democracy.[95]

Some research affirming the causal role of civic attitudes in producing democratic stability has simultaneously confirmed a causal relation-

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92 *See* GABRIEL A. ALMOND & SIDNEY VERBA, THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS 301 (1963) [hereinafter THE CIVIC CULTURE]; Yael Tamir, *Revisiting the Civic Sphere*, *in* FREEDOM OF ASSOCIATION 214, 223 (Amy Gutmann ed., 1998); Michele P. Claibourn and Paul S. Martin, *Information and Accountability: The Influence of Voluntary Associations on Policy Accountability*, *available at* http://faculty-staff.ou.edu/C/Michele.P.Claibourn-1/information_and_accountability_v1.pdf (working paper).

93 *See* Ronald Inglehart, *The Renaissance of Political Culture*, 82 AM. POL. SCI. REV. 1201, 1212, 1214, 1216–18 (1988). Basing his argument on cross-cultural data, Inglehart defends the proposition that in countries with the lowest levels of interpersonal trust and overall life satisfaction, people tend to support anti-system parties such as those on the extreme Right or the extreme Left and that countries with high levels of satisfaction and trust are "linked with the persistence of democratic institutions." *Id.* at 1216. *See also* Ronald Inglehart, *Trust, Well-Being and Democracy*, *in* DEMOCRACY AND TRUST, *supra* note 14, at 88, 89 [hereinafter *Trust, Well-Being and Democracy*]; ALMOND & VERBA, CIVIC CULTURE, *supra* note 92 (arguing that, based on cross-cultural empirical data, a cluster of attitudes–a "civic culture"–was a necessary condition for the survival of democratic political institutions). According to Inglehart, overall life satisfaction is a far more important determinant of democratic stability than political satisfaction, although the latter attitude may be "a better predictor of the popularity of a given government". Inglehart, *Renaissance of Political Culture, supra*, at 1209. Overall life satisfaction is influenced by economic development, but it is not determined by it. *Id. But see* Edward N. Muller & Mitchell A. Seligson, *Civic Culture and Democracy: The Question of Causal Relationships*, 88 AM. POL. SCI. REV. 635, 637 (1994) [hereinafter *Civic Culture and Democracy*] (finding, based upon their causal model and cross-national data, that years of continuous stable democracy produce "high levels of civic culture" and that economic development fosters civic culture indirectly, by producing stable democracy).

94 Muller & Seligson, *Civic Culture and Democracy*, *supra* note 93, at 639.

95 *Id.* at 645, 646–47.

ship between economic conditions and civic attitudes. According to this research, economic conditions have a causal relationship with the stability of democratic institutions through their impact on civic attitudes. In particular, poverty has been shown to be conducive to distrust because "[u]nder conditions of extreme poverty, the loss incurred from misplaced trust can be fatal."[96] According to the same analysis, economic development stabilizes democracy by contributing to the spread of cultural orientations that support democracy.[97] Other studies have similarly concluded that interpersonal trust decreases with increases in unemployment and that economic disparities—such as the fact that those with the most wealth received almost all of the increase in total household wealth in America in the last two decades[98]—are additional sources of instability for the country's democratic institutions.[99] The level of real income is also strongly and positively correlated with membership in voluntary associations.[100] To the extent that economic factors are a condition of, or contribute significantly to, the stability or instability of democracy, the representative institution perspective argues that the civic renewal debate must address issues of economic prosperity and economic justice, *e.g.*, inequalities in income, wealth, and the allocation of national resources, if its diagnosis and recommendations are to be effective.[101]

The representative institutions perspective on civic health emphasizes the importance of creating, reinforcing, and popularizing a wide range of values traditionally associated with democratic forms of government. Civil society authors writing from this perspective give pride of place to the value of equality in many forms, including political equality, equality of educational and other opportunities, and equality of respect for individuals regardless of their ethnic, religious, or national background or socioeconomic status.[102] As ethnic backgrounds, religious af-

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96 Inglehart, *Trust, Well-Being, and Democracy*, *supra* note 93, at 89. *See also* Pablo R. Fajnzylber et al., *Inequality and Violent Crime*, 45 J. LAW & ECON. 1 (2002).

97 Inglehart, *Trust, Well-Being, and Democracy*, *supra* note 93, at 97, 112. Examples are people's trust that no individual or group will be able to retain political power in violation of legal limitations and rules and people's deep-seated belief in the legitimacy of the regime. *See id.* at 99.

98 *See* S. LANCE DENNING, FINDING VIRTUE'S PLACE: EXAMINING AMERICA'S CIVIC LIFE 17 (1999) (citing Edward N. Wolff, *How the Pie is Sliced*, 22 AM. PROSPECT 58 (1995)).

99 *See* Caroline Hodges Persell, *The Interdependence of Social Justice and Civil Society*, 12 SOCIOL. FORUM 149, 157, 158, 161, 163 (1997); Caroline Hodges Persell et al., Civil Society and Economic Distress: Possible Causes and Consequences of Associational Memberships 23–24 (July 16, 1998) (paper prepared for The American Sociological Association annual meeting) (on file with author) [hereinafter Civil Society and Economic Distress].

100 Persell, Civil Society and Economic Distress, *supra* note 99, at 21–22.

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

102 *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 1–2, 10–15.

filiations, races, and lifestyles have become increasingly diverse, pluralism and tolerance have become recognized as central among the values that promote and reinforce democratic institutions and practices.[103] Some civic renewal authors have put forward other values, such as optimism and interpersonal trust, as fundamental democratic values.[104]

Some features of the representative institutions perspective on civic health are potentially in tension with one or both of the first two perspectives discussed. This third perspective endorses the goal of cooperation and collective action, but in a qualified way. Given the current relatively high status composition of people active in civic life, simply increasing the level of civic activity, without more, could leave intact or even increase existing inequalities in representation.[105] Although authors who stress cooperation and collective action hope for socially beneficial and just outcomes as well as efficient processes, they appear to assume that a more robust civic life will necessarily bring such outcomes in its wake. From the vantage point of the third perspective, in contrast, democracy presupposes more than formally democratic institutions and an invisible civic hand.

In addition, in contrast to both of the previous two perspectives, the representative institutions perspective is much more concerned with participation in the political process and influencing lawmakers than with nonpolitical, *i.e.*, civil, forms of civic activity. This emphasis can be traced to several considerations. First and foremost, "politics is the realm for which democratic norms seem to promise a level playing field."[106] Second, status-skewed participatory disparities appear to be significantly greater for political activities than for some other forms of civic activity.[107] Third, because some critical prerequisites for enhanced participation by populations currently unlikely to participate, such as additional and better educational and economic opportunities, may well require the active intervention of governmental authorities, it is important,

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

[104] For optimism and generalized trust as core democratic values, see Eric M. Uslaner, *Democracy and Social Capital*, *in* DEMOCRACY & TRUST, *supra* note 14, at 121, 140–44.

[105] *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 511, 512–13, 523–24. The actual operation of associations and the composition of their memberships is far more complicated than can be conveyed in this section. For a discussion of the ways in which they reinforce, rather than weaken, political inequalities, see John B. Judis, *The Pressure Elite: Inside the Narrow World of Advocacy Group Politics*, 3 AM. PROSPECT 158 (1992) and *infra* Part II.C.

[106] VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 513.

[107] *See id.* at 74–79, 513.

according to this perspective, not to minimize the role of politics and government in enhancing civil society, nor to overstate the potential achievements of cooperation and collective action by citizen groups.

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

D. THE COMMUNITY MORALITY PERSPECTIVE

The civic renewal literature contains a fourth perspective, which considers people's character and their moral values and practices to be constitutive elements of civic health. According to this perspective, healthy civic life is impossible without widespread acceptance of a core of moral norms and a sense of moral obligation toward oneself, others, and the community as a whole.

Although the authors for whom these concerns are central agree with proponents of the other three perspectives that participation in civic life is generally important for civic health, many take the view that its role has been exaggerated. According to Don Eberly, for example, contemporary declines in civic engagement are the symptom of a problem deeper than a lack of participation; they are ultimately attributable to the fact that American culture has lost its moral compass.[108] Similarly, for Christopher Beem, civic engagement is a necessary but not sufficient condition of civic health.[109] In his view, the internal dynamic of contemporary voluntary associations, including families, fails to foster in people the moral norms and core democratic values they need to contribute to an

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[108] *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 15, 155, 157.

[109] *See* Christopher Beem, *Civil Is Not Good Enough*, RESPONSIVE COMMUNITY, Summer 1996, at 47–50 (including the family and all organizational life other than government and the market in his notion of civil society). Because he includes families as well as organizations, Beem prefers the term "civil" life to "civic" life. *See id.* at 47, 52.

orderly and stable society.[110] Eric Uslander goes further and argues that moral values and an optimistic world view are far more important determinants of generalized interpersonal trust than is participation in voluntary associations or any other life experiences, except a person's race and level of education.[111]

Many commentators recognize that voluntary associations can further undesirable as well as desirable purposes.[112] Residential community organizations may be cooperative, but they can also be seen as "organized and oriented around a barely hidden segregationist, even secessionist, agenda."[113] In addition, families and their values are not necessarily sources of civic strength, especially when families impart to their children excessively individualist or materialistic values.[114] In principle, then, the existence of strong social bonds is, in and of itself, morally neutral unless it derives from or is accompanied by moral values.[115] According to these authors, it is the possession of moral values that enables people to "look beyond our own self-interest and to longer-term

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110 *See id.* at 53–55.

111 *See* ERIC M. USLANDER, THE MORAL FOUNDATIONS OF TRUST 77, 84–85, 90–92, 97–98, 100–04, 106, 108, 110–11 (2002). His assessment applies to what he calls "moralistic trust," which he distinguishes from "strategic trust." The latter is based primarily upon personal experiences and extends only to family, friends, and other non-strangers. *See id.* at 16–18, 21–23. *See also* Eric M. Uslaner, *Morality Plays: Social Capital and Moral Behaviour in Anglo-American Democracies*, *in* SOCIAL CAPITAL AND EUROPEAN DEMOCRACY, *supra* note 19, at 215–16.

112 Militia groups and racist organizations are usually mentioned in this connection. *See* Putnam, *Tuning In, Tuning Out*, *supra* note 17, at 665 (stating that whether the goals of voluntary associations are praiseworthy is "of course, entirely another matter"); EBERLY, AMERICA'S PROMISE, *supra* note 2, at 24 (mentioning "the Mafia, militias, and racist enclaves"); Beem, *Civil Is Not Good Enough*, *supra* note 109, at 50 (mentioning the Michigan Militia); Elshtain, *Not a Cure-All*, *supra* note 13, at 15 (noting that local attachments can take "unpleasant forms"). Ironically, there is evidence that the conspirators in the Oklahoma City bombing belonged to the same bowling league. *See* John Clark, *Shifting Engagements: Lessons from the "Bowling Alone" Debate*, HUDSON BRIEFING PAPER (Hudson Inst., Indianapolis, Ind.), Oct. 1996, at 1 (basing his observation upon a report by the NY TIMES, Aug. 13, 1995, at 1). *See also* Beem, *Civil Is Not Good Enough*, *supra* note 109, at 54 (stating that "more mainstream groups like the Christian Coalition, the National Rifle Association, the American Association of Retired Persons, and The National Organization for Women, have come to reflect the belligerence and inflexibility associated with this militaristic orientation").

113 Beem, *Civil Is Not Good Enough*, *supra* note 109, at 50; *see also* Daniel A. Bell, *Civil Society Versus Civic Virtue*, *in* FREEDOM OF ASSOCIATION, *supra* note 92, at 239, 240, 242–47 (describing the harmful effects of residential community associations and proposing reforms to enhance their civic benefit).

114 *See* INSTITUTE FOR AMERICAN VALUES, A CALL TO CIVIL SOCIETY: WHY DEMOCRACY NEEDS MORAL TRUTHS 19 (1998) [hereinafter CALL TO CIVIL SOCIETY].

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

stakes."[116] Moral values, in short, are critical to ensure that a more robust civil society is more public-spirited, not just more spirited.

Representative of these views is the Final Report of The National Commission on Civic Renewal (Report), a document endorsed by a wide range of political scientists and social scientists, philosophers, and members of the nonprofit community.[117] The Report laments both the country's moral and its civic ills, deplores the "vulgar" aspects of popular culture (especially popular music, movies, and television), criticizes the easy availability of liquor and pornography, and generally decries contemporary sexual and material self-indulgence and gratification.[118] Further, the Report identifies the weakening of America's moral culture as a key cause of the country's civic deficiencies.[119] Thus, the Report advocates measures to strengthen personal moral standards and the conduct of individuals, including public officials, as part of the civic renewal agenda.[120]

Considerable controversy has surrounded the idea of core or common moral beliefs accepted by all or most citizens, especially when the core beliefs are cast as "moral truths."[121] Critics fear that some of the core beliefs could well conflict with many citizens' own religious or secular beliefs, or that some civic renewal advocates are simply confounding moral truth with traditional morality.[122] To attempt to inculcate moral norms as part of the civic renewal agenda would, according to this view, amount to the coercive imposition of subjective moral views on the public at large under the ostensibly neutral banner of civic morality. In addition, commentators have questioned whether the moral norms typically endorsed by certain segments of the civic renewal community are in fact likely to create "civic virtue in the sense of the disposition to care about the common good of the whole polity and the capacity to deliber-

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116 Uslaner, *Morality Plays*, *supra* note 111, at 216. Uslaner also argues that in the United States, Canada, and the U.K., "[v]alues and expectations of reciprocity reinforce each other." *Id.* at 234.

117 *See* NATIONAL COUNCIL ON CIVIC RENEWAL, A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT 5–21 (1998) [hereinafter NATION OF SPECTATORS]. For the participants in the Commission and in its deliberations, see *id.* at 65–66.

118 *See id.* at 5, 6, 7, 17–18. *See also* CALL TO CIVIL SOCIETY, *supra* note 114, at 5–8.

119 *See* NATION OF SPECTATORS, *supra* note 117, at 6–8.

120 *See id.* at 11–12, 13, 14–17, 18. *See also* CALL TO CIVIL SOCIETY, *supra* note 114, at 12–13 (arguing that moral truths "underwrite" the civil and political goals of American democracy and that they inform and ensure the Nation's commitment to individual and political freedom).

121 *See* CALL TO CIVIL SOCIETY, *supra* note 114, at 12.

122 *See, e.g.*, Linda C. McClain & James E. Fleming, *Some Questions for Civil Society-Revivalists*, *in* 75 CHI.-KENT L. REV. 301, 310 (2000); Nick Gillespie, *Truth Squad: The Coercive Agenda Behind the "Civil Society" Movement*, REASON ONLINE, Aug./Sept. 1998, at 8. *See generally* Morone, *The Corrosive Politics of Virtue*, *supra* note 2.

ate about it," rather than merely addressing standards of personal morality.[123] If not, the core of moral norms arrived at might not be useful for promoting a culture of public-spiritedness or communal values such as tolerance.

The conceptual center of the civil society movement, in contrast, claims to be committed only to a secular and reasoned elaboration of foundational moral principles.[124] For Don Eberly, for example, there exist certain universal ideas of right and wrong evident in the writings of diverse peoples, Eastern and Western, ancient and modern.[125] Christopher Beem argues that there are moral norms that transcend particular epochs, nations, and cultures.[126] The fact that the Judeo-Christian religious tradition supplied such values for most of the history of the United States does not, in and of itself, make them intrinsically religious or subjective. According to Eric Uslaner, generalized interpersonal trust and the commitment to help people different from ourselves are themselves moral values that "rest upon assumptions about human nature" that transcend people's political and religious differences.[127]

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123 *See* McClain & Fleming, *Some Questions for Civil Society-Revivalists*, *supra* note 122, at 310.

124 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 189, 194–95. *See also* Beem, *Civil Is Not Good Enough*, *supra* note 109, at 56. Beem argues that to be healthy, civil society must have a core of common values that link citizens together sufficiently to ensure social harmony in the face of diversity. *See id.* In Tocqueville's time, there was such a network of common "regulative principles . . . to help Americans distinguish between good and bad civil society." *Id.* at 51. Beem calls these truths moral and philosophical principles. *Id.* That the founding documents were inspired by some kind of belief in transcendence is not, in his view, a coincidence; on the contrary, a purely particularist moral commitment will have difficulty surviving the pressures that threaten it. *See id.* at 57 (stating that a moral consensus must be grounded in the universal features of human existence and not merely in the belief that they are good for Americans). Eric Uslaner adds "being married" as a source of moral commitments (based upon 1981 survey data). Uslaner, *Morality Plays*, *supra* note 111, at 229. He also states that in the U.K., secular morality is the main source of what he calls "self-obey commandments." *Id.*

125 *See* Don E. Eberly, *The Quest for America's Character*, *in* CONTENT OF AMERICA'S CHARACTER, *supra* note 40, at 19 [hereinafter *Quest for America's Character*]. Eberly calls these "values that are universally found in successful societies," although he discusses approvingly the approach of C.S. Lewis, who considered certain moral values transcendent, and that of Ben Franklin, who considered certain virtues the values that "nourished human civilization." *Id.* at 19, 21.

126 *See* Beem, *Civil Is Not Good Enough*, *supra* note 109, at 57 (contending that there are "moral beliefs about human rights and equality [that] can be grounded in the universal features of human existence"). *See also* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 187 (noting that "there is such a thing as universal moral truth . . . that . . . transcends particular religious and cultural traditions").

127 USLANER, MORAL FOUNDATIONS OF TRUST, *supra* note 111, at 2. Uslaner appears to differ from Beem and Eberly in that his account of the moral foundation of civic engagement speaks about the character of people's assumptions about human nature rather than the character of human nature itself and attributes these assumptions primarily to early socialization rather than to experience or reasoning. It is thus possible that, for him, moral norms are instrumental rather than essential.

William Galston's understanding of the source and content of the core moral norms differs from that of Eberly or Beem. Galston argues that the common moral norms and virtues that are necessary to ground civil society in America are those that make possible and sustain "liberal democracy," "self government," and "citizenship."[128] Such norms and virtues are "functional or instrumental,"[129] and thus knowable by practical reason, not theoretical philosophy or revelation. As a consequence, to discern the appropriate norms and practices requires a practical understanding of constitutional democracies and the American system of government, as well as an analysis of the observations of empiricists.[130]

The Report approved by the members of the National Commission on Civil Renewal largely implements this functional approach. It identifies as moral virtues: parents putting the well-being of their children ahead of their "self-gratification;" acknowledging the spiritual capacity of human beings and circumscribing our personal conduct and that of our children in light of this human possibility; acknowledging that we have obligations to people outside of our families and being willing, if necessary, to sacrifice some of our own self-interests to the interests of others; and acting with moderation and self-restraint in sexual matters, alcohol consumption, and the satisfaction of physical desires in general.[131]

These precepts are clearly moral in character, but they are advanced because of their usefulness for America's civic goals. For example, the Report urges people who choose to become parents (or who fail to make choices to prevent becoming parents) to assume the moral responsibility of raising, caring for, and loving their children so that the children become educated, caring, and willing participants in civil society.[132] However, people are not expected, much less exhorted, to become parents in the first place, as they would be by the commands of certain religious traditions. Again, the Report appears to urge moderation in the satisfac-

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128 William A. Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, 75 CHI.-KENT L. REV. 603, 604-06 (2000). For a fuller discussion, see GALSTON, LIBERAL PURPOSES, *supra* note 77, at 217–28 (1991).

129 Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 128, at 606. Instrumental virtues can be "socially functional" without also being "advantageous" to particular individuals. GALSTON, LIBERAL PURPOSES, *supra* note 77, at 220.

130 *See* Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 128, at 606. Liberal democracies in general, Galston argues, need most citizens to possess virtues such as courage, law-abidingness, loyalty to the government's core principles, responsibility for oneself, self-restraint, tolerance, entrepreneurial virtues (such as imagination, initiative, drive, and determination), organizational virtues, a work ethic, the capacity for delayed gratification, respect for the rights of others, virtues of citizenship and leadership, a commitment to a politics of discussion and persuasion, and a commitment to reduce the tension between the principles and practices of one's community. *See* GALSTON, LIBERAL VIRTUES, *supra* note 77, at 220-27.

131 *See* NATION OF SPECTATORS, *supra* note 117, at 7.

132 *See id.* at 11, 13.

tion of sexual and other physical and material desires because some forms of self-restraint are essential conditions of the self-governance upon which self-government depends.[133] To that end, it recommends that potentially destructive (legal) substances and activities be located away from schools and that their availability in poor neighborhoods be limited.[134] But there is no suggestion in the Report that abstaining from these substances is superior to using them in moderation, as might be the case according to some religious teachings.

Some civil society commentators refer to the moral norms necessary for civil society as moral truths, presumably because they are the product of reasoning about the foundational morality necessary to sustain a democratic society. The term "truth" is preferred to "values" because, in contemporary America, moral values are portrayed as products of individuals' belief systems or personal and subjective preferences rather than the product of reasoned arguments open to public scrutiny and discussion of their validity.[135] Nothing in the civil society literature precludes the existence of moral beliefs and practices peculiar to one or more religions or to non-religious ethical traditions. In fact, most authors assume that such beliefs and practices will be possessed by most citizens in addition to, and in part overlapping with, the moral precepts necessary for a healthy civil society.[136] For civic renewal to succeed, however, such beliefs and practices must be in more or less peaceful coexistence with one another and with the moral norms necessary for a healthy civil society in America.

In contrast to the point of view just sketched, some civil society authors concerned about moral values believe that, for the most part, moral norms are likely to be created and reinforced because of certain structural features of the American system. For example, William Schambra has argued that because America is a large commercial republic, it will have such a multiplicity of interests that local majorities will not be able to suppress minorities.[137] He also maintains that because of

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133 *See id.* at 7, 8.

134 *See id.* at 17. Presumably illegal substances would be discouraged in any amount because they are illegal.

135 *See, e.g.*, Eberly, *Quest for Americaès Character*, *supra* note 125, at 11–13.

136 *See* NATION OF SPECTATORS, *supra* note 117, at 12 (observing that in general, morality is reinforced by religious beliefs, but asserting that the moral foundation upon which civil society depends "does not require any particular denominational creed"). *See also* CALL TO CIVIL SOCIETY, *supra* note 114, at 12 (stating that the moral truths that make possible democratic self-government "are in large part biblical and religious"). However, A CALL TO CIVIL SOCIETY, unlike NATION OF SPECTATORS, adds that various non-religious sources also "strongly" inform the moral truths necessary for a democratic civil society, citing the classical (Greek) natural law tradition, the ideas of the Enlightenment, documents from America's founding, speeches by Abraham Lincoln and George Washington, and the concept of higher law endorsed by and materials authored by Martin Luther King. *Id.*

137 *See* Schambra, *Beyond the Great National Community*, *supra* note 39, at 92.

the size of the commercial republic, no local community can "seal itself off completely from the moderate habits and values of the outside . . e world."[138] To illustrate this point, he observes that, as a rule, merchants will have to be polite to strangers because strangers may in the future become customers.[139]

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

> surely our churches, neighborhoods, and civic associations have over time managed to temper and moderate the harshest aspects of the marketplace's self-interest and materialism. Generation after generation, Americans have been taught that there are obligations beyond mere personal gain and the pursuit of wealth—obligations to family, community, and faith—and have behaved accordingly.[140]

On balance, he concludes, the potential mischief of the excesses of the marketplace has always in the past been successfully offset by the individual freedom, civic vitality, and moral community that characterize life in America.[141]

Similarly, as was previously discussed, many civil society theorists argue that participation in voluntary associations tends to generate in participants civic virtues such as interpersonal trust, social capital, and generalized reciprocity.[142] The civic participation/social capital thesis is also a structural account of the genesis of virtue because it asserts that some virtues are likely to arise automatically, as an incident of a certain kind of behavior. However, as noted earlier, those who advance this point of view have so far failed to explain how civic virtue developed in

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138 *Id.* at 95.

139 *See id.* Schambra also notes that there is unlikely to be ethnic or religious warring factions because the commercial character of the United States has permeated it with "sober, stolid values." *Id.* at 95–96. *See also* MICHAEL NOVAK, BUSINESS AS A CALLING: WORK AND THE EXAMINED LIFE 115 (1996) (arguing that "[b]usiness has a vested interest in virtue"). *See also id.* at 115–168. For a contrasting view, see generally GERTRUDE HIMMELFARB, ONE NATION, TWO CULTURES (1999) (arguing that the capitalistic ethic was an important cause of the moral decline in the second half of the twentieth century).

140 Schambra, *Beyond the Great National Community*, *supra* note 39, at 96. *But see id.* at 96–97 (conceding that the large commercial republic has not always been successful in curbing people's immoral sentiments).

141 *See* Schambra, *Beyond the Great National Community, supra* note 39, at 97 (arguing that it is because of the "tension between civil society and the marketplace" that the United States has survived in as good a condition as it has).

142 *See supra* Part I.A.

the service of private interests will also be exercised in the public interest if necessary.[143]

Civic renewal advocates promoting the fourth perspective reject the structural approach of Schambra to the emergence of moral norms, and many have reservations about the structural approach of Putnam as well. Their claim is that the current weakening of civic life cannot be ameliorated simply through legal, policy, or economic reforms. Nor, they argue, can the problem be solved by transforming the contemporary organization of people's social and political lives so as to maximize occasions for associational interaction or decision making through old-style voluntary associations, town councils, and small citizen meetings. In particular, as Christopher Beem argues, participation in civil life in general, and voluntary associations in particular, is unlikely to generate moral norms unless the greater part of those who join them already possesses these values.[144] Implicit in this view is the conviction that an individual's behavior is in large part determined by his or her values and beliefs, rather than the reverse. Therefore, these theorists reject the view that the interactions of individuals within associations or the structural relationships among associations will, without more, give rise to the kind of morality in members that a decent civil society presupposes. Eric Uslander explains the likely link between possessing moral values and behaving in a trusting and public-spirited manner as follows:

> Generalized trusters . . believe that most people share the same fundamental values, though not necessarily the same ideology. . ., and that people are not predisposed to take advantage of others. . . . Trusters believe that they can right wrongs and leave the world a better place than they found it. And this "effective citizen" is an active participant in civic life.[145]

Several civic renewal authors have asserted that the emphasis on rights in contemporary America has contributed to the breakdown of moral values and behavior.[146] While not denying that the two phenomena are related, Eberly argues that the causal sequence between rights and moral value runs in the opposite direction, at least initially. For him, if morality, custom, and culture in a society no longer distinguish be-

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143 *See infra* Part II.C.

144 *See generally* Beem, *Civil is Not Good Enough*, *supra* note 109; *infra* Part III.D. *See also* Galston, *Civil Society, Civic Virtue, and Liberal Democracy*, *supra* note 128, at 605 (arguing that "the artful arrangement" of institutions such as checks and balances is insufficient to sustain liberal democracy); Don E. Eberly, *Correspondence: Intellectuals Prefer Culture*, WKLY. STANDARD, Feb. 5, 1996, at 6 [hereinafter *Intellectuals Prefer Culture*].

145 USLANER, MORAL FOUNDATIONS OF TRUST, *supra* note 111, at 79–80 (citation omitted).

146 *See, e.g.*, sources cited *supra* at note 37.

tween right and wrong, law and the coercive arm of the state will gradually become the primary way to constrain behavior. Once that happens, "citizens are at the same time more prone to resort to law than voluntary conflict resolution in sorting out their differences and they are dismayed by the overreach of the law."[147]

At the deepest level, therefore, the community morality strand of the civil society debate attributes defects in contemporary civic life to changing attitudes toward specific moral codes and to the legitimacy of moral claims generally. The embodiment of this transformation is the contemporary tendency of people toward self-absorption, as reflected in the American "ideology of self-expression, self-interest, and individual entitlement."[148] To reverse this development, according to this strand of civil society theory, civic renewal must begin by building, or rebuilding, a public moral consensus.[149] For moral values to be recovered and accepted, however, people must abandon their cynicism and moral skepticism.[150] Finally, for this last change to occur, people must recognize, repudiate, and "rebuild[e] character-shaping institutions."[151]

Accordingly, the centerpiece of Eberly's civic renewal recommendations is the reinvigoration of character-shaping institutions, most importantly, the family. The family is a potentially important character-building institution because it is usually the first institution, chronologically and psychologically, to imbue children with moral beliefs and social attitudes such as caring about the well-being of others and interpersonal trust. He implies that the more successful families are in building their children's moral character, the less important participation in voluntary associations is for creating the shared moral norms that support civil society.[152] Other key character-shaping institutions are schools

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147 EBERLY, AMERICA'S PROMISE, *supra* note 2, at 112; *see also id.* at 115. Eberly also asserts that if people do not have fundamental moral beliefs to ground their actions, they will turn to economics or science to supply them with fundamental beliefs. *Id.* at 195.

148 EBERLY, CONTENT OF AMERICA'S CHARACTER, *supra* note 40, at xii; *see* Eberly, *Building the Habitat of Character*, *supra* note 40, at 28 (contrasting public spiritedness with self-absorption).

149 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 12, 196; *see also* Beem, *Civil is Not Good Enough*, *supra* note 109, at 50. Eberly calls the combination of moral and civic renewal, with the moral renewal triggering and informing the civic renewal, "civil society plus." *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 5, 15–16.

150 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 12.

151 *See id.* at 129. *See also* Don E. Eberly, *Question: Can Government Play a Significant Role in Restoring U.S. Families? No: New Laws Can't Remedy the Nation's Profound Cultural Crisis*, INSIGHT ON THE NEWS, WASH. TIMES, Jan. 29, 1996, at 25 [hereinafter *Can Government Play a Significant Role?*]; Eberly, *Quest for America's Character*, *supra* note 125, at 6.

152 CONTENT OF AMERICA'S CHARACTER, *supra* note 40, at xiii. Eberly focuses on what people think or believe insofar as it affects how they behave; thus, he applauds campaigns to encourage teen abstinence, parental responsibility, the sacredness of marriage, and so on. *See* Eberly, *Can Government Play a Significant Role?*, *supra* note 151, at 26.

and faith-based institutions. At the same time, Eberly does not see the role of character formation as wholly private. Rather, in his view, "[t]he job of politics . . . is to 'shape the public sentiments,' as Lincoln put it, without which policy reforms will be of little effect."[153]

In sum, interest in community morality has been directed along two distinct, although related, dimensions: the moral norms of individuals that guide them in their private conduct, including the familial and social interactions, and the moral norms of citizens. Although the two dimensions of morality may at times overlap, the former norms are usually equated with personal moral codes or ethics; the latter are more likely to be justified in terms of the conditions for public spiritedness, which require individuals to exert themselves on behalf of or defer to the needs of persons outside their family, church, or other kinship community. Personal moral codes, which are traceable to such things as religious doctrines, humanist teachings, or cultural practices, do not necessarily result in much less encouraging public spiritedness.

As was discussed in this section, civic renewal authors writing from the community morality perspective address personal moral norms for several reasons. For some, there exist universal moral truths that transcend cultures because they derive from an essential aspect of humanity. In addition, some authors believe that individuals need to be committed to certain moral norms or moral behavior to lead purposeful and productive lives, regardless of their specific goals. As a consequence, they advocate that families and schools actively seek to provide children with character education to instill and reinforce such norms and behavior. Finally, according to commentators who emphasize the inevitable tension between self-interest and community interest that will occur, a moderate attitude toward physical and material self-gratification is critical for individuals to be willing and able to exert themselves on behalf of others when necessary for public purposes.

E. CONCLUSION

This Part has explored four conceptually distinct perspectives that figure prominently in the civil society debate. The writings of individual civic renewal authors may incorporate concerns identified with more than one of the perspectives described above because some of the perspectives are compatible with others. However, when conflicts arise, those who prize one perspective more than others will subordinate the latter to the former. Distinguishing these perspectives is, therefore, important because each perspective is based upon a view of the primacy of a distinctive value (or cluster of values) over competing, possibly desira-

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153 Eberly, *Intellectuals Prefer Culture*, *supra* note 144, at 6.

ble, but nonetheless subordinate, values. As a practical matter, it is not possible for all of these values to be public priorities simultaneously. And when they are inherently in tension with one another, the pursuit of some values may impede the pursuit of others. Thus, as a prelude to evaluating such proposals, it is important both for public policy and theoretical reasons to understand which perspectives and values are embedded in specific proposals.

Underlying the cooperation perspective discussed above is a version of modern liberal political theory that has as its conceptual core a belief in the primacy of maximizing individual freedom and government neutrality with respect to individual preferences and pursuits. Consequently, many of the civic recommendations stemming from this perspective are purely instrumental, i.e., in the service of ends that are not necessarily themselves civic. The self-governance perspective reflects the concerns of a distinct strand of liberal political theory, one that contains a particular view of the nature of human well-being, namely, the belief that in the best case, individuals should be rational and autonomous in their own lives and should assume some responsibility for the well-being of the larger community in addition to their own private interests. Insofar as autonomy is identified with self-governance, the civic recommendations based upon this perspective are viewed as intrinsic goods. And, insofar as the self-governance of individuals promotes collective self-governance, the recommendations are instrumental. In contrast, according to the representative institutions perspective, democratic values, especially equality, are constitutive of civic health. Thus, one immediate goal of this perspective is equalizing the quantity and quality of citizen input ("voice") reaching political leaders across educational, socioeconomic, and other status groups. Like the cooperation perspective, and unlike the self-governance perspective, the representative institutions perspective does not claim to know the substantive content of individual or collective well-being, apart from its belief in the equal worth of individuals and the political imperative of equal representation. Finally, the community morality perspective views the moral well-being of individuals and the moral character of their social and communal relationships as paramount. Similar moral concerns may be urged by proponents of the other perspectives on civic health, sometimes under the Tocquevillian rubric of "self-interest rightly understood."[154] For some proponents of the fourth perspective, however, people should have an interest in doing what is right because it is right, and not because of a calculation that moral behavior or public-spiritedness might eventually inure to their private benefit. For these theorists, then, civic life can be intrinsically worthwhile,

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154 *See supra* note 51 and accompanying text.

but only insofar as it reflects and perpetuates moral norms. In addition, some authors who emphasize this perspective may also believe in the intrinsic value of moral life, but they recognize clearly that, to serve as public norms, moral values must be derived exclusively from, and justified in terms of, their functional dimension.

II. THE ROLE OF VOLUNTARY ASSOCIATIONS: EMPIRICAL EVIDENCE

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

A. CLASSIFICATIONS OF VOLUNTARY ASSOCIATIONS

Voluntary associations can be classified in a variety of ways. They are often divided into market and non-market organizations, and the latter are further divided into families and non-kinship groups formed voluntarily.[155] For-profit entities are typically excluded, even though they are voluntary associations, on the ground that they do not create or reinforce social capital or promote civic engagement.[156] Large bureaucratic voluntary associations with enormous membership rolls are sometimes bracketed because they require little of their members beyond writing a check,[157] even though such organizations are civically active to promote the interests of their members among lawmakers at the local, state, or national levels. Their political leverage derives from the ease with which

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155 *See supra* notes 12–14. Jeffrey Berry and David Arons argue that voluntary associations should be considered a subset of nonprofits. *See* JEFFREY M. BERRY & DAVID F. ARONS, A VOICE FOR NONPROFITS 26–27 (2003). They reserve the term "voluntary association" for organizations whose members are involved in the groups' operation and leadership. *Id.* They would thus exclude organizations operated primarily by professional staffs, even if funded by grass roots donations. *Id.* Most authors do no limit the use of the term this way, however, although the civil society debate would be much clearer and more useful if they did.

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

157 *See* Theda Skocpol, *Associations Without Members*, 45 AM. PROSPECT 66, 68–69, 71–73 (1999). AARP is one such organization. Organizations that require check-writing as the primary mode of participation need not be huge, but very large organizations on average tend to want or need less in the way of direct participation on the part of their members than do their smaller counterparts.

they can, through newsletters and other communications, inform their members about the substance and status of legislation under consideration, mobilize them to favor particular positions on issues, and encourage them to register, vote, and otherwise become politically active.

For purposes of state and federal regulation, the most basic distinction among formal voluntary organizations is between the treatment of for-profit and nonprofit entities. Voluntary business organizations may be for-profit companies or nonprofit groups such as trade associations, chambers of commerce, and other professional associations. Although the primary purpose of these nonprofit organizations is commercial, they are regulated as nonprofits under the business and tax laws of most states and under the Code because they do not contribute directly to the profitability of any specific firm and do not themselves generate profits for distribution to members or shareholders.[158] Instead, such groups further the interests of an industry or profession by collecting and providing information relevant to an entire class of businesses, establishing business or professional standards, and lobbying government officials or the public at large on behalf of industry positions.[159] Some types of veterans groups, fraternal beneficiary societies, and labor organizations are also treated as nonprofits under state and federal law.[160] Although some of these associations may engage in *ad hoc* or ongoing charitable activities, their primary goal is to improve conditions for their members, e.g., by organizing social activities, providing insurance or other benefits to their members at discount rates, and lobbying. By virtue of being classified as nonprofits, these organizations receive tax benefits and other favorable treatment under state and federal law.[161] In contrast to mutual benefit

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158 *See, e.g.*, I.R.C. § 501(c)(6) (2000) (identifying the organizations listed in the text as candidates for exemption from federal income taxation). For elaboration of the characteristics required of such organizations in order to gain federal exemption, see Treas. Reg. § 1.501(c)(3)-1 (1994). All of the nonprofit organizations described in the text are classified as "exempt organizations" if they qualify for exemption from federal income taxation under section 501 of the Code.

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

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

161 For direct links to federal and state laws regarding U.S. Nonprofit Organizations, see Online Compendium of Federal and State Regulations for U.S. Nonprofit Organizations, *at* http://www.muridae.com/nporegulation (last updated June 3, 1999). *See also* Miriam Galston, *Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities*, 71 TEX. L. REV. 1269, 1296–1302 (1993) [hereinafter *Lobbying and the Public Interest*] and sources cited therein; W. HARRISON WELLFORD & JANNE G. GALLAGHER, UNFAIR COMPETITION? THE CHALLENGE TO CHARITABLE TAX EXEMPTION 153–260 (1988) (summarizing all the state charitable exemption laws). An organization that has nonprofit

nonprofits, charitable entities must be operated to help charitable classes—the poor, homeless, sick, or handicapped—or engaged in a category of activity that state or federal law has determined contributes to the public interest. Examples of the latter type of charity are educational groups or institutions, health care organizations, houses of worship, and museums. In addition to the tax and other benefits granted to noncharitable nonprofits,[162] charities are entitled to receive contributions that are deductible from the income of the donors, subject to certain restrictions.[163] The charitable contribution deduction tax benefit has been variously explained as compensating for charities' lack of access to capital markets, lessening the burdens of government, taking advantage of charities' efficiency in providing charitable services, or deriving from a "sovereignty" view of the charitable sector.[164]

From the perspective of sociologists, a fundamental distinction should be made between expressive and instrumental associations, or between associations that members join for expressive as against instrumental reasons.[165] In their pure form, expressive associations provide activities that create the "satisfactions of personal fellowship" and that members engage in primarily because they are enjoyable.[166] The mem-

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status under state law will not necessarily be exempt from federal or even state income taxation. In contrast, states tend to make federal exemption from income tax a condition of receiving state income tax exemption rather than relying upon their own grant of nonprofit status. For example, the District of Columbia grants an automatic exemption from the income and franchise tax to any organization exempt under § 501(a) of the Code except those exempt under § 501(c)(3). In order to be exempt from the income and franchise tax as a charity in the District of Columbia, an organization must have both a federal tax exemption and demonstrate that a certain percentage of its activities or expenditures benefit District of Columbia residents. *See* District of Columbia Office of Tax and Revenue, Instructions for Filing Application for Exemption (Form FR 164) (2002); *see also* D.C. CODE ANN. § 47-1802.1 (LEXIS 2001) (listing organizations exempt from District of Columbia income and franchise tax). Revenues of noncharitable exempt organizations that would constitute unrelated business income under § 511 of the Internal Revenue Code are not exempt in D.C. *See* D.C. CODE ANN. § 47-1802.1 (LEXIS 2001). Similar laws exist in many states. *See, e.g.*, MD. CODE ANN., TAX-GEN. § 10-104(2) (Michie 1997). For a discussion of tax and non-tax benefits associated with exempt status, see Bazil Facchina et al., *Privileges & Exemptions Enjoyed by Nonprofit Organizations*, 28 U.S.F. L. REV. 85 (1993).

[162] *See supra* notes 156, 158-59 and accompanying text.

[163] *See* I.R.C. § 170(a) (2000). Other exempt entities may be entitled to receive deductible contributions. *See* I.R.C. § 170(c)(1), (3), (4), (5).

[164] *See generally* Evelyn Brody, *Of Sovereignty and Subsidy: Conceptualizing the Charity Tax Exemption*, 23 J. CORP. L. 585 (1998) [hereinafter *Of Sovereignty and Subsidy*].

[165] *See* C. Wayne Gordon & Nicholas Babchuk, *A Typology of Voluntary Associations*, 24 AM. SOC. REV. 22, 25–26, 27–28 (1959). Even if an association is predominantly expressive in its mission, some people may join for instrumental reasons; conversely, a person may join a fundamentally instrumental organization for expressive reasons.

[166] *See id. at* 27. In sociological jargon, "integration of the personality system is often held to be the major reason for the existence of the group." Nicholas Babchuk & John N. Edwards, *Voluntary Associations and the Integration Hypothesis*, 35 SOC. INQUIRY 149, 151 (1965) [hereinafter *The Integration Hypothesis*].

bers derive "immediate and continuing gratification" merely from taking part in the association's activities; the activities of such organizations are wholly or largely contained within the organization; and the activities are ends in themselves."[167] Examples include recreational clubs, choirs, little league teams, and other kinds of social organization.

In their pure form, instrumental organizations enable their members to accomplish goals outside of the organization. In particular, members may seek to effect changes to the social, economic, or political orders,[168] or to maintain the status quo against a threat of change—goals that are frequently long-term and depend upon influencing individuals, groups, or public officials outside the group. People therefore join instrumental organizations primarily as means to some other end or ends.[169] Examples are the NRA, the League of Women Voters, and the Sierra Club. Some associations may serve both expressive and instrumental purposes depending upon the reasons members join."[170]

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

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167 Arthur P. Jacoby, *Some Correlates of Instrumental and Expressive Orientations to Associational Membership*, 35 SOC. INQUIRY 163, 164 (1965) [hereinafter *Correlates of Instrumental and Expressive Orientations*].

168 *See* Babchuk & Edwards, *Voluntary Associations and the Integration Hypothesis*, *supra* note 166, at 149, 151. However, the authors also mention a study finding that "upper-class women" emphasized personal satisfaction as their reason for joining instrumental associations. In contrast, "middle-class women" emphasized association goals as their reasons for joining voluntary associations, even though they "were mostly affiliated with expressive associations." *Id.* at 152.

169 *See* Gordon & Babchuk, *A Typology of Voluntary Associations*, *supra* note 165, at 25–26; Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 167, at 164. *See also* John Wilson & Marc A. Musick, *Work and Volunteering: The Long Arm of the Job*, 76 SOC. FORCES 251, 253 (1997) (dividing social participation into expressive, self-interested, and helping the needy or resolving community problems).

170 *See* Gordon & Babchuck, *A Typology of Voluntary Associations*, *supra* note 165, at 28 (citing Kiwanis and the American Sociological Society as examples of mixed purpose associations). The authors also call Alcoholics Anonymous a mixed purpose organization, presumably because of the camaraderie that develops among those who go regularly to the same chapter, even though the primary purpose remains instrumental. The distinction between expressive and instrumental groups is similar to, and to some extent overlaps with, the distinction between bonding and bridging groups made by Robert Putnam. *See supra* note 56 and accompanying text.

terest" is used in this way, advocacy groups are inherently public interest groups, regardless of whether they pursue the personal goals of their members.[171]

Others reserve the term "public interest" for efforts by some people to assist others because of a belief that this is the right thing to do, regardless of whether they expect a private benefit.[172] Used in this way, both pro-choice and pro-life groups might properly be called public interest groups because their goals are based upon a profound belief of their members in the correctness and benevolent purpose of their respective missions, rather than upon personal advantage or utility. Even if the members of such groups can be seen as seeking a self-interested goal, theirs are self-interested civic goals rather than self-interested private, material goals—a distinction that "matters for the political life of the community."[173]

B. WHY PEOPLE PARTICIPATE IN VOLUNTARY ASSOCIATIONS

Many commentators—both those who believe in and those who reject the idea of civic decline—agree that people who participate in one voluntary association are more likely to participate in other aspects of civil life, broadly defined to include neighborhood involvement and other types of informal helping or social participation, as well as in political activities.[174] Thus, much study has focused on what motivates people to get involved in voluntary associations in the first place.

1. *Education*

The most consistently documented finding in this area is that there is a strong positive correlation between formal education and civic engagement: people with some college education participate in voluntary

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

[172] *See* Mansbridge, *On the Contested Nature of the Public Good*, *supra* note 171, at 9–10. *See also* Alan Wolfe, *What Is Altruism?*, *in* PRIVATE ACTION AND THE PUBLIC GOOD, *supra* note 171, at 36, 37 (quoting J. Phillipe Rushton's definition of altruism as "social behavior carried out to achieve positive outcomes for another rather than for the self").

[173] VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 23.

[174] *See* David Horton Smith, *Determinants of Voluntary Association Participation and Volunteering: A Literature Review*, 23 NONPROFIT & VOLUNTARY SECTOR Q. 243, 253 (1994) [hereinafter *Determinants*]. In some formulations, this belief risks becoming a tautology. *See infra* Part II.C.2.

associations and vote significantly more than less educated groups.[175] To some extent, this correlation is related to the correlation between civic engagement and socioeconomic status. However, even when researchers control for income, those with higher levels of formal education participate more in civil society.[176]

Education also has an impact on the manner or type of civic engagement that people choose. According to one study, "[t]hose with more formal education are more likely than those with less to direct their [volunteering] activities not only to their own communities but also to other communities."[177] Further, there is evidence that people with college or more advanced degrees show greater interest than other people in working with serious social problems relating to disabled, disadvantaged, abused, troubled, or neglected children and youth.[178] In the realm of political activity proper, education is most highly correlated with voting, demonstrating, signing a petition, boycotting, and contacting public officials. The correlation is substantially weaker for working with others and attending meetings and rallies.[179]

There are numerous reasons why education fosters civic engagement. Education makes certain forms of engagement easier by imparting

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175 *See* VIRGINIA A. HODGKINSON ET AL., INDEPENDENT SECTOR, GIVING & VOLUNTEERING IN THE UNITED STATES, VOLUME II 14 tbl.1.7 (1995) (according to 1993 data collected by Independent Sector, people with less than a high school diploma made up 12.3% of all volunteers, while those with some college or higher made up 52% of all volunteers); *see also* M. MARGARET CONWAY, POLITICAL PARTICIPATION IN THE UNITED STATES 22–23 (1991) [hereinafter POLITICAL PARTICIPATION]a *See also* J. Miller McPherson, *A Dynamic Model of Voluntary Affiliation*, 59 SOC. FORCES 705, 711, 712, 715 (1981) (agreeing that education is the "most important exogenous variable in almost all studies of affiliation," but noting that in countries other than the United States education does not play as important a role in predicting affiliation). In the 1950s and 1960s, people with a grade school education voted in midterm elections at about the same rates as people with a high school education did in the 1980s; in the 1950s and 1960s, people with a high school education voted at rates comparable to the voting rates of people with a college education in the 1980s. *See* CONWAY, POLITICAL PARTICIPATION, *supra*, at 22 tbl.2-1.

176 *See* CONWAY, POLITICAL PARTICIPATION, *supra* note 175, at 22 tbl.2-1; Christopher J. Anderson, *Political Action and Social Integration*, 24 AM. POL. Q. 105, 116 tbl.3 (1996). For a discussion of the relationship between education, social class, and civic engagement ("participation in noninstitutionalized politics"), see Ronnelle Paulsen, *Education, Social Class, and Participation in Collective Action*, 64 SOC. EDUC. 96 (1991) and *infra* note 255 and accompanying text. By noninstitutionalized politics, the author means forms of collective action that do not involve formal political institutions, e.g., "protest demonstrations and community problem solving." *Id.* at 96.

177 *See* POINTS OF LIGHT FOUNDATION, SURVEY ON VOLUNTEERING FOR SERIOUS SOCIAL PROBLEMS 5 (Washington, D.C., September 1996) (prepared for the Inaugural Meeting of the National Commission on Philanthropy and Civic Renewal) (noting that among volunteers for serious social problems, 69% of college graduates volunteered, whereas 57% of those with a high school diploma or less volunteered) [hereinafter VOLUNTEERING FOR SERIOUS SOCIAL PROBLEMS].

178 *See id.* at 5.

179 Anderson, *Political Action and Social Integration*, *supra* note 176, at 114.

useful information and skills, e.g., how to write a member of Congress, participate in an association, work for a political campaign, or register to vote.[180] These skills and experiences derived from leadership roles in student activities help create a sense of political efficacy. Political efficacy, in turn, is highly correlated with participation in collective action.[181] In addition, education also helps motivate people to become civically engaged, presumably by teaching students to value civic involvement and providing them with networks of people who are civically involved and who invite them to join specific organizations, projects, or events.[182] Because people with "higher levels of education tend to come from families in which the parents had higher levels of education as well," values imparted by these students' parents are an additional source of motivation for civic engagement.[183]

2. *Religion*

Religion, whether in the form of membership in a religious organization or attendance at religious services, is a close second to education in predicting civic involvement.[184] The correlation between religion and civic engagement has been explained, in part, by the likelihood that involvement in religious organizations can develop communication and organizational skills useful for effective participation in voluntary associations of any kind.[185] For instance, churches have been found to be especially critical for teaching skills in African-American communities.[186]

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[180] *See* Brady et al., *Beyond SES*, *supra* note 84, at 283. According to these authors, however, the impact of education on voting turnout has been overstated. Based upon an analysis of data from over 15,000 phone interviews conducted in 1989 and 1990, they concluded that "the impact of education on voting is funneled entirely through political interest." *Id.*

[181] *See* Paulsen, *Education, Social Class, and Participation in Collective Action*, *supra* note 176, at 101, 104–06. On the importance of the sense of political efficacy in adults, see *infra* notes 254–255 and accompanying text.

[182] *See* STEVEN J. ROSENSTONE & JOHN MARK HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, 76–77, 135–36 (1993); Brady et al., *Beyond SES*, *supra* note 84, at 283. *See also* William A. Galston, *Political Knowledge, Political Engagement, and Civic Education*, 4 ANN. REV. POL. SCI. 224–25 (2001) (noting the positive impact of civic education on political participation and support for democratic values).

[183] CONWAY, POLITICAL PARTICIPATION, *supra* note 175, at 23. *See also infra* notes 223-227, 240 and accompanying text.

[184] *See* Robert Wuthnow, *Mobilizing Civic Engagement: The Changing Impact of Religious Involvement*, *in* CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY, *supra* note 5, at 331, 333 [hereinafter *Mobilizing Civic Engagement*] (citing sources). *See also* John Wilson & Thomas Janoski, *The Contribution of Religion to Volunteer Work*, 56 SOC. RELIGION 137, 138–39 (making the same point with respect to volunteering).

[185] *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 305–06, 310–11, 313; *see also* Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, at 346.

[186] *See* Peter Dobkin Hall, *Vital Signs: Organizational Population Trends and Civic Engagement in New Haven, Connecticut, 1850-1998*, *in* CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY, *supra* note 5, at 211, 237 [hereinafter *Vital Signs*]. *See also* VERBA ET AL., VOICE

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

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

> [a]ctive church members are likely to be exposed to religious teachings about loving their neighbor and being responsible citizens, they are more likely to have social capital in the form of ties to fellow congregants that can be used to mobilize their energies, and they are more likely to be aware of needs and opportunities in their communities as a result of attending services in their congregations.[187]

Based upon similar reasoning, some civic renewal writers have attributed a significant part of the decline in civic participation to the decline in traditional forms of religious commitment.[188] This connection has been challenged on several grounds. As a threshold matter, there is data showing that the level of religious engagement in the United States, measured by beliefs, practices, or a combination, has remained quite stable for at least five decades.[189] Some commentators, in fact, see an upswing

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AND EQUALITY, *supra* note 5, at 320–30 (noting that participation in politics is highly correlated with socio-economic status except that participation in churches increases the level of participation of poor blacks and white fundamentalists; however, participation in churches does not increase the participation levels of Catholics).

187 Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, at 334; *see also* Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 184, at 137–38.

188 *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 69 (arguing that people joined or went to church or other religious institutions less in the 1970s (41%) than they did in the 1950s (48%)).

189 *See* Bill Broadway, *Poll Finds America 'as Churched as Ever,è* WASH. POST, May 31, 1997, at B7 (basing his claim that Americans are "as churched as ever" on a Gallup Poll done for the Princeton Religious Research Center); Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, at 334–35 (1999) (arguing that religious involvement has been stable for at least five decades, with a "temporary increase" in the 1950s, and that the way some surveys phrased the question about religious involvement may be responsible for the decrease that Putnam asserts); *The Solitary Bowler*, ECONOMIST, Feb. 18, 1995, at 21 (claiming that church attendance in America shows the weakest decline; it has been stable at 40% since 1939); *see also* Ladd, *Data Just Don't Show Erosion*, *supra* note 2, at 21 (basing his claim on data from colonial times through 1990 and, relying on the work of Roger Finke and Rodney Starke, concluding that the rates of religious "adherence" have been "essentially constant" at about 55% since the 1920s).

in religious observance.[190] To some extent, this disagreement reflects different evaluations of changing forms of religious practice and expressions of religious identity that have occurred in the last several decades. If, as Robert Wuthnow argues, spirituality has undergone a significant shift from "habitat-based" to "seeker-based,"[191] it stands to reason that measures of religious identification based upon attendance at or involvement with houses of worship will witness a decline.

The link between religion and civic engagement must be further qualified by research showing that the link is complex and not uniformly present across religions or religious denominations. For example, although there is a strong correlation between religious engagement and civic engagement in general, several studies have found significant differences in the extent and type of civic activity characteristic of different religions and denominations within religions. Some early studies found that Catholics participated less than Protestants in civic and service organizations.[192] Data from the early 1970s, in contrast, show that Catholics, Jews, and Episcopalians volunteered significantly more than other religious groups and denominations in addition to people claiming no religious affiliation.[193] According to data from 1991, Catholics were much more likely to join a nonreligious voluntary association than were evangelical Protestants, whereas mainline Protestant denominations were much more likely to join such associations than Catholics.[194]

The disparity in civic participation as between Catholics and mainline Protestants may come from the habits of mind that are imparted to congregants by the different structures of the two denominations. Ac-

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

191 ROBERT WUTHNOW, AFTER HEAVEN: SPIRITUALITY IN AMERICA SINCE THE 1950S 3–4 (1998). This is not the first time in the history of religion in America that people have turned away en mass from formal, ritually oriented forms of religious worship to more individualistic, spiritually or mystically oriented forms of worship. *See generally* RICHARD KYLE, THE RELIGIOUS FRINGE: A HISTORY OF ALTERNATIVE RELIGIONS IN AMERICA (1993); PETER W. WILLIAMS, POPULAR RELIGION IN AMERICA: SYMBOLIC CHANGE AND THE MODERNIZATION PROCESS IN HISTORICAL PERSPECTIVE (1980).

192 *See* MURRAY HAUSKNECHT, THE JOINERS: A SOCIOLOGICAL DESCRIPTION OF VOLUNTARY ASSOCIATION MEMBERSHIP IN THE UNITED STATES 76–77 (1962) [hereinafter THE JOINERS] (distinguishing between Protestants and Catholics)); *see also* Hall, *Vital Signs*, *supra* note 186, at 233–34 (distinguishing between liberal and conservative Protestants and Roman Catholics in New Haven).

193 *See* Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 184, at 143.

194 *See* Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, at 341, 343. *See also* HODGKINSON ET AL., GIVING AND VOLUNTEERING IN THE UNITED STATES, *supra* note 175, at 14 tbl.1.7 (based upon 1993 data from Independent Sector, 22.4% of volunteers are Catholic while 54.2% are Protestant).

cording to one interpreter of the data, Protestant congregations tend to view the clergy as serving the members, whereas it is more common for authority in Catholic churches to be hierarchical, with the congregants at the bottom of the authority structure.[195] This is consistent with the findings of political scientist Robert Putnam, who studied numerous districts in Italy[196] and found that high levels of religious observance or expressions of religious identity were strongly correlated with low levels of civic activity.[197] Putnam attributed this fact, in part, to the Italian Church's emphasis on ecclesiastical hierarchy, in which "[v]ertical bonds of authority are more characteristic . . . than horizontal bonds of fellowship."[198] The demonstrated predictive value of religious affiliation for civic engagement may, then, mask a more meaningful correlation between experiences in certain structural environments and civic engagement that, in the case of religious institutions, rest on basic characteristics of their underlying theologies.

A direct link between theology and civic engagement has been posited based on data showing that volunteering in community or secular organizations is higher among mainline and liberal Protestants than among evangelicals, conservative Protestants, and Catholics.[199] Researchers have speculated that this difference is due to the fact that the former denominations tend to link their theological teaching explicitly with social activism, whereas the latter are more likely to stress piety, personal salvation, and volunteering to the church.[200] One consequence,

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195 *See* HAUSKNECHT, THE JOINERS, *supra* note 192, at 54–55. Verba, Schlozman, and Brady give the same explanation for low participation rates in politics among poor Catholics. *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 245. Hierarchical structures are also considered a factor reducing the likelihood of civic engagement in other contexts. *See infra* notes 211-13 and accompanying text (describing the positive relationship between work that offers employees challenge and discretion and their involvement in civic life).

196 *See generally* PUTNAM, MAKING DEMOCRACY WORK, *supra* note 5 (finding that the difference in economic development in the northern and southern parts of Italy was directly correlated to the differences in their civic traditions and culture and arguing that, over time, civic engagement produced trust and other bonds among neighbors, members of groups, and people active in other types of communities). Subsequently Putnam generalized his findings from Italy and concluded that interpersonal trust and social capital are essential for all forms of cooperation, whether economic, social, or political, in the United States and elsewhere. *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 21.

197 *See* PUTNAM, MAKING DEMOCRACY WORK, *supra* note 5, at 107–08.

198 *See id.* at 107.

199 *See* Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, at 341–44; *see also* Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 184, at 143–44, 148 (finding Catholics volunteer at the same rate as liberal Protestants).

200 *See* Wuthnow, *Mobilizing Civic Engagement*, *supra* note 184, 342–44; *see also* Wilson & Janoski, *The Contribution of Religion to Volunteer Work*, *supra* note 184, at 149–50; Hall, *Vital Signs*, *supra* note 186, at 234; PUTNAM, MAKING DEMOCRACY WORK, *supra* note 5, at 107. Wuthnow also attributes the phenomenon to the fact that evangelical churches make very great, time-consuming demands on the members of their congregations, and they provide them with a wide assortment of opportunities to engage their energies.

then, of the increased popularity of fundamentalist congregations during the final third of the last century may be a reduced level of involvement in secular (including civil and political) organizations, as members are encouraged to direct their energies and financial resources to their own churches and church-related organizations and activities.

In sum, it is certainly true that religious values may lead those who take them seriously to be concerned about the well-being of people outside their own religious communities and to be inspired to join and participate in civic organizations devoted to helping causes or populations regardless of their religious orientation. At the same time, the positive civic impact of religious organizations appears to depend also on the content of the values that they inculcate. If so, when people internalize civic values as part of their religious life, their civic commitment will be strong. When, in contrast, religious teachings focus on the needs of specific religious communities or emphasize the virtues of piety and the goal of personal salvation, the civic impact is likely to be negligible or even negative.

3. *Job and Workplace*

Scholars have long been interested in the degree to which jobs or careers influence the likelihood that people will be active members of civil society and influence the type of civic activities they choose.[201] As a threshold matter, research shows that spending large amounts of time on the job does not necessarily interfere with a person's willingness to be engaged civically outside of work. In fact, according to some studies, "among workers, longer hours are often linked to *more* civic engagement, not less."[202] Although it may seem counterintuitive, women working full time for pay are more involved in formal and informal civic activities than are women who do not engage in paid work.[203] Women who work part-time for pay, however, are more involved in such activities than both full-time working women and women who do not have paid jobs.[204] This finding may suggest that working has a strong positive effect on a person's desire for civic engagement, even though it reduces the amount of time available for civic activities, but that full-time em-

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201 *See, e.g.*, Graham L. Staines, *Spillover Versus Compensation: A Review of the Literature on the Relationship Between Work and Nonwork*, 33 HUM. REL. 111 (1980) [hereinafter *Spillover Versus Compensation*].

202 *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 191 and authorities cited therein. Putnam here includes informal activities, such as having people to dinner and "schmoozing," in his measure of civic involvement.

203 *See* Kay Lehman Schlozman, *Did Working Women Kill the PTA?*, AM. PROSPECT, Sept. 11–a2000, at 14 (emphasizing the positive aspect of paid work on women's political involvement); *see also* PUTNAM, BOWLING ALONE, *supra* note 2, at 200–01.

204 *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 201.

ployment cuts excessively into the hours available for outside activities, at least for women.[205]

There is considerable interest in the relationship between characteristics of work and the type of civic activities that people engage in outside of work. Researchers have found that, in general, people choose civic activities that are similar to, or build on, their work experiences more often than they choose non-work activities that contrast with their work experiences.[206] Empirical studies examining the kinds of outside activities preferred by working women have found that many working women are joining professional groups now, whereas previously they tended to join service-oriented groups to a greater degree.[207] To the ex-

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205 Men who have been employed in structured work environments for a significant period are more likely to be engaged in civic life than those who have not. *See* C. Muhammad Siddique, *Orderly Careers and Social Integration*, 20 INDUS. REL. 297, 303–04 (1981). *See also* Harold L. Wilensky, *Orderly Careers and Social Participation: The Impact of Work History on Social Integration in the Middle Mass*, 26 AM. SOC. REV. 521, 530–32 (1961) (basing his conclusion on an analysis of upper working class and lower middle-class men and finding that men who have had orderly horizontal or vertical careers will have more memberships in formal associations, attend more meetings, spend more time in associational activities (other than church activities), interact more frequently with persons different from themselves, be exposed to more of the major institutional spheres of society, and have stronger attachments to the community than men lacking such orderly careers).

206 *See* Staines, *Spillover Versus Compensation*, *supra* note 201, at 112, 115, 116, 117, 123. When there are similarities between a person's work and his leisure activities, sociologists attribute this to a "spillover" or "generalization" effect, which presupposes that the skills developed, attitudes created, roles played, and needs satisfied on the job "spill over" or are generalized during leisure time outside the job. *See id.* at 112, 115. A dissimilarity between work and non-work activities is explained as a "compensation" or "competition" effect. *Id.* at 114. According to this theory, people's experiences on the job satisfy some human needs but not others. *Id.* at 112–14. As a result, in their leisure time people seek to compensate for the various voids that are not satisfied through their work on the job. *See id.* at 115 (citing work suggesting that this causes people to seek involvement in voluntary associations in the first place and implying that such people will seek activities unlike those performed at work). *See also* Robert Hagedorn & Sanford Labovitz, *Participation in Community Associations by Occupation: A Test of Three Theories*, 33 AM. SOC. REV. 272, 281 (1968) (finding that "isolated occupations compensate by being high participators in community associations"). Some studies show that people who have physically demanding jobs are not only less likely to be physically active when they participate in activities outside work; they are less likely to participate to begin with. *See* Staines, *Spillover Versus Compensation*, *supra* note 201, at 118–19. Alternatively, according to this view, people may be seeking variety in their non-work activities to balance their work activities. *See id.* at 116–17; Wilson & Musick, *Work and Volunteering: The Long Arm of the Job*, *supra* note 169, at 253 and sources cited therein. In general, studies have found a positive spillover effect more often than a compensation effect. There have, however, been a substantial number of studies that found a compensation effect or no relationship between work and non-work activities at all.

207 *See* Danny R. Hoyt et al., *The Voluntary Association Memberships of Women: Changing Patterns of Affiliation*, (1985) (paper delivered at the American Sociological Association Convention) (on file with author and a summary is available in SOC. ABSTRACTS, Dec. 1985, at 1734); *see also* Patricia Klobus Edwards et al., *Women, Work, and Social Participation*, 13 J. VOLUNTARY ACTION RES. 7, 16 (1984) (noting that "working women . . . are most likely to engage in instrumental activities").

tent that women's participation in professional groups is motivated by the desire to refine skills necessary for their jobs or helpful for career advancement, their desire for civic engagement is only incidental. Alternatively, women's turn toward professional organizations may be due to a loss of interest in the types of groups they formerly joined, coupled with a new interest in different types of associational activities. In this case, a woman's job may have created a motivation for civic engagement that did not exist previously. In that event, the finding that women working for pay are more involved in civic life than their non-working counterparts[208] may be explained by women's desire to balance work life with experiences outside the workplace while taking advantage of expertise gained in the workplace. Working women may also be responding to exposure to social networks first encountered on the job. Either way, the influx of women into the workplace would be responsible for expanding the variety of women's civic commitments and introducing them to a range of associational opportunities not previously encountered.

The likelihood that workers will join a union and engage in formal union activities constitutes a special case of worker participation in voluntary associations. Researchers have found that the propensity of workers to attend meetings or hold office in their unions is a function of two variables: first, the degree to which individual members see themselves as at risk and, second, the union's perceived level of effectiveness in promoting fairness in the employment relationship. A recent study found that ethnic-minority women were the most likely to participate in a union perceived as effective in promoting fairness; non-ethnic minority women were the next most likely, followed by non-ethnic minority men, and finally ethnic-minority men.[209] In such cases, involvement in unions is pursued predominantly for instrumental (rather than ideological or social) reasons.[210]

Highly-placed individuals in corporate America often seek out civic opportunities, including joining charitable groups, because it is made clear on the job that such outside activities enhance the reputation of the company and thus may enhance the individual's chances for promo-

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208 Sources cited *supra* at note 203.

209 *See* Steven Mellor et al., *Unions as Justice-Promoting Organizations: The Interactive Effect of Ethnicity, Gender, and Perceived Union Effectiveness*, 40 SEX ROLES 331, 331 (1999).

210 *See* Thomas C. Kohler, *Civic Virtue at Work: Unions as Seedbeds of the Civic Virtue*, 36 B.C. L. Rev. 279 (1995), *reprinted in* SEEDBEDS OF VIRTUE: SOURCES OF COMPETENCE, CHARACTER, AND CITIZENSHIP IN AMERICAN SOCIETY 131 (Mary Ann Glendon & David Blankenhorn eds., 1995) (criticizing the decline in union membership and attributing it to the fact that people tend to value autonomy and self-interest over other values, thereby overlooking the potential of collective bargaining negotiations to be a forum for responsible self-government).

tion.[211] Because voluntary organizations are often "prestige-conferring,"[212] people with a high level of occupational success may seek parallel achievements in the institutions of civil society. The widely-recognized strong positive correlation between high educational level and socioeconomic status, on the one hand, and the level of civic participation, on the other, may also explain the participation of such individuals.[213]

There is also evidence that workplace positions demanding qualities such as autonomy, initiative, decision making, discretion, considerable interaction with other workers, complex tasks, and leadership correlate positively with civic involvement.[214] It is possible that the correlation between civic engagement and challenging jobs of the kind described bears upon confidence more than on motivation, given that the workplace is one of the most important places for learning and practicing skills useful for civic engagement.[215] However, given that a positive correlation between civic engagement and challenging jobs exists even when the studies control for level of education,[216] it is more likely that such jobs are responsible for motivating employees' involvement in civil society in addition to equipping them to participate with a variety of experiences and well-honed skills.

Recent research has found that the correlation between participation in nonpolitical civic activities and participation in political activities is far stronger than the correlation between participation in workplace activities and political involvement.[217] The disparity was the most pronounced in connection with time-consuming or volunteer-oriented

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211 *See* Thomas Janoski & John Wilson, *Pathways to Voluntarism: Family Socialization and Status Transmission Models*, 74 SOC. FORCES 271, 273 (1995) [hereinafter *Pathways to Voluntarism*] (noting that membership in voluntary associations is frequently "almost part of the job" for people in high-status occupations); *see also* Wilson & Musick, *Work and Volunteering: The Long Arm of the Job*, *supra* note 169, at 253 and sources cited therein; Staines, *Spillover Versus Compensation*, *supra* note 201, at 115 and sources cited therein.

212 Jack C. Ross, *Toward a Reconstruction of Voluntary Association Theory*, 23 BRIT. J. SOC. 20, 27 (1972).

213 *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 189–200.

214 *See* Wilson & Musick, *Work and Volunteering: The Long Arm of the Job*, *supra* note 169, at 253–54 and sources cited therein. *But see* Steven L. Schweizer, *Participation, Workplace Democracy, and the Problem of Representative Government*, 27 POLITY 359, 368–69 (1995) (arguing that "[t]he drift of empirical research suggests that workplace democracy does not increase external political participation").

215 *See* Sidney Verba et al., *Race, Ethnicity and Political Resources: Participation in the United States*, 23 BRIT. J. POL. SCI. 453, 476–78 (1993).

216 *See* Wilson & Musick, *Work and Volunteering: The Long Arm of the Job*, *supra* note 169, at 253–54.

217 *See* Ayala, *Trained for Democracy*, *supra* note 85 (analyzing the same data base as Verba, Schlozman, and Brady, *supra* note 84, with some adjustments of methodology). The author notes that the result was the same for professionals as it was for low-skilled workers. *Id.* at 104.

political activities, as contrasted with voting.[218] This finding suggests that a person's work is not as significant a factor in prompting civic engagement, at least in the form of political participation, as is participation in voluntary forms of associational life. At the same time, the author of this research noted that the causal element had not been proven: it is possible, given the results of the research, that the time-intensive types of political activity might be causing the participant to engage in non-political voluntary associations as well.[219]

4. *Friends, Parents, and Social Ties*

Friends are an important source of motivation for getting involved in civil society. People who are asked in person, or through a personal communication, to join or volunteer, do so far more often than those who learn of such opportunities from the newspaper or other print or broadcast media.[220] When questioned, such joiners often respond that the primary reason they joined was the personal solicitation of a friend.[221] The powerful effect of solicitations by friends may also explain why people who work and those who attend church have higher rates of civic engagement than those who do not: most workplaces and church groups provide an assortment of networks of people with varying interests, some of them eager to recruit fellow workers or worshipers. Researchers have even found that subjects in an experiment who do not have much interpersonal trust tend to show a stronger preference for civic activities after writing an essay on the benefits of friendship.[222]

Children growing up in homes where one or both parents are active in civic associations are much more likely than children with the same socioeconomic status and education to join civic associations or to be civically active when they are adults.[223] When one or both parents en-

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218 *Id.* at 106.

219 *Id.* at 108.

220 *See* S. Wojciech Sokolowski, *Show Me the Way to the Next Worthy Deed: Towards a Microstructural Theory of Volunteering and Giving*, 7 VOLUNTAS 259, 272, 275 (1996) [hereinafter *Show Me the Way*] (finding that solicitation increased volunteering to philanthropic entities, although it did not increase charitable giving); Smith, *Determinants*, *supra* note 174, at 252. According to one researcher, direct recruitment at voluntary organizations and churches does not explain the strong correlation between involvement in voluntary associations, including churches, and voter turnout. *See also* Carol A. Cassel, *Voluntary Associations, Churches, and Social Participation Theories of Turnout*, 80 SOC. SCI. Q. 504 (1999).

221 *See* Arthur P. Jacoby, *Personal Influence and Primary Relationships: Their Effect on Associational Membership*, 7 SOC. Q. 76, 77–81 (1966) (noting as well that personal influence was a much greater factor in the decision to join expressive associations than in instrumental ones).

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

223 *See* SCOTT KEETER ET AL., CENTER FOR INFORMATION & RESEARCH ON CIVIC LEARNING AND ENGAGEMENT, THE CIVIC AND POLITICAL HEALTH OF THE NATION: A GENERATIONAL

gaged in helping behaviors and also had a nurturing relationship with the children, the children were significantly more likely to become committed activists or engage in sustained helping behaviors than children without such backgrounds.[224] The mechanism involved in socialization by parents is thought to be role modeling, reinforcement of values, and possibly actual recruitment of children by their parents.[225]

At the same time, some researchers have found that the impact of family socialization varies depending upon the type of voluntary association. Parental transmission of status has been shown to be better than parental socialization for predicting children's participation in "self-oriented" associations, such as business or professional groups, unions, or veterans groups. In contrast, family socialization provided a better explanation of children's participation in community-oriented associations such as church, fraternal, neighborhood, and service organizations.[226] These findings are consistent with research on the pivotal effect of cultural, social, or family values on levels of involvement in associations directed toward collective goals discussed below.[227]

The desire for interpersonal social relationships is another reason for joining associations.[228] Some researchers have found that organiza-

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PORTRAIT 17 (2002), *available at* http://www.pewtrusts.com/pdf/public_policy_youth_civic_political_health.pdf (last visited Apr. 2, 2004); Janoski & Wilson, *Pathways to Voluntarism*, *supra* note 211, at 283.

224 *See* E. Gil Clary & Jude Miller, *Socialization and Situational Influences on Sustained Altruism*, 57 CHILD DEV. 1358 (1986) (finding, based upon data from adult volunteers at a telephone crisis-counseling agency, that helping behavior was twice as likely to extend through the six-month commitment period if the volunteer's parents had been committed activists and nurturing to their children than if the parents had not been). However, the authors also found that partially committed adults, e.g., those whose parents had preached but not practiced altruism and had been less nurturing than the parents of the comparison group, achieved the identical level of altruistic commitment as the others if they received highly cohesive volunteer training prior to undertaking the volunteer work. *Id.* at 1362.

225 *See* USLANER, MORAL FOUNDATIONS OF TRUST, *supra* note 111, at 92–93; Eric M. Uslaner, *Producing and Consuming Trust*, 115 POL. SCI. Q. 569,a571,a575 (2000); Janoski & Wilson, *Pathways to Voluntarism*, *supra* note 211, at 273–74, 289; Paul Allen Beck & M. Kent Jennings, *Pathways to Participation*, 76 AM. POL. SCI. REV. 94, 98–101, 104–05 (1982). Uslaner also argues that parents are largely responsible for instilling in their children a generous attitude and a sense of optimism, including a belief in one's ability to control one's surroundings and make the world a better place. *See* USLANDER, MORAL FOUNDATIONS OF TRUST, *supra* note 111, at 80–81, 93.

226 *See* Janoski & Wilson, *Pathways to Voluntarism*, *supra* note 211, at 279–286. The authors note that their distinction between self- and community-oriented organizations is different from the more commonly used distinction between expressive and instrumental organizations. *Id.* at 274.

227 *See infra* II.B.5.

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

tions with civic purposes such as helping needy populations attract people looking for fellowship.[229] In general, members motivated to join for reasons of this kind tend to be committed to a group's internal activities, but are less likely to engage in external activities connected to the group than are those who join as a result of altruistic or ideological motives.[230] "Social ties" with a philanthropic organization are also good predictors of volunteering and donations.[231] Such "social ties" include organizational membership, church attendance, or parents who volunteered.[232]

5. *Attitudes and Values*

Since the pioneering work of Mancur Olson on collective action problems, political and social theorists have often been pessimistic about the likelihood that people will expend substantial resources to obtain a public good in circumstances where they can expect to share in the fruits of other people's efforts regardless of their own contribution.[233] Subsequent studies, in contrast, have determined that people's motives for joining, volunteering for, and giving money to non-economic voluntary organizations are usually mixed, and that altruism, ideology, and the desire for prestige are better predictors of certain kinds of civic activity than are material motives.[234] An analysis based on 1990s survey data similarly found that the desire for material rewards, such as career opportunities, was not a significant predictor of the likelihood that adults would volunteer for philanthropic activities or make charitable dona-

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229 *See id.* at 488 (noting that "solidary rewards [can] stem from the act of association itself").

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

231 *See* Sokolowski, *Show Me the Way*, *supra* note 220, at 275.

232 *See id.* at 269.

233 *See* MANCUR OLSON, JR, THE LOGIC OF COLLECTIVE ACTION 10-12, 14-15, 53-54 (1965). Differently put, Olson's theoretical model "requires substantial private-good incentives to overcome the tendency of public goods to induce free riding." Knoke, *Incentives in Collective Action Organizations*, *supra* note 230, at 326.

234 *See* Knoke, *Incentives in Collective Action Organizations*, *supra* note 230, at 326 (finding, based upon a study of professional, recreational, and women's organizations using 1980s data, that "[g]eneral normative principles, prestige, and status enhancements are especially potent instigators of general commitment and internal participation," in contrast to selective benefit inducements, such as services or finding job opportunities). Knoke found, however, that normative incentives do not tend to induce participation in activities outside of the association, with the important exception of women's organizations. *Id.* It is possible to make distinctions among types of values, beliefs, or attitudes as motivators of behavior. *See, e.g.*, Carolyn L. Funk, *Practicing What We Preach? The Influence of a Societal Interest Value on Civic Engagement*, 19 POL. PSYCHOL. 601, 602 (1998) [hereinafter *Practicing What We Preach?*] (distinguishing between values and attitudes); Thomas Janoski et al., *Being Volunteered? The Impact of Social Participation and Pro-Social Attitudes on Volunteering*, 13 SOC. F. 495, 498 (1998) [hereinafter *Being Volunteered?*] (quoting Paul Schervish's distinction among "general values," "fundamental orientations," and "causes we are dedicated to"). This article does not make such distinctions.

tions, whereas altruism (in the sense of desiring to help others) and the desire for self-improvement were both positively correlated with rates of volunteering (although not with donations).[235] Similar findings led one political scientist to conjecture that organizations attempting to attract members with material or other individual benefits would improve their success in recruitment and maintenance of membership by appealing to people's societal values.[236] Further, members who joined organizations in order to obtain personal, utilitarian benefits tended to be more passive and less committed to an organization than those who joined to influence public policy.[237]

The preceding findings are consistent with the results reached by research about the impact of family, friends, and social ties on levels of civic involvement, discussed above,[238] since these are frequently influential through instilling civic attitudes and moral values.[239] In fact, according to one sociologist, socioeconomic status has its acknowledged profound effect on the likelihood of political participation because of the attitudes and orientations associated with social and economic status.[240] Even when individuals join or volunteer simply in response to a personal appeal, they may do so because of the value they place on friendship, itself a civic value as fulsome as more obvious civic values such as voting. Further, sometimes a person joins a voluntary group for one reason but acquires a different reason for remaining in the group,[241] or joins a group independently of social or civic values and then acquires such values as a result of participation in the group.[242]

6. *Conclusion*

Several themes recur in the preceding discussion of the reasons people participate in voluntary organizations. First, the motivation for joining is often complex and multi-faceted. Second, some reasons may themselves derive, both conceptually and in actuality, from other reasons. For example, church attendance is a strong predictor of participation in civic life more broadly. But the difference in participation rates

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235 *See* Sokolowski, *Show Me the Way*, *supra* note 220, at 273.

236 *See* Funk, *Practicing What We Preach?*, *supra* note 234, at 611.

237 *See* Knoke, *Incentives in Collective Action Organizations*, *supra* note 230, at 326.

238 *See supra* Part II.B.4.

239 *See supra* Part II.B.1, 2, 4.

240 *See* Pollock, II, *Organizations as Agents of Mobilization*, *supra* note 228, at 485.

241 *See* E. Gil Clary et al., *Volunteers' Motivations: A Functional Strategy for the Recruitment, Placement, and Retention of Volunteers*, 2 Nonprofit Mgmt. & Leadership 333, 340 (1992); Jo Ann Gora & Gloria Nemerowicz, *Volunteers: Initial and Sustaining Motivations in Service to the Community*, 9 RES. SOC. HEALTH CARE 233, 239–40 (1991).

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

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

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

C. SELF-SELECTION, SOCIALIZATION, AND MOBILIZATION

1. *Introduction: Methodological Challenges*

One building block for much of the civil society literature is the documented existence of a significant positive correlation between association membership, on the one hand, and civic attitudes and values and other forms of civic activity, on the other.[243] At the same time, a correlation between association membership and other forms of civic engagement is, as a theoretical matter, open to at least three interpretations: (1) that active association members were civically oriented before they joined an association and joined, in part, because of that orientation (the self-selection thesis); (2) that such members developed their civic orientation primarily as a result of their association activities (through socialization[244] or active recruitment by other members of the group); or (3) that a combination of these two causal mechanisms is at work.

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[243] *See* sources cited *supra* at note 5. The discussion that follows does not apply, however, to dangerous forms of civic activity such as characterizes racist, hate, and terrorist groups, unless otherwise noted. For groups of this kind, see *supra* note 112.

[244] The term "socialization" is also sometimes used to refer to the process whereby childhood or cultural influences impart values or attitudes to people. I used the term this way in Part II.B.4, 5. Used that way, the term refers to developments outside of associational life. *See, e.g.*, Beck & Jennings, *Pathways to Participation*, *supra* note 225, at 94. In this Part II.C, in contrast, I use the term to refer to the transformation that a member may experience as a result of participating in the activities of an association. Following sociological terminology, I use "self-selection" or "selection" to refer to the impact on joiners of attitudes created independent of their participation in a specific organization. Some authors also speak of "selective recruitment" to refer to the process whereby an organization recruits members who already display the attitudes, skills, or other qualities useful to the organization. *See, e.g.*, Carla M. Eastis, *Organizational Diversity and the Production of Social Capital: One of These Groups Is*

Identifying which causal relationships underlie a given correlation is complicated by the fact that empirical studies are not usually designed to assess the relative roles of self-selection prior to joining an association as compared to socialization or mobilization after becoming a member. Further, self-selection can be attributed to a person's unlearned predispositions or learned attitudes and interests, whether ultimately traceable to formal schooling or informal educational experiences that occur in settings like families, neighborhoods, schools, recreational activities, or summer camps. Mobilization, in turn, can be either direct, through express recruitment, or indirect, through the process of socialization. Moreover, the existing research that measures and compares the relative roles of pre- and post-joining influences is not uniform in the outcomes studied (e.g., voting, volunteering, or some other civic activity) or the influences measured (e.g., values, recruitment, role models).[245] This lack of uniformity in research design has resulted in a patchwork of incomplete and often incommensurable findings.

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

Not Like the Other, 42 AM. BEHAV. SCI. 66, 71 (1998) [hereinafter *Organizational Diversity and the Production of Social Capital*].

245 *See* Brehm & Rahn, *Individual-Level Evidence for the Causes and Consequences of Social Capital*, *supra* note 5, at 999 (hypothesizing that "[v]ariation in social capital can be explained by citizens' psychological involvement with their communities, cognitive abilities, economic resources, and general life satisfaction"); Marc Hooghe, *Voluntary Associations and Democratic Attitudes: Value Congruence as a Causal Mechanism*, *in* GENERATING SOCIAL CAPITAL, *supra* note 5, at 89, 93-94, 102-03 (examining the role of both pre-existing and post-involvement attitudes in connection with feelings of ethnocentrism); David L. Rogers et al., *Voluntary Association Membership and Political Participation: An Exploration of the Mobilization Hypothesis*, 16 SOC. Q. 305, 309 (1975) (examining the impact of both self-selection and organizational involvement on engaging in political activities such as writing elected or agency officials, meeting with agency officials, or attending a public hearing).

2. *Provisional Findings*

Some recent empirical studies have called into question the existence of a strong positive correlation between civic engagement (whether political or not) and the presence of or increase in generalized interpersonal trust[246] on the part of those who were civically engaged. A survey conducted by the Pew Research Center of adults in Philadelphia and surrounding areas revealed that they exhibited high levels of civic engagement, including volunteering, despite the fact that they did not possess high levels of interpersonal trust.[247] The survey's findings are inconsistent with the view that civic engagement presupposes a significant level of generalized interpersonal trust, and they may also suggest that civic engagement does not necessarily generate or increase such trust. These results were largely replicated by a survey of Americans eighteen years and older prepared for AARP by analysts at the University of Virginia Center for Survey Research. The survey found that "social trust may not actually be an important component of civic involvement."[248] Other data have also failed to reveal a correlation between generalized trust and involvement in civic or political groups.[249] Consistent with these findings is research indicating that increases in interpersonal trust among people do not necessarily translate into increased participation by them in their communities.[250] Some cross-national empirical data suggest that the cor-

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246 *See supra* notes 52-56 and accompanying text (discussing the meaning of this term).

247 *See* PEW RESEARCH CENTER, TRUST AND CITIZEN ENGAGEMENT IN METROPOLITAN PHILADELPHIA: A CASE STUDY 4–5 (1997) [hereinafter TRUST AND CITIZEN ENGAGEMENT] (on file with author). The survey measured interpersonal trust and found that 54 percent of the people surveyed believe that "one can't be too careful in dealing with other people." *Id.* at 5. At the same time 57 percent of those surveyed said that people usually try to be helpful and 64 percent said "other people try to be fair." *Id.* Thus, the report concluded that those surveyed were "more wary than distrusting." *Id.* The survey also found that the level of distrust was higher in the city than in the suburbs and that the reasons for distrusting others included people's fear of other people's dishonesty, as well as their fear of crime. *Id.* at 5. The study found that parental warnings were the single most important factor determining whether children, once adults, distrusted others. *Id.* at 8.

248 THOMAS M. GUTERBOCK & JOHN C. FRIES, MAINTAINING AMERICA'S SOCIAL FABRIC: THE AARP SURVEY OF CITIZEN INVOLVEMENT 109 (Center for Survey Research 1997). *See id.* at 89-93, 98 (finding that social trust is weakly correlated with social involvement or volunteering, although there is a modest correlation between social trust, on the one hand, and memberships in associations and community attachment, on the other).

249 *See* USLANER, MORAL FOUNDATIONS OF TRUST, *supra* note 111, at 125-28. The author also concluded that members of labor unions have no more generalized interpersonal trust than nonmembers, and that there is a negative correlation between membership in religious organizations and generalized trust. *Id.* at 127 tbl 5-1.

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

relation between associations and generalized interpersonal trust is confined to particular nations.[251]

At the same time, some revealing correlations have been found. On the pre-joining side, research done by one sociologist suggests that those who join voluntary associations have more generalized interpersonal trust prior to joining than those who do not join.[252] This is the case even after controlling for education and socioeconomic status, both of which are also highly correlated with high levels of generalized trust.[253] The author concludes that there is significant self-selection among people who join voluntary associations.[254] This conclusion does not necessarily contradict the findings of the other researchers just discussed. Rather it suggests that generalized trust may be a sufficient but not a necessary cause of civic engagement.[255]

Although less studied than interpersonal trust, empirical research supports the view that a person's confidence or sense of political efficacy is an important cause of civic engagement.[256] According to one analysis, the well-documented positive correlation of socioeconomic status and education with civic engagement can be explained by the fact that these

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251 *See* Nonna Mayer, *Democracy in France: Do Associations Matter?*, *in* GENERATING SOCIAL CAPITAL, *supra* note 5, at 43, 44--45 (noting that in France "[m]embership and trust levels evolve in opposite directions"). *Cf.* Dag Wollebæk & Per Selle, *The Importance of Passive Membership for Social Capital Formation*, *in* GENERATING SOCIAL CAPITAL, *supra* note 5, at 67 (based upon Norwegian survey data, confirming a strong correlation between association membership, trust, and civic engagement). *See also* Stolle, *Clubs and Congregations*, *supra* note 42 (analyzing differences in the impact of several types of associations in the United States, Germany, and Sweden and finding differences based upon national characteristics as well as on the characteristics of members and the type of association).

252 Stolle, *Bowling Together, Bowling Alone: The Development of Generalized Trust in Voluntary Associations*, 19 POL. PSYCHOLOGY 497, 507–09 (1998) [hereinafter *Bowling Together, Bowling Alone*] (basing these findings upon recent survey data drawn from active members of a variety of associations in Sweden and Germany). Since Stolle was unable to control for self-selection completely, she could not conclude definitively if people are more trusting before they join an association or they become more trusting with the decision to join. *Id.* at 507. She did not, however, find that people became more trusting after joining. *See id.* at 516.

253 *Id.* at 508 n.16, 515; Stolle, *Clubs and Congregations*, *supra* note 42, at 229-30.

254 Stolle also found significant effects on generalized trust as a result of associational activity in certain instances. *See* Stolle, *Bowling Together, Bowling Alone*, *supra* note 252, at 516–18.

255 The reason is that it can be true that people with significant levels of generalized interpersonal trust are likely to join more often than those without such trust without it also being true that a significant level of such trust is necessary for a high level of civic engagement. *Cf.* USLANER, MORAL FOUNDATIONS OF TRUST, *supra* note 111‡ at 127 (finding that confidence and a sense of control are themselves strong predictors of generalized trust, although the same research also failed to show that generalized trust was a strong predictor of civic engagement).

256 *See* USLANER, MORAL FOUNDATION OF TRUST, *supra* note 111‡ at 100–02.

factors create "a sense of political efficacyë in students.[257] In its study of civic engagement among adults in Philadelphia, the Pew Research Center also found that a large percentage of people surveyed said they were confident they would be effective when they involved themselves in community issues, even though many of these same people expressed a high level of distrust of others.[258] These studies suggest that, in some circumstances, individualsè perception of their own or their organization's efficacy may be more important than interpersonal or generalized trust in leading them to engage in civic activity.

Turning to post-joining effects, studies suggest that associational involvement can increase certain types of civic attitudes on the part of participants. One study found that associational involvement contributes significantly to the emergence of interpersonal trust, even though the same research also revealed that interpersonal trust does not contribute significantly to community participation.[259] Three studies based upon 1960s data found "positive changes in the altruist as a function of volunteering."[260] Other studies, in contrast, have concluded that associational involvement does not usually increase members' generalized trust.[261] However, in one of these, when the data describing groups with a high proportion of foreigners were isolated from the rest, there was an increase in generalized trust among members of groups with many foreigners during the period of their involvement (as well as a significant self-selection effect).[262] This finding suggests that involvement in voluntary associations with members of diverse backgrounds has the potential to increase the level of tolerance among members. Other research, in contrast, indicates that the associational effect may be to increase or decrease tolerance, depending upon the dominant view within the organization.[263]

It is possible that absence of strong support for Robert Putnam's belief that group participants are, as a general matter, likely to develop

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257 *See* Paulsen, *Education, Social Class, and Participation in Collective Action*, *supra* note 176, at 96.

258 *See* TRUST AND CITIZEN ENGAGEMENT, *supra* note 247, at 4. Of course, confidence and a sense of political efficacy can also result from, as well as lead to, associational involvement.

259 Shah, *Civic Engagement, Interpersonal Trust, and Television Use*, *supra* note 250, at 487–88.

260 These are noted in Clary & Miller, *Socialization and Situational Influences on Sustained Altruism*, *supra* note 224, at 1359. The studies revealed increases in empathy, nurturing, and self-confidence and self-acceptance.

261 *See* USLANER, MORAL FOUNDATION OF TRUST, *supra* note 111, at 128; Stolle, *Bowling Together, Bowling Alone*, *supra* note 252, at 510, 516.

262 Stolle, *Bowling Together, Bowling Alone*, *supra* note 252, at 516–18; *see also* Stolle & Rochon, *Are All Associations Alike?*, *supra* note 59, at 60–61 (finding that members of organizations with low levels of diversity report far less generalized trust than do members of more diverse organizations).

263 *See infra* notes 300-01 and accompanying text.

generalized interpersonal trust as a result of their participation in the group may be due merely to the fragmentary state of research focusing on this issue. Nevertheless, at this time, there is only minimal evidence to support his belief that expressive bonding groups, like bowling leagues and choral societies, are likely to lead to more complex interpersonal or public-oriented bonds among members.[264]

Also on the post-joining side of the equation, there is a significant amount of empirical research devoted to measuring the effect of involvement in voluntary associations on political participation.[265] Although numerous studies have found a strong positive correlation between involvement in nonpolitical voluntary associations, including attending church, and political participation as a generic category,[266] the results are more ambiguous when voter turnout–a single measure of political participation – is examined separately. One study found that participation in both religious and nonreligious voluntary groups was a "moderately important" predictor of turnout, and that the "participatory predispositions" toward civic engagement of those that joined these groups explained very little of the correlation.[267] The inference is that their engagement in associational activities (through socialization or recruitment) influenced members to vote. Other research has concluded that participation in associations had no impact on the likelihood of members voting,[268] or that

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264 For a different view of the civic contribution of members of bowling leagues, see THE BIG LEBOWSKI (Universal Studios 1998). For a comparison of the pre- and post-joining attributes of members of two choral groups, one organized to perform the sacred music of a fifteenth century Flemish composer and the other to perform an evening of songs from Broadway musicals, published by a participant observer, see Eastis, *Organizational Diversity and the Production of Social Capital*, *supra* note 244.

265 There is also research exploring situations in which social interactions other than organizational involvement increase the likelihood of political activity, and some have argued that social environment can influence political involvement even in the absence of concrete social interactions. *See* Anderson, *Political Action and Social Integration*, *supra* note 176, at 111. Marvin Olsen, in contrast, found no correlation between informal social interactions and voter turnout after controlling for other participation factors. *See* Marvin E. Olsen, *Social Participation and Voting Turnout: A Multivariate Analysis*, 37 AM. SOC. REV. 317, 323 (1972) [hereinafter *Social Participation and Voting Turnout*]. Because of the focus of this Article on associations, this research is not considered.

266 *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 338–39; ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 182, at 83–88; DAVID KNOKE, ORGANIZING FOR COLLECTIVE ACTION: THE POLITICAL ECONOMIES OF ASSOCIATIONS 17, 193–95 (1990); Olsen, *Social Participation and Voting Turnout*, *supra* note 265.

267 *See* Cassel, *Voluntary Associations, Churches, and Social Participation Theories of Turnout*, *supra* note 220, at 509–10, 514 (basing her findings upon her analysis of National Election Study (NES) data and controlling for other influences, Cassel concluded that only education and age had more of an effect on voter turnout in presidential elections from 1972-1992 than did predispositions).

268 Pollock, III, *Organizations as Agents of Mobilization*, *supra* note 228, at 500 (finding that there was a causal relationship between the SES of people who joined solidary organiza-

only engagement in religious institutions, but not other forms of associational involvement, has a strong effect on members voting.[269] The view that only a weak link exists between participation in nonpolitical associations and voting is consistent with empirical work by two political scientists who found that more than half of the decline in voter turnout in presidential elections between 1960 and 1988 was due to a "decline in mobilization" of voters through personal contacts in favor of media advertising (especially television advertising); the increasing numbers of primaries, which diluted scarce resources; and states changing their elections for governor to off-years.[270]

A study of the relationship between nonpolitical voluntary associations and what the researchers classified as "intermediate" political activity, namely, attempts to influence government officials, as contrasted with lower levels of political activity, such as voting, reading about politics, or discussing politics,[271] concluded that both self-selection and organizational involvement explain the extent of people's intermediate forms of political participation, but that mobilization within an association accounts for a larger effect.[272] Other researchers credit the positive impact of associational involvement on subsequent political engagement to the information and skills members acquire through participation in the activities of an association.[273] The connection between participation in voluntary organizations and political engagement may also be a result of the fact that people who participate in voluntary associations are more

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tions and their voting, but finding no effect on people's voting behavior because of their participation in such associations, whether by unintentional or intentional mobilization of members).

269 *See* VERBA ET AL., VOICE AND EQUALITY, *supra* note 5, at 359.

270 *See* ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND AMERICAN DEMOCRACY, *supra* note 182, at 183–84, 214–18. "Mobilization" is used by this author to refer to the efforts of people (whether or not affiliated with associations) to get citizens to vote and not as the term is used in this section, *i.e.*, for the efforts of some members of an association to recruit others or the more subtle socializing effect of an organization on its members. *See also* Richard M. Valelly, *Couch-Potato Democracy?*, AM. PROSPECT, Mar.-Apr. 1996, at 25 (agreeing with Rosenstone and Hansen and emphasizing that "parties, groups, and movements" used to make personal contact with voters and draw them into elections, as did unions, which have also declined).

271 *See* Rogers et al., *Voluntary Association Membership and Political Participation, supra* note 245, at 309.

272 *See id.* at 314. This study is one of the few to compare the post-joining outcomes with the parallel relationship between self-selection (a combination of SES and political attitudes). *See also* Ayala, *Trained for Democracy, supra* note 85, at 104, 108, 109 (finding that the impact of participation in voluntary associations on political participation rivaled the effect of SES).

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

likely to see themselves as having control over their lives, develop the ability and the desire to think through issues and problems that affect them, assume responsibility to solve such problems, be willing and able to work with others to implement their decisions, and have more and more enriched interpersonal relations than their non-participating counterparts.[274] Whatever the mechanism of this causal process, it seems that members must be active participants, at least for a significant period of time, for beneficial effects of association membership to occur.[275]

The empirical evidence is even clearer that involvement in advocacy, political, or politically-oriented organizations, as contrasted with nonpolitical organizations, causes additional political engagement. This is probably because leaders within such groups deliberately seek to mobilize members to engage in political activity outside the group to further the group's objectives.[276] As a consequence, mobilization within a political association is an effective mechanism for promoting additional civic involvement, especially engagement in politics.

In sum, based upon current empirical studies, there is some evidence that participation in a voluntary association will induce or cause further civic activity on the part of the participant, but the causal link appears to be weaker than is often assumed. Moreover, where a causal link between the two has been documented, the effect seems to be attributable to mobilization by group members, especially group leaders, to a far greater degree than to skills, confidence, or civic attitudes acquired through participation in the "first" association. In addition, confidence in a person's own or his or her organization's political efficacy rather than generalized interpersonal trust appears to be the attitude most likely to prompt civic engagement. Given the embryonic state of empirical research in this area, for the time being it seems prudent to assume that future research is likely to find that the relative importance of pre- and

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274 *See* ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 182, at 14–16, 79.

275 *See* SIDNEY VERBA & NORMAN H. NIE, PARTICIPATION IN AMERICA: POLITICAL DEMOCRACY AND SOCIAL EQUALITY 184 (1972) (concluding that members must be active in an organization in order to acquire the skills that make increased political engagement likely); Stolle, *Bowling Together, Bowling Alone*, *supra* note 252, at 515. For the view that there is no meaningful difference between the level of social capital displayed by active and passive members, see Dag Wollebæk & Per Selle, Voluntary Associations and Social Capital: Does Face to Face Interaction Really Matter (2000) (paper presented at the European Consortium for Political Research Workshop, "Social Capital and Interest Formation," on file with author).

276 *See* ROSENSTONE & HANSEN, MOBILIZATION, PARTICIPATION, AND DEMOCRACY IN AMERICA, *supra* note 182, at 83. The efforts of leaders of an association to encourage the political participation of members may extend beyond the members' original incentives in joining in the first place. *See also* Leighley, *Group Membership and Mobilization*, *supra* note 273, at 452.

post-association factors will turn out to be context-dependent and not uniform.[277]

3. *The Role of Integration in Socializing Members of Associations*

Sociologists also study how participation in voluntary associations influences members' attitudes and conduct. Central to this research is the concept of "integration," a term of art referring to the way in which bonds form among people. Voluntary associations can be viewed as integrative in two ways.[278] First, when members of voluntary associations develop bonds with one another through their common activity and goals, the process is referred to as "social-psychological integration."[279] The bonds thus created constitute what Robert Putnam calls the interpersonal trust of "bonding groups."[280] Because people who bond with each other through expressive associations,[281] such as weekly bridge games or square dancing, are not likely to be concerned with community issues by virtue of their group bonds, the expectation is that their social-psychological integration within the group would prompt little or no social integration outside the group and, similarly, little or no civic engagement.[282] As was noted in Part I, some commentators have argued that intra-group bonds may actually interfere with the formation of bonds to the larger community.[283]

It would seem that intra-group integration will also occur in instrumental associations, but that social integration with a larger community will occur as well, given that, by definition, such groups seek to influence people or policies external to the group to achieve their objectives.[284] As a consequence, members of instrumental groups need to recognize and operate in accordance with external cultural norms and practices, and they may also need to develop certain "activist-type" skills, including a sense of the effectiveness of working together as a group to accomplish their common purpose. Belonging to instrumental voluntary associations should, therefore, both equip and enable members

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277 *See, e.g.*, Hooghe, *Voluntary Associations and Democratic Attitudes: Value Congruence as a Causal Mechanism*, *supra* note 245, at 106.

278 *See* Babchuk & Edwards, *The Integration Hypothesis*, *supra* note 166, at 149 n.1.

279 *See id.*

280 For this term, see *supra* note 56 and accompanying text.

281 For the distinction between expressive and instrumental associations, see *supra* Part II.A.

282 Of course, their participation in expressive or bonding groups does not preclude their participating in other types of groups.

283 *See supra* note 58.

284 *See* Babchuk & Edwards, *The Integration Hypothesis*, *supra* note 166, at 149 n.1.

to be civically active.[285] Empirical research confirms this expectation to some extent, but it suggests important limits on the type of social integration members acquire.

An early study of students was designed to test the proposition that members of instrumental associations were more likely than members of expressive groups to be oriented toward "community activities that may not provide much immediate gratification but which are generally considered worthwhile and desirable." The data revealed that student subjects who joined associations for instrumental reasons were, in fact, more likely than their expressive counterparts to be civically engaged, e.g., to vote, watch educational and documentary television programs, and read newspapers and news magazines thoroughly and daily.[286] Contrary to the study's hypothesis, however, the instrumentally-oriented students did not participate more in service organizations or give blood in greater numbers than students in expressively-oriented groups.[287] Based upon this and other findings, the study considered the possibility that "[t]he instrumental association member may well be an interested and concerned citizen, but the interest and concern appears to be self-oriented and rather impersonal in nature. People are important primarily as objects to be manipulated to serve one's own ends."[288] If accurate, participation in voluntary associations is unlikely to facilitate the creation of generalized interpersonal trust even if it succeeds in causing members to be civically active.

In THE CIVIC CULTURE, Gabriel Almond and Sidney Verba suggested that participation in voluntary associations is correlated with dem-

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285 *See* Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 167, at 165; *see also* Bartolomeo J. Palisi & Perry E. Jacobson, *Dominant Statuses and Involvement in Types of Instrumental and Expressive Voluntary Associations*, 6 J. VOLUNTARY ACTION RES. 80, 86 (1977) [hereinafter *Dominant Statuses*]. The data in both articles were based upon student responses to questionnaires.

286 They were also more likely to receive good grades and feel disappointed when they did not get them. Jacoby, *Correlates of Instrumental and Expressive Orientations*, *supra* note 167, at 165.

287 *See id.* at 171.

288 *See id.* at 172. The data also showed that students who joined expressive voluntary associations lived with other people significantly more and reported having many more friends than did students who preferred instrumental associations. *Id.* at 166. The author opined that people who join expressive associations or view the associations they join as expressive do so because they value or need human relationships, in contrast to loners, who appear not to possess such values and needs to the same degree. Jacoby, *Personal Influence and Primary Relationships*, *supra* note 221, at 82. This is consistent with the possibility that people who participate in expressive voluntary associations may be more civic minded than they would be if they preferred solitary recreation, like watching television or computer games, because group activity develops or reinforces personal ties and, as a consequence, a form of social trust or social capital. *See* Babchuck & Edwards, *The Integration Hypothesis*, *supra* note 166, at 150, 151; *see also* PUTNAM, BOWLING ALONE, *supra* note 2, at 149.

ocratic attitudes.[289] However, more recent studies exploring the relationship between association participation and social integration have discovered that associational life often replicates and reinforces socio-economic inequalities. In one, the data showed that associations made up primarily of high-status individuals are more influential than those whose members are low status[290] and that voluntary associations "which have high levels of affiliation also appear to allocate that affiliation in ways which reinforce, rather than counteract, the distribution of inequality in society."[291] Other research showed that dominant status students[292] were more likely to be members of instrumental associations than were subordinate-status students; dominant-status individuals were much more likely to join voluntary associations whose goal was to obtain benefits for their members than groups devoted to accomplishing some goal for the outside community; and when dominant status individuals did join instrumental voluntary associations with a community orientation they participated at a rate lower than the average participation rate for instrumental associations overall.[293]

The status reinforcing aspects of voluntary associations[294] may be a result of their tendency to be "overwhelmingly homogeneous," which inhibits contacts among dissimilar people.[295] According to the authors of research on the composition of voluntary associations:

> [v]oluntary association homogeneity magnifies social differences, rather than mitigating them. When people

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289 *See* ALMOND & VERBA, THE CIVIC CULTURE, *supra* note 92, at 300-01, 307, 318-21.

290 *See* McPherson, *A Dynamic Model of Voluntary Affiliation*, *supra* note 175, at 720, 724.

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

292 The researchers distinguish "dominant" status people from "subordinate" status people based upon income, education, occupation, gender, age, marital status, and religion. *See* Palisi & Jacobson, *Dominant Statuses*, *supra* note 285, at 82–83. The authors develop the distinction in Mona Lemon et al., *Dominant Statuses and Involvement in Formal Voluntary Associations*, 1 J. VOLUNTARY ACTION RES. 30 (1972).

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

294 *See id.* at 86 (citing Chapter 3 of EDWARD C. BANFIELD, THE UNHEAVENLY CITY REVISITED (1974)).

295 *See* Popielarz & McPherson, *On the Edge or In Between*, *supra* note 291, at 698–99, 704.

> are segregated into homogeneous groups, access to the important resources that these groups afford inevitably becomes concentrated in small social circles rather than dispersed in the general population. These resources include new social network ties (and the information and support that they provide), as well as other forms of social capital and political influence.[296]

Voluntary association homogeneity, in turn, is the norm because "new members replicate the sociodemographic characteristics of old ones."[297] Even when people relatively dissimilar to existing members are in fact recruited, members at the periphery of an association's "niche" tend to leave the association sooner or at a higher rate than those in its core.[298] Thus, if homogeneous when first organized, organizations are likely to remain that way, thereby limiting the possibility of "cross-category contact."[299]

In contrast to the preceding, research based upon Belgian survey data showed that associations such as human rights organizations, environmental groups, and school boards, whose members are highly educated, tended to be less ethnocentric than other associations and reduced the level of prejudice among members even after controlling for the effect of the higher educational levels of the members. However, associations dominated by blue collar workers did not have a democratizing effect even though they explicitly voiced anti-discrimination policies.[300]

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296 *Id.* at 699.

297 *Id.* at 701. To test their hypothesis, the authors used gender and education, two easily identifiable dimensions of network ties. *Id.* at 710. They also conjectured that future studies will show that different dimensions exert different amounts of pressure on members. *Id.* at 716.

298 *Id.* at 702–704. The authors' explanation of this phenomenon is that "[f]or individuals at the center of the niche, the group is an integral part of the social structure of relations. But for those at the edge of the niche, the group divides the social world rather than reinforces it." *Id.* at 704.

299 *See id.* at 717. The authors also found that competition among the groups for members was most successful when a competing group sought to lure away members of another association that were most dissimilar from those at the center of the target association, assuming the members on the periphery of the first organization also happen to be in the niche of the competing organization. *Id.* at 704–05. The authors found that the people especially vulnerable to being lured away are those who are at the periphery of the niche of group one and also within the niche of group two ("niche overlap"). *Id.* The consequence of competition among groups, therefore, is that the duration of memberships for those on the periphery is shorter than the durations for those at the core. *Id.* at 715. In short, both the effect within associations and the effect among associations act as homogenizing mechanisms for voluntary associations. *Id.*

300 *See* Marc Hooghe, Socialisation, Selective Recruitment and Value Congruence: Voluntary Associations and the Development of Shared Norms 15-19 (2000) (paper delivered at Workshop 13, "Voluntary Associations, Social Capital and Interest Mediation: Forging the Link," European Consortium for Political Research, April 14-19, 2000) (on file with author) (concluding that there is "value congruence" under such conditions); Hooghe, *Voluntary As-*

The study concluded that, while individuals usually choose to associate with people of similar educational levels and attitudes, they are also influenced by the views of other members after they join. In particular, the study found that members experience "an enhancement of previously existing value patterns" converging on the dominant rather than an average value and, thus, members' democratic attitudes will increase and their prejudice be reduced only in associations where the dominant views are democratic.[301] These findings are consistent with Swedish and German data that showed increased generalized interpersonal trust and significant self-selection in groups with a large percentage of foreigners.[302]

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

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sociations and Democratic Attitudes: Value Congruence as a Causal Mechanism, *supra* note 245, at 100-04.

301 *See* Hooghe, *Voluntary Associations and Democratic Attitudes: Value Congruence as a Causal Mechanism*, *supra* note 245, at 105-07. *See also id.* at 93-94. Through the same dynamic, associations can increase "unsocial capital." *Id.* at 92, 106-07.

302 *See supra* text accompanying note 262.

III. CIVIC RENEWAL AND THE REGULATION OF EXEMPT ORGANIZATIONS

The civic renewal debate is a work in progress. There is evidence pointing to a long pattern of decline in significant areas of civic life, yet there is also evidence that the decline has been sporadic, is limited in scope, has been misinterpreted, or has turned the corner.[303] Thus, civic life may have deteriorated since the 1960s or, alternatively, it may simply not be as robust as we would want or expect in a country of widespread economic prosperity and increasing levels of education. There is also evidence that the locus of civic engagement has shifted, not declined, as many individuals have come to view civic engagement predominantly in terms of civil or social involvement or other face-to-face encounters, rather than political activity.

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

Given the uncertainty as to the existence of and reasons for civic decline, in addition to the differing goals that reformers seek, it is difficult to chart a direction, much less design concrete steps, for improving civic life. In addition to this uncertainty, there is a deep disagreement among those who concur on the need for civic life to be more robust as to the appropriate roles of governmental and private actors. Some view government action in general, and specific government actions in the last century, as a large part of the problem.[304] Others believe that whatever the source of the problem, legal enactments are not part of the solution.[305] Still others argue that laws and other government actions inevitably influence social, economic, and political norms, even if that is not the intent of those who drafted them.[306] If so, it is irresponsible to ignore the potential impact of government action at the national, state, or local levels; instead, attention must be paid to the many ways in which govern-

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303 *See* sources cited *supra* at note 2.

304 *See supra* Part I.A.

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

306 *See, e.g.*, Cass R. Sunstein, *On the Expressive Function of Law*, 144 U. PA. L. REV. 2021, 2023, 2025, 2031-32, 2045, 2047-50 (1996).

ment action and norms interact, so that public actors play a constructive role in helping to ensure that the interactions benefit, rather than undermine, civil society.[307] Finally, there are civic renewal advocates who believe that public and private actors working together or working concurrently in their respective spheres are a necessary part of the solution.[308]

This Part focuses primarily on one aspect of the role of law and civic renewal, namely, the legal regulation of nonprofit institutions. In particular, this Part will analyze the federal income tax rules governing the status and activities of what are called "exempt organizations" in the Internal Revenue Code (Code).[309] The decision to concentrate on this subset of a much larger topic is based on four considerations. First, many civic renewal advocates believe that participation in voluntary associations can, in certain circumstances, improve civic life, whether because such participation is intrinsically valuable, because of its instrumental value in furthering the goals sought by associations, or because of the effects it has upon members. Second, although the subset of groups that request and receive exemption from federal income taxation does not exhaust the larger class of voluntary organizations,[310] it ac-

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307 *See* Richard H. Pildes, *The Destruction of Social Capital Through Law*, 144 U. PA. L. REV. 2055, 2067–76 (1996) (arguing that law and policy can destroy social capital by designing streets and neighborhoods without informal places for people to congregate, by violating norms of fair dealing in its interactions with citizens, and by injudicious attempts to incorporate social norms into law in situations where social enforcement of them is preferable).

308 *See, e.g.*, PUTNAM, BOWLING ALONE, *supra* note 2, at 403,a405, 413-14; Putnam, *Bowling Alone*, *supra* note 2, at 76-77; E. Schukoske, *Community Development Through Gardening: State and Local Policies Transforming Urban Open Space*, 3 N.Y.U. J. LEGIS. & PUB. POL'Y 351 (2000) (arguing that state or local legislation could greatly facilitate private transformation of vacant urban land from dangerous eye-sores to community gardens conducive to community development by authorizing access to resources and protecting gardeners from the threat of legal liability). *See also supra* note 40.

309 *See supra* note 158.

310 Voluntary associations can be informal or formal. Informal voluntary organizations may be subject to state law regulation, but they are not necessarily required to file or register with the a state agency simply because they exist. For example, a duplicate bridge club or a garden club need not register or file unless, for example, they desire to solicit contributions subject to state solicitation laws. Formal voluntary organizations, in contrast, typically have some kind of organizing document, such as articles of association, a charter, or articles of incorporation filed with a state agency. An organization seeking to be recognized as a nonprofit under state law is usually required to file its organizing documents with the state and comply with any other reporting requirements. A copy of an entity's organizing documents must be provided to the Internal Revenue Service as part of the process of applying for an exemption from Federal income taxation or for charitable status. *See* I.R.S. Forms 1023 (Application for Recognition of Exemption Under Section 501(c)(3)), 1024 (Application for Recognition of Exemption Under Section 501(a)) *available at* http://www.irs.gov/formspubs/index.html (last visited Apr. 2, 2004). At the same time, most states make the receipt of Federal income tax exemption a condition of receiving state income or sales tax exemption (although not a condition of merely organizing as a nonprofit within the jurisdiction), or at least accept a Federal determination letter as sufficient to apply for tax benefits in the state.

counts for a large proportion of all formal voluntary associations. Third, the regulation of exempt organizations under the Code is the single most comprehensive regulatory structure governing the character and content of the operations of these voluntary associations, as well as their structural and financial arrangements. Finally, federal tax rules constitute the primary source of regulation of exempt organization advocacy, lobbying, and campaign activities—topics of obvious relevance for a discussion of the role of voluntary associations in civic life and their potential utility as vehicles for civic engagement.[311]

A. THE COOPERATION PERSPECTIVE

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

1. *Voluntary Associations and Cooperation*

As was discussed in Part II, empirical research supports the thesis that voluntary associations can facilitate the twin goals of cooperation and effective collective action associated with the first perspective on civic health discussed above[312] even though their impact on the development of civic attitudes has been exaggerated. Small, instrumental voluntary associations may provide a forum for people already predisposed to undertake a community-based or public mission to come together, develop a plan for influencing those outside the group who are in a position to further their mission, and allocate among the members tasks conducive to persuading and motivating outside parties to act on their behalf. The internal dynamic of such associations leads the members to have a reasonable expectation that the other members are committed and willing to expend their personal resources to achieve the goal they share. As a result, the members are likely to acquire confidence in their own ability

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For an overview of state law regulation of nonprofits and their staffs, see JAMES J. FISHMAN & STEPHEN SCHWARZ, NONPROFIT ORGANIZATIONS: CASES AND MATERIALS 60–316 (2d ed. 2000).

311 The Federal Election Campaign Act (FECA), 2 U.S.C. §§ 431-455 (2000), is also important, especially for the advocacy of activities of exempt organizations. An analysis of the impact of FECA provisions is, however, outside the scope of this Article.

312 *See supra* Part I.A.

and the ability of their organization to influence decisions related to the group's concerns.

Based upon the empirical research discussed in Part II, the basis of this expectation is not yet understood.[313] It may be a calculation that relies heavily on the face-to-face character of members' interactions and the visibility of members' actions in a small group. It may be a sense of trust that members had prior to joining the group, or one that arose or was strengthened from interactions within the group. It may be a transitory sense of common norms coupled with the confidence, based upon experience with that or other groups, that the impact of unified and persistent groups is in general far more effective than the efforts of a single person, however knowledgeable and sophisticated.

Large instrumental voluntary associations, including checkbook organizations or "associations without members," can also function as vehicles for effective collective action by virtue of the financial resources they possess to spend on a paid staff, professional lobbyists, Madison Avenue advertising agencies, telemarketers, and mass mailings to their members and others to galvanize them into an outpouring of grass roots activity.[314] Because of their greater resources, large associations may be more effective at the national level or in circumstances requiring simultaneous, coordinated action in a large number of states than are small instrumental organizations. Large voluntary associations can thus achieve a powerful external effect even if they have little or no impact on the skills or civic engagement of their members apart from eliciting financial support. In fact, from the vantage point of "getting things done," such associations may frequently be more effective—especially at the federal, regional, or state level—than small instrumental organizations made up of members who participate actively.[315]

Small instrumental and large non-participatory organizations are thus well-suited to address and influence the resolution of many societal ills. Even class action litigation may be considered a voluntary association vehicle with great potential for cooperation and effective collective action, as can be seen from the many successes of civil rights, environmental, and tort class action suits brought in the second half of the twentieth century.[316] This is the case even though it is rare for more than a handful of the members of the class to participate in the litigation in a

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313 *Supra* Part II.C.

314 *See supra* note 157 and accompanying text.

315 *See generally* Newton, *Social Capital and Democracy in Modern Europe*, *supra* note 17 (distinguishing an organization's internal impact from its external impact).

316 SCHUDSON, THE GOOD CITIZEN, *supra* note 2, at 249–52. Most civic renewal advocates, however, consider the American litigious culture as part of the problem, not the solution. *See* FUKUYAMA, TRUST, *supra* note 12, at 51.

way that would engender any of the attitudes, habits, skills, or behaviors often attributed to involvement in voluntary associations.

Civic renewal advocates writing from the cooperation perspective also expect that participation in associations will increase the generalized interpersonal trust of the members, i.e., that it will extend their intra-group interpersonal trust to trust of people and groups outside the group, thereby enhancing the reservoir of social capital in the larger communities of which they form a part. The emergence of some kind of ripple effect is a critical component of the cooperation perspective argument, even if it is not stated explicitly, because it is the predicate for believing that participation in voluntary associations will lead to more efficient and effective cross- or inter-association cooperation and correspondingly broad community outcomes.[317]

We have seen, however, that some empirical research supports the premise of social integration or the emergence of generalized interpersonal trust resulting from associational involvement, but that much research does not.[318] One possibility discussed in the preceding sections is that people join voluntary organizations because they are predisposed to join, i.e., they already have the attitudes or habits disposing them to civic engagement.[319] To the extent that this is the causal sequence, in order to ensure a robust civil society, civic renewal efforts need to focus on the process whereby such attitudes or habits are formed prior to joining. Research to date has revealed that education, social class, and attitudes and values learned at home, from friends, and at schools are the most important sources of the disposition to join.[320] Another finding was that, where voting was concerned, direct mobilization by friends or activists in face-to-face encounters was the most successful strategy, and that this was true regardless of the associational involvement of the person recruited. Direct mobilization within groups also tended to generate civic engagement outside the groups if members were specifically recruited for that purpose. Such mobilization occurred primarily in instrumental voluntary associations, where a common, relatively specific goal rather than a deep-seated or generalized norm of cooperation seemed to be the motivating force. At the very least, empirical research has so far failed to document that there is a significant transformative effect on participants in most instrumental voluntary associations, i.e., that members active in one association develop such habits of mind and behaviors that

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317 Some kind of ripple effect would explain Putnam's conviction that there are bridging effects of certain bonding associations such as choral societies and bowling leagues. *See* PUTNAM, BOWLING ALONE, *supra* note 2, at 22–23.

318 *See supra* Part II.C.

319 *See supra* notes 181-83, 187,i200, 223-25, 234 and accompanying text. *See generally supra* Part II.C.2.

320 *See supra* Part II.B.

they come to view civic engagement as an integral part of their lives.[321] Similarly, there have been conflicting accounts of the potential of non-instrumental or expressive groups for generating generalized interpersonal trust outside the group.[322] Thus, based upon the current state of research, civic renewal measures embodying the first perspective should aim at increasing the amount of mobilization within and by groups (and other face-to-face requests) for all kinds of civic engagement. In addition, future research should focus directly on which non-associational factors create the disposition in people to join which types of groups.

2. *The Regulation of Exempt Organizations*

The general contours of the current system of regulation of exempt organizations are largely consistent with this understanding. First and foremost, the Code affords exemption from income taxes to mutual benefit organizations as well as to charities and other entities dedicated to enhancing social welfare. Mutual benefit organizations include associations that represent an industry (thus indirectly benefiting individual members of the industry), as well as groups that benefit individuals directly. Examples of the former are trade associations and chambers of commerce; examples of the latter are certain fraternal lodges, recreational groups, cemetery companies, and veterans' organizations.[323] Labor unions, which are exempt under section 501(c)(5) of the Code, can be seen as benefiting both individual union members and the industries the unions represent.[324]

Some might question the rationale for giving a tax-favored status to mutual benefit organizations, given that they exist to provide direct or indirect benefits to their members rather than to confer a public benefit. From the cooperation perspective, however, group membership is presumptively beneficial for civic life, and groups that enable people to combine to achieve a collective purpose that improves the members' lives is an important part of a robust civil society, both because of its accomplishment of the goals of members and because of the emergence of an ethic of reciprocity, interpersonal trust, or confidence among the members. These organizations may act more efficiently on behalf of and be more responsive to the needs of their members than would comparable government programs. In addition, mutual benefit organizations often sponsor formal and informal activities, both of which can be effec-

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321 *See supra* Part II.C.3.

322 *See supra* Part II.C.3.

323 *See* I.R.C. § 501(c)(6), (7), (8), (13), (19) (2000).

324 *See* Thomas C. Kohler, *Civic Virtue at Work: Unions as Seedbeds of the Civic Virtues*, 36 B.C. L REV. 279, 298–301 (1995) (arguing that unions, especially their collective bargaining negotiations, benefit members by enabling them to engage in self-governance as well as by affording them economic benefits).

tive in creating social ties. The fact that mutual benefit groups primarily further the economic or social interests of their members, rather than engage in charitable or community endeavors, should not bar their favorable tax treatment given that civic life, according to the cooperation perspective, *should* be the main vehicle for groups to address collective problems in a mutually beneficial and cooperative fashion.[325] The cooperation perspective thus affords a strong justification for this feature of the tax law treatment of voluntary organizations.[326]

Although the broad structure of exemption from taxation under the Code for certain kinds of noncharitable and charitable nonprofit organizations thus gains support from the cooperation perspective, other features of federal tax regulation of exempt organizations do not necessarily further its vision of civic health, and some might even actively obstruct its attainment. For example, tax law does not distinguish between organizations whose members are passive and those in which members are active participants. As was noted earlier, recent decades have seen an expansion of what Theda Skocpol calls "associations without members," i.e., associations whose members "participate" primarily by writing checks to fund activities carried out exclusively by the organization's professional staff and paid contractors, such as advertising, telemarketing, and lobbying firms.[327] Members of such organizations are kept apprised of issues of importance through the organization's newsletter or other mailings. They thus have information for acquiring some expertise about these issues, the positions taken by the organization, and its efforts to influence public policy, private actors, and the legislative process. However, they are not expected to participate in any of these efforts unless the leadership asks them to vote in an election or ballot measure, send a check to the organization, or write letters or make phone calls as part of a grass roots lobbying campaign. All of these are activities that people can undertake as private individuals and, with the exception of voting, while remaining at home. Thus, at their most active, members of such organizations acquire information, write checks, contact officials or individuals (often using boilerplate messages conveyed to them by the organization), and vote.[328] They may acquire confidence in the ability of elites within their groups or professionals hired by their groups to

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

326 A second major respect in which the Code's treatment of exempt organizations other than charities impacts objectives of the cooperation perspective involves the advocacy rules, discussed *infra* notes 341-356 and accompanying text.

327 *See supra* note 157 and accompanying text.

328 There is evidence that the flow of information from association leaders to members can create significant member loyalty and that, in certain situations, it can offset the effects of centralized decision-making power and oligarchic staffing in an association. *See* David

achieve certain goals on their behalf, but they will not participate in a manner calculated to build interpersonal trust, social networks, the ethic of reciprocity, or the habit of cooperation with one another, much less generalized interpersonal trust.[329] In short, according to the cooperation perspective, associations whose members participate in only a minimal way are unlikely sources of civic renewal, which presupposes relationships that arise primarily in settings where people work together in common activities toward common goals.

For the tax law to encourage the development of civic engagement according to this point of view, it would have to acknowledge the importance of participation, as contrasted with mere membership. The Code could do this by favoring, through tax benefits, organizations in which significant participation is a prerequisite of membership or those in which, as a historical matter, a significant portion of members do participate actively in the work of the organization. Several scholars have recommended that federal and state law be revised to classify nonprofits based upon the level of member participation in the governance structure of the organization so that groups with governing boards composed partially or exclusively of members would be subject to less onerous state and federal regulatory burdens and be granted enhanced tax benefits.[330] Alternatively, the tax law could favor, through tax benefits, the individuals who participate or who participate significantly in exempt groups. Under the present system, individuals are entitled to deduct from their gross income the dollar value of contributions of property, in cash or in kind, made to organizations acknowledged as charities by the Internal Revenue Service.[331] There is no contribution deduction, however, for rendering services to or volunteering for a charitable entity except for

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Knoke, *Commitment and Detachment in Voluntary Associations*, 46 AM. SOC. REV. 141, 143–44, 153–54 (1981).

329 *See* Jeffrey M. Berry, *The Rise of Citizen Groups*, *in* CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY, *supra* note 5, at 367, 369, 389–90 (noting also that members of such associations may participate in other groups where social capital is formed).

330 Dana Brakman Reiser makes several such proposals and reviews the literature advocating reform of nonprofit governance to make nonprofit decision making structures more democratic. *See* Dana Brakman Resier, *Dismembering Civil Society: The Social Cost of Internally Undemocratic Nonprofits*, 82 OR. L. REV. 829 (2003). She argues that the failure of nonprofits to include members in their governing bodies deprives society of the potential increment in social capital and civic skills individuals would acquire through participating in governance. *Id.* Under current federal income tax law, a member of a charity is someone who pays dues, makes a donation that is not nominal, or volunteers for more than a nominal amount of time. Treas. Reg. § 56.4911-5(f)(1) (1990). *See also* Treas. Reg. § 1.170A-9(e)(7)(iii) (2002) (defining a charity's support, in part, in terms of membership fees made "to provide support for the organization rather than to purchase admissions, merchandise, services, or the use of facilities").

331 *See* I.R.C. § 170(a) (2000). The amounts that can be deducted as charitable contributions by individuals are limited to a percentage of an individual's adjusted gross income and are restricted by the type of property contributed and by certain attributes of the charitable

documented expenses incurred while volunteering, e.g., for transportation or purchases.[332]

The reason for this disparity is often stated in terms of the administrative difficulty of valuing people's services. For example, how would the Service value one hour of a lawyer's time donated to a charity? By the going market rate? If so, which market rate? The market rate for entry level attorneys? For attorneys with the same qualifications as the attorney-donor? For attorneys with the same qualifications as the attorney-donor in big firms? In small firms? Based upon averages in big cities? In all cities? Including average rates for attorneys with similar experience in the public sector?

Although this valuation problem is real, the argument against a tax benefit for participating in or volunteering for charities that is based upon administrative difficulty is not as persuasive as it first seems once one considers the counterpart difficulty of valuing many forms of in-kind contributions of property, e.g., works of unknown artists, libraries of used and out-of-print books, stock in closely-held corporations, or second-hand clothes—the value of all of which are entitled to a charitable contribution deduction under the Code.[333] To avoid administrative difficulties in valuing services donated, tax law could allow those who volunteer in charitable organizations serving the disadvantaged, for example, to receive a tax deduction in acknowledgment of the time and effort donated, using a standard rate per hour set by the Service based, perhaps, upon the average hourly compensation for American workers.[334] Using

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donee. *See* I.R.C. § 170(b)(1). The charitable contribution deduction for corporations is similarly limited. *See* I.R.C. § 170(b)(2).

[332] *See* Treas. Reg. § 1.170A-1(g) (1996); Levine v. Comm'r, 54 T.C.M. (CCH) 209 (1987). Individuals are not, however, allowed to deduct out-of-pocket expenses incurred while taking part in a charity's lobbying effort. See I.R.C. § 170(f)(6) (2000). An alternative to the suggestion made in the text would be to revise the Code to permit the deduction of such out-of-pocket expenses. I am indebted to Greg Colvin for this suggestion as well as for the proposal, made in the Conclusion, to standardize the definitions of lobbying and the exceptions to them.

[333] *See* JOHN D. COLOMBO AND MARK A. HALL, THE CHARITABLE TAX EXEMPTION 203--04 (1995) (proposing to include the value of labor donated to an organization along with the value of money and other property in determining whether the organization should be entitled to tax exemption as a publicly supported charity).

[334] Such a flat rate option is currently available for certain business deductions. *See* Rev. Proc. 2001-54, 2001-48 I.R.B. 530 (permitting taxpayers to calculate the deduction using the I.R.C. standard mileage rate or actual costs). The proposal in the text would not permit an "actual costs" option. *See* Mark A. Hall and John D. Colombo, *The Donative Theory of the Charitable Tax Exemption*, 52 OHIO ST. L.J. 1379, 1459 (1991) [hereinafter *Donative Theory*]. Hall and Colombo would prefer to measure the value of donated labor by "what the labor would have cost the recipient [organization] on the market," because this more appropriately reflects what the organization has "saved" and more fairly estimates "the 'opportunity cost' of a volunteer's time (e.g., what they would receive if they sold the same services in the labor market)." *Id.* at 1459, n.247.

a single flat rate would have the egalitarian effect of assigning an equal value to one hour of anyone's efforts as a volunteer in such a charity. Some charities already keep records of the number of hours worked by volunteers for various purposes,[335] and they would probably find such recordkeeping cost-effective if it elicited a higher rate of member participation. The provisions of charitable tax law as currently structured, in contrast, appear to favor the value of property over the value of work.[336] In any event, because data show that people who volunteer (and their households) contribute significantly more money than donors who do not volunteer,[337] both the goal of increasing revenues donated to charities and according equal value to volunteering and making financial contributions to charity suggest adopting public policies that somehow encourage the former as well as the latter.

A second argument against allowing a charitable contribution deduction for volunteering at a charitable organization rests upon notions of tax neutrality. The existing deduction provisions are neutral as between someone who volunteers at a charity for a day instead of working for pay and someone who works a day and donates her earnings for the day to the charity and then takes a deduction.[338] Were tax law to authorize charitable contribution deductions for volunteering, in other words, it would upset the existing tax neutrality by favoring those who contribute time rather than those who work and receive taxable income.[339] The

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335 For example, some states require students to engage in community service for a certain number of hours in order to graduate from high school. *See* MD. REGS. CODE tit. 13A, § 03.01(F)(1 l) (2003) (encouraging each local high school system to include activities, programs, and practices that "provide appropriate opportunities for students to participate in community service") and *infra* note 428. Because students are required to document their service with a written statement from each facility where they volunteer, these charities have already established procedures for record keeping.

336 Arguably this favoritism is compounded by the tax-favored status of charitable gifts of appreciated property. *See* I.R.C. §170(e)(1). Ellen Aprill argues, in contrast, that from the perspective of dollar efficiency and price elasticity, which could influence taxpayer behavior, those who itemize experience a tax neutral outcome, whereas for those who do not itemize, "the income tax system creates a distortion in favor of gifts of time." Ellen P. Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, 42 B.C. L. Rev. 843, 863 (2001). My argument, however, assumes a decision made by someone who works full time for pay and is trying to decide to give money or time to a charity. Assuming the taxpayer is not also an economist, the contribution alternative may look superior because it generates a contribution deduction. Economists are themselves in disagreement as to the likelihood that the contribution deduction actually affects the level of charitable contributions, especially among low and middle-income taxpayers with relatively low marginal rates. *See id.* at 856–61.

337 Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 336, at 863–64.

338 *See id.* at 862–64.

339 *See* Hall & Colombo, *Donative Theory*, *supra* note 334, at 1449, n.243 (arguing that the net effect would be to confer a "double tax benefit" on those who contribute labor). In contrast to the situation described in the text, the Code is not neutral if the hypothetical taxpayer is a non-itemizer. The Code "creates a distortion in favor of gifts of time" for non-

neutrality upon which this argument is constructed, however, is in regard to dollar efficiency, so that the Code is neutral as between two equally efficient uses of dollars. The civil society argument, in contrast, would not take its bearing by dollar efficiency exclusively. Rather, it would seek to compare the direct impact of a tax provision in creating inefficiency with the potential indirect positive civic impacts, one of which would be increased cooperation, leading to increased civic outcomes, including an increment in effective collective action. Depending upon the outcome of this calculation, instituting a deduction for contributions of services might further the goals of the cooperation perspective by creating a tax incentive for individuals to participate actively in charitable organizations. Given that participation in civic organizations in general, not just participation in charities, promotes civic engagement, cooperation theorists might also favor tax incentives for volunteering for exempt organizations other than those exempt under section 501(c)(3).[340]

Another area where the tax law may not further the cooperation perspective on civic health, one in which the tax law arguably obstructs the attainment of cooperation, is its regulation of lobbying and political campaign activities by charities. Under current law, public charities are permitted to attempt to influence legislation only if their lobbying is not "substantial,"[341] and private foundations are not permitted to lobby at all.[342] There is an absolute prohibition against either public charities or private foundations engaging in political campaign activities.[343] Other

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itemizers. *See* Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 336, at 863.

340 I am grateful to John Colombo for calling my attention to the possibility that the cooperation perspective would favor tax incentives to voluntary associations as a group to avoid creating a disincentive to participating in mutual benefit and other noncharitable entities. Cooperation theorists might nonetheless make distinctions among categories of exempt organizations, especially if they also hold views associated with one or more of the other perspectives on civic health. See also Brakman Reiser, *Dismembering Civil Society*, *supra* note 330, at 829–93.

341 *See* I.R.C. § 501(c)(3) (2000) (requiring that "no substantial part of the [entity's] activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))"). Treas. Reg. § 1.501(c)(3)-1(c)(3) (1990) elaborates on this restriction, as do I.R.C. §§ 501(h) and 4911 and the regulations thereunder. I.R.C. §§ 501(h) and 4911 apply the "no substantial part" test by establishing a maximum percentage of an organization's expenditures for its exempt purposes that can be spent on attempting to influence legislation. An organization must elect to have its legislative activities judged under this test. I.R.C. §§ 501(h), 4911 (2000). Otherwise, the Service and the courts will assess the substantiality of an organization's attempts to influence legislation under the case law, possibly including the centrality of such attempts relative to the organization's purpose(s) and the extent of volunteer activities as well as the amount of its expenditures in the calculation.

342 *See* I.R.C.t§ 4945(d)(1) (2000) (imposing on private foundations a tax on any taxable expenditure, which includes any amount paid "to carry on propaganda, or otherwise to attempt, to influence legislation").

343 *See* I.R.C.t§§ 501(c)(3), 4945, 4955 (2000); Treas. Reg.t§ 1.501(c)(3)-1(c)(3)(i), (iii).

exempt organizations, in contrast, are generally permitted to engage in lobbying or take part in political campaigns, although some restrictions may apply to individual categories of exemption.[344] Given the importance for the collective action perspective of learning civic (including political) skills, attitudes, habits, and practices, and of being able to engage in cooperative efforts to influence public policy, this aspect of the regulation of charitable organizations seems to deny an effective means of securing their goals to those organizations dedicated to providing public goods, like education, protecting the environment, or improving the lives of disadvantaged third-parties rather than the lives of their members. The consequence is to deprive people desiring to engage in public-spirited or altruistic behaviors of an important collective opportunity to influence the political process. It also impairs the ability of non-affluent people to influence the political process through churches, which are often their primary associational affiliation.[345] Finally, these restrictions deprive charitable institutions desirous of promoting the special interests of the disadvantaged from engaging in advocacy to the same degree as their self-interested, mutual benefit or recreational exempt counterparts can. Given that high-wealth individuals can exert influence on political decision-making through their personal expenditures and campaign contributions or through noncharitable exempt organizations, such as trade associations or social clubs, that are not subject to the lobbying and campaign restrictions on charities, the existing tax law limitations on charities appear to create an unfair playing field against organizations presumptively acting in the public interest and in favor of the affluent and the associations they support.

The lobbying restrictions on public charities and private foundations are, of course, a product of several public policies embodied in the tax law[346] which might outweigh the public policy implications of the coop-

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[344] *See* Melissa Waller Baldwin, Comment, *Section 501(c)(3) and Lobbying: The Case for the Local Organization*, 23 OHIO N.U. L. REV. 203, 212–13 (1996); Galston, *Lobbying and the Public Interest, supra* note 161, at 1276–77 (summarizing the lobbying regulations for exempt organizations other than charities). The Code and Treasury regulations are silent on political campaign activities undertaken by noncharitable exempt organizations other than those described by section 501(c)(4). *See* Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) (1990). This implies that any restrictions on the lobbying or political campaign activities of noncharitable exempt organizations would thus be derived exclusively from the nature of their exempt purposes and thus would not be likely to intrude on their ability to pursue their missions.

[345] On the desirability of religious institutions engaging in political activities, *see infra* notes 457-67 and accompanying text.

[346] *See, e.g.*, Rob Atkinson, *Altruism in Non-Profit Organizations*, 31 B.C. L. REV. 501 (1990); Evelyn Brody, *Of Sovereignty and Subsidy*, *supra* note 164, at 585; John D. Colombo, *The Marketing of Philanthropy and the Charitable Contributions Deduction: Integrating Theories for the Deduction and Tax Exemption*, 36 WAKE FOREST L. REV. 657, 667–89 (2001); Nina J. Crimm, *Evolutionary Forces: Changes in For-Profit and Not-for-Profit Health Care Delivery Structures; A Regeneration of Tax Exemption Standards*, 37 B.C. L. REV. 1 (1995);

eration perspective on civic health. A major stumbling block to assessing the competing policy claims arises from the fact that the tax law advocacy restrictions were evolving and becoming codified during the first six decades of the twentieth century, in a period prior to the time during which a decline in civic engagement is said to have occurred.[347] It is thus unlikely that the need to adopt measures to encourage civic engagement and advocacy was a factor in the policy considerations.

Nonetheless, before concluding that the current restrictions on the advocacy by public charities and private foundations should be relaxed, several additional aspects of tax regulation of these entities should be considered. First, public charities are already permitted to attempt to influence lawmakers as long as such activities do not constitute a substantial part of their operations.[348] Thus, in assessing the policy question, it is necessary to ask whether the existing regulation of lobbying by charities affords them sufficient opportunity to enable their members to engage in cooperative practices and effective collective action in pursuit of their goals. The answer may well depend on the size and other characteristics of the organization, as well as on whether the organization has made the section 501(h) election. For example, consider a public charity with an annual budget of no more than $500,000. It is possible that the current section 501(h) election expenditure limit of 20 percent of the charity's annual expenditures would be adequate to enable its members to lobby lawmakers effectively, especially if the lobbying were done by staff or volunteers rather than by hired lobbyists.[349] To stay within the

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Ira Mark Ellman, *Another Theory of Nonprofit Corporations*, 80 MICH. L. REV. 999 (1982); Hall & Colombo, *Donative Theory, supra* note 334; Henry Hansmann, *The Rationale for Exempting Nonprofit Organizations from Corporate Income Taxation*, 91 YALE L.J. 54 (1981); Frances R. Hill, *Targeting Exemption for Charitable Efficiency: Designing a Nondiversion Constraint*, 56 SMU L. REV. 675 (2003).

347 For the development of the policies underlying the lobbying restrictions, see Laura B. Chisolm, *Exempt Organization Advocacy: Matching the Rules to the Rationales*, 63 IND. L.J. 201, 215–20 (1987); Galston, *Lobbying and the Public Interest*, *supra* note 161, at 1282–85 (describing the evolution of the neutrality justification for the restrictions on lobbying by section 501(c)(3) organizations).

348 *See* I.R.C. § 501(c)(3); Treas. Reg. §1.501(c)(3)-1(c)(3); *supra* note 341.

349 For this limit, see I.R.C. § 4911(c)(2) (2000). Exempt purpose expenditures include most of an organization's annual expenditures other than certain expenses of fund-raising. *See* I.R.C. §4911(e)(1). The costs of informing organization members about legislation of direct interest to the organization are not in general considered lobbying (or grass roots lobbying) expenses unless the organization also urges its members to communicate with lawmakers or to urge others to do so. Thus, the charities in question could inform their members about legislative matters of interest to them without incurring costs that count as lobbying expenditures. In addition, lobbying actions that members take without having been urged to do so are unlikely to be attributed to their organizations. As was noted earlier, the analysis would need to take more than revenue expenditures into account if the organization had not made the election and thus would be judged under the "no substantial part" test. *See supra* note 341.

lower grass roots lobbying expenditure limit,[350] however, would be difficult because this limit is permitted to be no more than one fourth of the overall lobbying limit. The organization would have to restrict the frequency of its mailings, use volunteers to phone or canvass neighborhoods, use the internet for many of its communications, or avail itself of some combination of these methods, and it still might exceed its grass roots lobbying limit. This circumstance points to the desirability of recently introduced legislation that would eliminate the distinction between direct and grass roots lobbying, enabling an electing charity to use any or all of its permissible lobbying expenditures for grass roots lobbying.[351]

Would the imposition of the restriction on a hypothetical organization with a $500,000 annual budget, $100,000 of which could be spent on lobbying, interfere with its potential as a breeding ground for habits of cooperation and an ethic of reciprocity among its members? This question is impossible to answer without knowing the histories, operations, and dynamics of actual organizations with the annual exempt purpose expenditures described and without knowing the relative effectiveness of expensive, professional communications as compared to inexpensive, volunteer and Internet communications. In principle, the lobbying expenditure caps imposed on a charitable organization making the section 501(h) election could have a salutary effect by forcing it to rely on its members and provide them with opportunities to participate actively in its internal and external affairs. To be effective grass roots lobbyists, volunteers would have to be informed enough to answer the questions posed by individuals whose votes they seek to influence. If they were to go door to door or buttonhole people at the supermarket to communicate their message, they would be more actively involved in face-to-face discussions than they would be watching the news or campaign advertisements on television at home or even writing a letter to the editor of the local newspaper.

The desirability of the lobbying limitations on charities cannot, however, be determined in a vacuum. Organizations entitled to a charitable exemption are not the only players seeking what are often scarce public resources. Non-charitable organizations frequently devote extremely large sums of money to lobbying campaigns, and they avail themselves of professional lobbyists, buy radio or television time, hire telemarketing firms, and the like.[352] Although legislative battles are not

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

351 Charitable Giving Act of 2003, H.R. 7, 108th Cong.a§ 303 (2003).

352 This discussion is limited to lobbying by exempt organizations. The implications are, however, broader than first appears because corporate funds in legislative battles are frequently funneled through exempt organizations, especially section 501(c)(6) trade associations and section 501(c)(4) advocacy organizations. Business interests use them for advocacy be-

always won by the biggest spenders, it would nonetheless not further the goals of the cooperation perspective if collective actions by engaged and active citizens were routinely overwhelmed by the sophistication and financial resources of professional elites. Whether the lack of symmetry in the tax law restrictions on lobbying in fact has this effect is an empirical question, and the answer may depend on the legislative forum (local, state, or national), the subject matter of the legislation, or the type of decision maker involved, e.g., an official, a formal body, or the public itself, as in an initiative or referendum.

To a certain extent, the federal tax law already addresses the potential problems arising from asymmetries in the regulation of lobbying by charities as compared with other exempt organizations. As was noted above, section 501(c)(4) organizations are permitted to lobby without limit, as long as most of the lobbying is related to the groups' exempt purposes.[353] Public charities and private foundations are permitted to establish section 501(c)(4) affiliate organizations, and the latter can, for the most part, share their name,[354] board of directors, officers, premises, and so on, as long as no funds of the charity are used to assist the section 501(c)(4) organization in any way and the officers and directors of each organization satisfy their fiduciary responsibilities to the groups as separate legal entities. Thus, a section 501(c)(4) organization must pay fair market value to its affiliated section 501(c)(3) charity for such things as rent, the use of office support, and the use of the charity's list of contributors, and board meetings for the two entities must be kept wholly sepa-

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cause this enables businesses to pool their funds and coordinate their efforts so as to maximize their impact. Business interests may prefer exempt advocacy groups even when the legislative issues involved are at the state level and the trade association, for example, is national, because members of an industry in all parts of the country are frequently concerned about the fate of legislation or a referendum in one state. As a result of legislation passed in 1993, there is no longer a business expense deduction for the cost of lobbying. *See* I.R.C. § 162(e) (2000). When business interests contribute to (noncharitable) organizations, they are permitted a business expense deduction for the amount contributed except for any portions of the contribution that are earmarked for or in fact used for lobbying. *See id.*

353 *See* Treas. Reg.t§ 1.501(c)(4)-1(a)(2) (1990); *see also* Rev. Rul. 71-530, 1971-2 C.B. 237 (holding that a section 501(c)(4) organization may have lobbying for social welfare as its sole purpose). Although the amount of such an organization's lobbying is not limited, its character is: to qualify for section 501(c)(4) status, its activities must be primarily directed toward "promoting in some way the common good and general welfare of the people of the community." Treas. Reg. § 1.501(c)(4)-1(a)(2)(i).

354 Under the laws of a number of states, the names of the two entities must be sufficiently distinct that third parties will not be confused. Save the Long-Haired Chinchillas, Inc. and Save the Long-Haired Chinchillas Advocacy, Inc. would satisfy this requirement. *See, e.g.*, Rev. Model Bus. Corp. Act § 4.01(c), cmt. 2 (noting that one corporation's name need only be "distinguished from other corporation[']s upon the records of the secretary of state"). This standard is to enable state and taxing authorities to avoid confusion and "to permit accuracy in naming and serving corporate defendants in litigation." *Id.* The Model Code provision superseded an earlier standard prohibiting "deceptively similar" names, which was designed to prevent unfair competition between similarly named corporations. *Id.*

rate even if the directorates are overlapping.[355] Affiliations of this kind are common. An established section 501(c)(4) entity is also entitled to create a companion 501(c)(3) organization to engage in useful non-advocacy activities, such as issues research, distribution of issues information, and other educational endeavors that can be funded with charitable contributions.[356] Thus, as long as the regulations governing the various relationships between the two entities are carefully observed, charities can influence the public policy process through their sister section 501(c)(4) advocacy organizations.

In short, the limitations on lobbying by charities do not seem to prevent them from engaging in legislative advocacy. Rather, the primary effect is to deprive such entities of the ability to lobby a substantial amount with funds favored by the charitable contribution deduction. Where the Code is deficient is in its failure to privilege associational participation over mere membership. To encourage participation through tax incentives, the tax law could privilege exempt organizations that are predominantly participatory, even if they are not exempt as charitable entities, or it could offer a deduction to the people who participate, possibly requiring a minimum level of participation within a specific time frame (an average of five hours a week for forty weeks, for example) to increase the likelihood that participation will promote civic objectives. Alternatively, tax law could limit the amount of legislative activity engaged in by all exempt organizations, i.e., by the non-charitable associations currently under minimal or no restrictions, for example, by creating dollar or percentage caps. These suggestions could have the salutary effect of encouraging noncharitable exempt organizations to rely to a far greater degree on volunteers and other low-cost personal contacts rather than on television advertising, telemarketing, and professional lobbyists. The last suggestion, however, would be virtually impossible to implement for political reasons, since noncharitable exempt organizations already have an entrenched interest in the current regulatory scheme. Further, the suggestion could possibly raise constitutional issues relating to the rights of free speech and free association.

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355 For examples of the possible relationships between section 501(c)(3) and 501(c)(4) organizations, see GREGORY L. COLVIN & LOWELL FINLEY, ALLIANCE FOR JUSTICE, THE RULES OF THE GAME: AN ELECTION YEAR LEGAL GUIDE FOR NONPROFIT ORGANIZATIONS 42–44 (1996) [hereinafter RULES OF THE GAME] (copy on file with author). There are detailed regulations governing such relationships, including the use section 501(c)(4) organizations can make of the research or work product of a section 501(c)(3) organization without jeopardizing the charity's exempt status.

356 *See id.* at 45–46.

B. THE SELF-GOVERNANCE PERSPECTIVE

1. *Voluntary Associations and Self-Governance*

The notion of civic health as cooperation and effective collective action is consistent with the theoretical view that the purpose of political life is to translate the preferences of citizens into public outcomes—be they laws or policies or allocations of resources—as faithfully and efficiently as possible. An active citizenry is important for the cooperation perspective to achieve this end. According to the self-governance perspective,[357] in contrast, to be meaningful, civic engagement should expose people to participatory and deliberative endeavors rather than merely to cooperative and collective ones. Participatory associational activities are necessary because self-governance presupposes that citizens engage in the decision making, whether formal or informal, that will structure and give content to important aspects of their lives. Deliberative communications are also important, according to this perspective, to assure that people's decisions are informed and that discussions take into account a variety of interests and viewpoints. This perspective thus assumes that, in connection with some issues, people's understandings of their own purposes may change through discussion and deliberation. In some situations, deliberation will expose not only conflicts among separate interests, but also conflicts between some or all of the separate interests (and coalitions of such interests) and what is arguably the public interest—fair allocations of resources, intergenerational justice, and justice between developing and developed nations, for example.

From the self-governance perspective, then, the goal of cooperation and effective collective action would fall short of the civic ideal if it only entails influencing social or political outcomes by exerting pressure on communities, institutions, and leaders without at the same time providing an occasion for citizen participation and reflection on both means and ends. Small voluntary associations are thus in general preferable to large or "checkbook" organizations because the former are more likely to provide opportunities for participation by members than the latter. Large and other nonparticipatory organizations usually have professional staffs, contracts with lobbyists, and even public relations companies to help them achieve their goals. Although "associations without members"[358] may be extremely effective vehicles of collective action, they provide few opportunities for members to contribute to or learn from the association's decision-making process.

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357 *See supra* Part I.B.

358 This is the phrase of Theda Skocpol. *See supra* note 157 (referring to large, bureaucratic voluntary associations with very large membership rolls that require little of their members beyond writing a check to help support the organization's activities).

There is little empirical research devoted to the deliberative character of participation in voluntary associations. However, the proposition that voluntary associations in general, and small organizations in particular, tend to be homogeneous and to recruit members that share one another's views has been confirmed empirically.[359] This fact suggests that deliberative opportunities within small organizations will tend to be circumscribed because of the similarity of the members' views on issues important to the organizations. The homogeneity of members' views, especially as relates to an organization's purpose, in turn, virtually ensures that discussions will be about means, rather than ends, and even discussions about means may be limited by a common orientation on the part of the members (ethnic, religious, liberal or conservative, or consumers versus business).

At the same time, many voluntary associations disseminate newsletters to their members that contain information useful for gaining an informed understanding of the organizations' positions and many organize lectures, panels, and debates. Some voluntary associations engage in efforts to disseminate information on a range of topics in an accessible way,[360] including the use of web sites that can reach shut-ins and others. Were these associations to undertake to host, publish, or otherwise provoke "a wide range of competing arguments" in circumstances capable of eliciting "careful consideration,"[361] they could contribute to the creation of a culture of deliberation among their members and other audiences. Absent a deliberate effort to promote balanced information and discussion, however, voluntary associations are likely to produce a stream of information that is not calculated to encourage debate and that could discourage it if the "facts" and "arguments" presented in communications were targeted to members or recipients already sympathetic to the organization's views and goals. The latter possibility is, in fact, what most organizations intend when they buy the mailing lists of other groups known to target comparable populations.

2. *The Regulation of Exempt Organizations*

As was noted above, participation in certain types of voluntary associations—such as neighborhood organizations and parent-teacher groups as well as some local chapters of labor unions and trade organizations—appears to further civic health, as understood in terms of autonomy and self-governance, by providing a forum for members of geographical or other communities of interest to debate, design, and promote specific public policies and public practices that they consider ben-

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359 *See supra* notes 294-299 and accompanying text.

360 *See infra* notes 373-377 and accompanying text.

361 *See supra* note 69 and accompanying text.

eficial to their respective groups.[362] Although there is obvious overlap with the ends and means characteristic of the collective action perspective, the conceptual core of the self-governance perspective is to nourish problem solving at the community or local level in a manner that maximizes thoughtful and responsible decision making.[363]

The federal tax law regulating exempt associations makes possible the formation of community groups capable of solving local problems on their own by providing a mechanism for pooling individuals' resources without certain adverse tax consequences that would apply, were it not for their exempt status. For example, without exempt status, charities, fraternal societies, veterans organizations, social welfare groups, and other mutual benefit organizations would be unable to collect and invest dues from members for funding long-term projects without being subject to income taxation on their annual net income.[364] Exempt status thus enables individuals to pool their financial resources efficiently, i.e., without penalizing members for saving pooled amounts. The ability to save pooled amounts makes it possible for exempt entities to aggregate larger amounts than would be possible on an *ad hoc* basis at the time an actual expenditure is under consideration and to engage in long-term planning, such as creating a sinking fund for capital expenditures by a homeowners' group or accumulating unemployment or strike funds for union members.[365]

These features of tax law do not guarantee the development of self-governance in the comprehensive sense discussed earlier, i.e., as including both a sense of obligation and informed deliberation.[366] In fact, the very same features of tax law facilitate both the existence of well-endowed groups with no sense of, or inclination for, deliberation or community-oriented decision making as well as other groups with the

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362 *See supra* Part I.B.

363 This is not inconsistent with the collective action perspective, but neither is it required by it. *See infra* page 382.

364 *See* I.R.C. §§ 501(c)(1)-(28) (2000). Homeowner groups are similarly exempt from taxation on such income, although their exemption is not authorized by I.R.C. § 501(a). *See* I.R.C. § 528 (2000).

365 Some commentators have argued that not much tax is actually forgiven as a result of the exemption under section 501(a) as long as an organization's revenues can be offset by administrative and program expenditures. *See* John G. Simon, *The Tax Treatment of Nonprofit Organizations: A Review of Federal and State Policies*, *in* THE NONPROFIT SECTOR: A RESEARCH HANDBOOK 67, 73–75 (Walter W. Powell ed., 1987). *See also* John M. Colombo, *Why is Harvard Tax Exempt? (And Other Mysteries of Tax Exemption for Private Educational Institutions)*, 35 ARIZ. L. REV. 841, 857–61 (1993) (analyzing and criticizing the income measurement theory of tax exemption of Boris Bittker and George Rahdert). Recent statistics based upon Forms 990 and 990EZ suggest the opposite. *See* Paul Arnsberger, *Charities and Other Tax-Exempt Organizations, 1997*, STAT. INCOME BULL., Fall 2000, at 47, 50 fig.D. The "excess of revenue over expenses" in Figure D does not include investment income, which is a substantial source of income to some charities, such as colleges and foundations.

366 *See supra* Part I.B.

purpose and ability to devise thoughtful and long-term plans to strengthen a community. However, without the ability to form associations with substantial and dependable resources, it would be difficult for private parties to undertake and coordinate long-term, community-wide solutions to local problems. Further, without this ability, it would be impossible for such groups to dilute the power of centralized government bodies and to prevent them from imposing solutions on local communities from above. In short, organizations often need the opportunities provided through federal income tax exemption to perform both functions deemed critical to the self-governance perspective, i.e., informed deliberation about community-wide policies and serving as a counterpoise to centralized government actions.

The federal income tax treatment of charities provides an additional tax advantage that assists the accumulation of revenue and long-term planning. The charitable deduction provision encourages private individuals who itemize deductions to support charitable entities engaged in the type of public benefit considered important to them, e.g., education, health, social services, religion, or cultural activities.[367] The charitable contribution deduction is frequently defended on the ground that the support of private individuals enables charities to undertake different kinds of projects than would government decision makers.[368] Specifically, charities can take risks, consider novel, experimental, or unpopular ideas, and in other ways enhance the diversity of efforts to improve social welfare.[369] Correspondingly, association members can also have the luxury

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367 The extent of the incentive effect is extremely controversial. *See* CHARLES T. CLOTFELDER, FEDERAL TAX POLICY AND CHARITABLE GIVING (1985) (examining the "relation between federal taxes and charitable giving," using econometric evidence); JOSEPH CORDES, THE COST OF GIVING: HOW DO CHANGES IN TAX DEDUCTIONS AFFECT CHARITABLE CONTRIBUTIONS? (Urban Institute, Emerging Issues in Philanthropy Seminar Series, 2001), *available at* http://www.urban.org/UploadedPDF/philanthropy_2.pdf (last visited Apr. 2, 2004) ; LOUIS ALAN TALLEY, CONGRESSIONAL RESEARCH SERVICE, CHARITABLE CONTRIBUTIONS: PROS AND CONS OF DEDUCTIBILITY (1990); Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 336, at 856–67; George McCully, *Battle in the Bay State and Beyond: Charitable Tax Incentives Are Worth Fighting For*, PHILANTHROPY, May-June 2002 (finding that states with an income tax but without charitable tax incentives scored among the lowest in charitable giving), *available at* http://www.philanthropyroundtable.org/magazines/2002/may/mccully.html (last visited Apr. 2, 2004); Robert C. Ricketts & Peter H. Westfall, *New Evidence on the Price Elasticity of Charitable Contributions*, J. AM. TAX'N ASS'N, Fall 1993, at 1 (finding that charitable contributions are affected by the contribution deduction but not by tax rate differences).

368 *See* JAMES DOUGLAS, WHY CHARITY? THE CASE FOR A THIRD SECTOR 133–37 (1983) (arguing that foundations are not subject to the same time constraints as government actors); John G. Simon, *Foundations and Public Controversy: An Affirmative View*, *in* THE FUTURE OF FOUNDATIONS 58, 82–83 (Fritz F. Heimann ed., 1973) (arguing that the need to be reelected frequently prevents lawmakers from sponsoring controversial projects).

369 *See* DOUGLAS, WHY CHARITY?, *supra* note 368, at 133–37; Earl F. Cheit & Theodore E. Lobman III, *Private Philanthropy and Higher Education: History, Current Impact, and Public Policy Considerations*, *in* 2 COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC

of making decisions slowly, if necessary, and seeking out information without the political pressures that can overwhelm public officials.[370] To the extent that these possibilities are realized, charitable associations will contribute importantly to informed and thoughtful collective actions both because of donors who scrutinize the goals and operations of potential recipients and to the ability of recipient organizations to be more deliberative and innovative than government officials.

The preceding discussion highlights the opportunities for enhancing self-governance that the tax law governing exempt organizations may facilitate. However, the charitable contribution deduction rules do not guarantee such outcomes or even predispose organizations and their members and donors in that direction.[371] In contrast, in one area the regulations are drafted so as to encourage informed and deliberative consideration of issues. As was noted earlier, tax law prohibits lobbying by private foundations, permits lobbying by public charities with a section 501(h) election as long as lobbying expenditures do not exceed a percentage of exempt purpose expenditures, and permits lobbying by non-electing public charities as long as it does not constitute a substantial part of the organization's activities.[372] The tax law also provides that a certain kind of informational communication made by private foundations or public charities to their members, lawmakers, or the public in general is not considered lobbying, even if the communication goes so far as to advocate a particular position or viewpoint on specific legislation:

> so long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individ-

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NEEDS, RESEARCH PAPERS 453,i492, 493 (1977); Albert M. Sacks, *The Role of Philanthropy: An Institutional View*, 46 VA. L. REV. 516,i524, 531 (1960). Not all commentators agree that charities are especially open to innovation and experimentation. *See* Mark P. Gergen, *The Case for a Charitable Contribution Deduction*, 74 VA. L. REV. 1393, 1410 (1988).

370 *See supra* note 368. Of course, there can be pressures involved in meeting the demands of large private donors as well.

371 The tax rules impose financial accountability standards and other organizational and operational requirements, but they do not in general require qualitative judgments as to the desirability of specific charitable purposes or specific projects undertaken by charitable entities. *See* Treas. Reg.i§ 1.501(c)(3)-1 (1990). When the IRS departs from substantive neutrality in applying the exempt organization rules, it almost always gets in trouble, sometimes deservedly so (in this author's view), as when it denied charitable status to associations devoted to issues concerning homosexuals. *See* Tommy F. Thompson, *The Availability of the Federal Educational Tax Exemption for Propaganda Organizations*, 18 U.C. DAVIS L. REV. 487, 525 (1985). In the last two decades, the IRS's battles with the Church of Scientology have been widely documented. *See* Editorial, *Intimidating the IRS*, St. Petersburg Times, Mar. 11, 1997, at 12A; Frank Rich, *Scientologists Scare Even IRS*, SO. BEND TRIB. (Ind.), Mar. 20, 1997, at A15; Lisa Stansky, *Scientology Tax Case Before 9th Circuit; IRS is Demanding Tens of Thousands of Documents; Church Calls It Harassment*, RECORDER, May 6, 1992, at 3; Todd Woody, *War of Words; The Scientology Church Wants Filings Containing 'Atrocious Liesė Sealed*, RECORDER, Nov. 22, 1995, at 1.

372 *See supra* notes 341-344 and accompanying text.

> ual to form an independent opinion or conclusion. The mere presentation of unsupported opinion, however, does not qualify . . . e[373]

This is known as the exception from the definition of lobbying for "nonpartisan analysis, study, and research." To qualify for such favorable characterization, a charity is required to convey full and fair information about both the case for and the case against the legislation in question in its communication.[374] There is an additional exception from the definition of lobbying for communications by charities that examine or discuss broad social, economic, or similar issues, even if the discussions are directed toward the public or the communications are with lawmakers, and even if "the general subject . . . [discussed] is also the subject of legislation before a legislative body."[375] This exception does not require a charity to meet the standards associated with the exception for nonpartisan analysis, but it is not applicable if the communication mentions the merits of specific legislation along with its discussion of broad issues, or if the communication in question urges people to take action with respect to legislation.

Because of the monetary and other quantitative restrictions on their lobbying activities, charities typically strive to have as many communications to their members, the public, and public officials as possible

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373 Treas. Reg.i§ 56.4911-2(c)(1)(ii) (1990). The regulation also provides that communications that are published or broadcast as part of a series will usually be judged together to determine if the nonpartisan standard has been met. *See* Treas. Reg.i§ 56.4911-2(c)(1)(iii). Thus, if a charity produces a two-part series on the effect of pesticides on agriculture, and the first program develops the case in favor of pesticide use and pending legislation approving its use while the second portrays the conflicting research and arguments opposing the legislation, the series will qualify for the nonpartisan study, analysis, or research exception, assuming that the two programs occur within six months of one another and during comparable television time slots. *See* Treas. Reg. § 56.4911-2(c)(1)(iii), (vii) exs.6, 7.

374 *See* Treas. Reg. § 56.4911-2(c)(1)(vii) ex.2. Although the communication is also allowed to contain a view for or against specific legislative proposals under consideration by lawmakers, it is not allowed to encourage lawmakers or the public to take action with respect to the legislation favored by the charity, e.g., it cannot say, "Write Congressman X and tell him to vote against HR 66." The organization is, however, free to identify public officials in support of or opposed to the legislation. Treas. Reg. § 56.4911-2(c)(1)(vi). These regulation provisions apply to charities making the section 501(h) election. For the counterpart exception for nonelecting charities, see Rev. Rul. 66-258, 1966-2 C.B. 213; Rev. Rul. 64-195, 1964-2 C.B. 138. For the counterpart exception for private foundations, see I.R.C. § 4945(e), (f) (2000). Both the IRS and the courts have used the definitions in the regulations for private foundations and electing public charities when they analyze parallel issues for nonelecting public charities. *See* Haswell v. United States, 500 F.2d 1133, 1141–44 (Ct. Cl. 1974); Gen. Couns. Mem. 36,127 (Jan. 2, 1975).

375 Treas. Reg. § 56.4911-2(c)(2). For the counterpart exception for nonelecting charities, see Rev. Rul. 66-256, 1966-2 C.B. 210. For the counterpart exception for private foundations, see Treas. Reg. § 53.4945-2(d)(4) (1990).

qualify for one of the lobbying exceptions.[376] If they are successful, the associated costs of the communications will not be counted as lobbying expenditures against their lobbying limit, and these costs may even enlarge the baseline against which the extent of lobbying will be compared. In the case of private foundations, which are not permitted to engage in any amount of lobbying, the lobbying exceptions constitute the sole means available to them for communicating with lawmakers and the public with respect to legislative matters without risking the loss of their exemption. Thus, whatever the underlying rationale for the lobbying exceptions,[377] their effect is to encourage charitable organizations to strive towards reasonably balanced presentations of topics associated with ongoing legislative efforts.

By the same token, one of the great weaknesses of the tax law governing exempt organizations from the self-governance perspective is that it imposes no restrictions encouraging balanced presentations on the part of any exempt organizations other than charities. The usual justification for this discrepancy is that charities alone are restricted in the amounts and kind of lobbying permitted because they are the main exempt entities entitled to receive contributions that are deductible to their donors.[378] Historically, the coupling of the entitlement to charitable contributions and the limited entitlement to lobby (and the absolute prohibition against intervention in political campaigns) was justified by the view that charitable contributions constitute a government subsidy and that the govern-

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376 *See* Treas. Reg. § 56.4911-2(c)(2). There is also an exception from the definition of lobbying for responses to requests for technical assistance made by lawmakers to charities at the lawmakers' initiative, even if a charity makes a recommendation in support of or in opposition to specific legislation as part of its communication. *See* Rev. Rul. 70-449, 1970-2 C.B. 112; Treas. Reg. §§ 56.4911-2(c), 53.4945-2(d). In addition, public charities and private foundations can lobby on any issue affecting the entity's own survival, powers, or tax status without it counting as lobbying. For this "self-defense" exception to the lobbying rules, see I.R.C. § 4945(e); Treas. Reg. §§ 53.4945-2(d)(3), 56.4911-2(c)(4); Gen. Couns. Mem. 34,289 (May 8, 1970).

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

378 *See* I.R.C. § 170(c)(2) (2000). Also entitled to receive deductible contributions are government units, if the gift is "for exclusively public purposes," I.R.C. § 170(c)(1); certain posts or organizations of war veterans, I.R.C. § 170(c)(3); fraternal lodges, if the contribution is to be used exclusively for charitable purposes, I.R.C. § 170(c)(4); and certain member-owned cemetery companies, I.R.C. § 170(c)(5).

ment should not be in the business of subsidizing private advocacy.[379] However, this rationale overlooks the circumstance that exemption from federal income taxes by itself is also a subsidy and that the exemption subsidy is often critical to the survival and effectiveness of many exempt organizations that have no entitlement to charitable contributions.[380]

Another anomaly in the taxation of exempt organizations from the self-governance perspective is the fact that the lobbying restriction for charities includes only attempts to influence "legislation," i.e., action to be taken "by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure."[381] As a definitional matter, communications made to influence actions of administrative, executive, or judicial bodies, are not considered lobbying.[382] Administrative and executive bodies include "school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive."[383] For purposes of the self-governance perspective, the definition of lobbying would be more beneficial to civil society interests if it included communications with federal and state entities within the purview of lobbying while excluding county and other local officials and bodies. So defined, public charities would be able to engage in attempts to affect public outcomes more or less freely in a local context, which is precisely the forum most suited to making decisions directly affecting the affairs of association members.

In regard to the self-governance perspective, as was discussed in connection with the collective action perspective, charities can avoid the need for nonpartisan analysis and communication by establishing a section 501(c)(4) advocacy organization with strong ideological ties to the charity to lobby on its behalf.[384] Thus, the Code enables groups to acquire the resources necessary for productive civic engagement, but it only encourages informative and balanced communications in the limited

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379 *See* Cammarano v. United States, 358 U.S. 498,i512 (1959); *see also* Slee v. Comm'r, 42 F.2d 184, 185 (2d Cir. 1930); H.R. REP. No. 100-391, at 1624-25 (1987), *reprinted in* 1987 U.S.C.C.A.N. 2313-1, 2313-1204 to 2313-1206.

380 *See* Galston, *Lobbying and the Public Interest*, *supra* note 161, at 1287–1302 (arguing that the difference in the situations of charitable and noncharitable exempt organizations does not justify the extent of the differences in the lobbying regimes applicable to them).

381 Treas. Reg. § 1.501(c)(3)-1(c)(3)(ii) (1990).

382 *See id*; Treas. Reg. § 56.4911-2(d)(3) (1990). Note, however, that lobbying includes contacting "*any government official or employee* . . . who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation." Treas. Reg. § 56.4911-2(b)(1)(i)(B) (emphasis added); *see also* Treas. Reg.i§ 53.4945-2(a)(1) (1990) (stating a similar rule for private foundations).

383 Treas. Reg. § 56.4911-2(d)(4).

384 *See supra* notes 353-356 and accompanying text.

situation where an organization seeks to engage in advocacy using funds that are charitable contributions deductible to the donors. In practice, this does not create any incentive for noncharitable exempt entities to relinquish their ability to engage in one-sided, and sometimes inflammatory or misleading, communications in the heat of a legislative battle.

To transform the current culture of partisan advocacy would require changes in attitudes and values far beyond the powers of the Code. The most that the tax law could do would be to require all legislative advocacy by all exempt organizations to meet certain informational or educational criteria, such as those required to meet the exception for nonpartisan study, analysis, or research, or a looser standard requiring reasoned argument in support of, or opposed to, specific viewpoints.[385] In the absence of such a radical change, the present federal income tax regulation of voluntary associations does not further, and may well thwart, the kind of civil association hoped for by adherents of the self-governance perspective of the civil society debate.

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

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385 For further elaboration on this point, see the proposal in Galston, *Lobbying and the Public Interest*, *supra* note 161, at 1343–46.

C. THE REPRESENTATIVE INSTITUTIONS PERSPECTIVE

1. *Voluntary Associations and Representative Institutions*

As was discussed in Part I, according to the representative institutions perspective, civic health presupposes political equality in the sense of a system of representation that is not biased in favor of, or against, any citizen or class of citizens, the dispersal of decision making power, accountability of governmental officials to citizens, institutional stability, and attitudes supporting all these goals.[386] The empirical research reviewed in Part II.C suggests that voluntary associations can further several of these objectives.

Political equality is unlikely to be achieved in practice until political participation and political representation become more egalitarian. This can occur through the increased input of those who currently fail to exercise their legal rights as well as through the increased responsiveness of representatives to populations that are currently underrepresented because of their silence, their ineffective modes of communication, or their lack of influence even when they do communicate.[387] Voluntary associations are well-suited to alleviate some of these circumstances. Empirical evidence shows that small, participatory voluntary associations, or small group settings within larger associations, provide opportunities for members to learn communication and organizational skills.[388] Such settings may also instill confidence in individual members in their own or in the organization's ability to make their point of view heard by others, including public officials, or actually to influence the formation of public policy. Research also shows that this kind of confidence may be a condition, and possibly a cause, of civic engagement, even in the absence of interpersonal trust.[389] The combination of skills and confidence learned through participation thus has the potential to prompt previously inactive people to become more politically active, e.g., by writing or otherwise contacting lawmakers and other officials, joining grass roots initiatives, serving on political committees, and working in their own neighborhoods to encourage others to register, vote, or become civically active in other ways.[390]

Voluntary associations can also play an important and direct role in improving the socioeconomic status of disadvantaged populations by

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386 *See supra* Part I.C.

387 *See supra* notes 84-87 and accompanying text.

388 *See supra* notes 185-186, 273 and accompanying text.

389 *See supra* notes 256–258 and accompanying text.

390 However, an increase in voting among those who currently do not vote without increases in other forms of political participation is unlikely to achieve the amount and kind of democratic outcomes essential to the democracy enhancing perspective. *See supra* pages 310-11.

providing services like job training and placement, low-cost housing, day care, transportation, shelters for the homeless and victims of domestic abuse, and health care for the poor, sick, or disabled. Although only a small portion of the wealth and income of charities is currently devoted to such activities,[391] such assistance improves the lives of the needy in a direct and tangible fashion. In addition, some voluntary associations have historically championed causes of underrepresented populations, especially children and others who do not themselves participate or have political clout with lawmakers. Such efforts can be very successful in giving a voice to the concerns of these populations in a politically effective fashion. Thus engaged, voluntary associations have the ability to make political institutions more representative and improve the living situations of targeted beneficiaries even when they do not operate in a fashion valued by the cooperation or self-governance perspectives, i.e., by involving the beneficiaries in the process of procuring goods and services. It is possible, however, that such efforts by associations will, over time, enhance the representative character of institutions in other ways, given that empirical research has demonstrated a strong positive correlation between education and socioeconomic status, on the one hand, and civic engagement, on the other.

Although research suggests that the act of participating in an association will probably not create civic attitudes in favor of participation as such,[392] it has been shown that participants in instrumental and advocacy organizations are likely to be mobilized to engage in civic activities outside the group, if only to advance the group's mission.[393] Since empirical evidence also shows that people join associations or participate in their activities when others solicit their participation,[394] participation in a voluntary association may beget more participation even without a major change in civic attitudes, e.g., when those who are civically engaged ask their friends, neighbors, co-workers, and family members to help out. However, such a ripple effect can augment the egalitarian character of the political process only if, and to the extent that, the organizations in question seek out participation by, or further the interests of, underrepresented groups. Churches and community organizations in poor neighborhoods are especially likely candidates for activities of this kind, as are parent associations in districts with substandard or poorly-served schools. In short, even though the evidence shows that voluntary associations are typically the beneficiaries of civic attitudes rather than

391 *See* EBERLY, AMERICA'S PROMISE, *supra* note 2, at 67–70 (citing statistics suggesting that most volunteering never reaches the poor and homeless and that a large part of the funding of charities engaged in social services comes from government, not private sources).

392 *See supra* notes 247, 249, 261, 272, 300-301 and accompanying text.

393 *See supra* notes 272, 276 and accompanying text.

394 *See supra* notes 220-221 and accompanying text.

their source, it is also the case that the recruitment and mobilization functions of voluntary associations can promote more representative institutions by drawing larger numbers of non-participants into civic life.

On the negative side, empirical research has so far failed to show that voluntary associations have potential for creating or strengthening democratic values, however, because of the frequency with which participants self-select for organizations that share their values and because organizations themselves engage in selective recruitment.[395] In addition, the composition of most voluntary associations tends to be especially homogeneous along dimensions related to the organizations' purposes,[396] further reducing their utility as "schools for democracy"[397] in the sense of teaching participants values different from those they possessed when they joined.[398] There is even a danger that encouraging greater participation on the part of citizens generally (as contrasted with targeted increases in the participation of politically underrepresented groups) could accentuate existing distortions in representation.[399] Finally, voluntary associations that are successful often grow large and hierarchical, hire professional staffs, and rarely solicit the input of their own constituencies, thereby reinforcing their tendency to speak for more educated and higher status individuals. In short, voluntary associations have the potential to promote more representative institutions and democratic norms and practices, but pursuing a more "robust civic life," without more, does not adequately capture their usefulness for these purposes.

2. *The Regulation of Exempt Organizations*

There are several ways in which the current regulation of exempt organizations affects the goal of reducing inequalities in participation and representation. First, many exempt organizations are active in registering voters and encouraging and enabling them to get to the polls. Federal tax law permits most exempt organizations, other than charities, to engage in registration and get-out-the-vote (GOTV) activities without restrictions.[400] Charities are treated differently, however, because of the

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395 *See supra* notes 297, 300-301 and accompanying text.

396 *See supra* notes 294-299 and accompanying text.

397 For this idea, see PUTNAM, BOWLING ALONE, *supra* note 2, at 338–39.

398 *But see* ROSENBLUM, MEMBERSHIP AND MORALS, *supra* note 61 (arguing, based upon her own experience researching the effect of membership on members' morals, that belonging to groups and participating with like-minded people in common enterprises furthers democratic values even if the values and practices of the groups are not themselves democratic).

399 *See* Verba et al., *Big Tilt*, *supra* note 85, at 77 (noting that the policies favored by the dominated groups are different from those favored by the dominant groups).

400 Among the non-charitable exempt organizations, only social welfare organizations are limited in registering voters and getting them to vote since only these are subject to limitations on the amount of campaign activities permitted to them. *See* Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii) (1990) (stating that the political campaign activities of organizations described in

prohibition against engaging in any political campaign activities whatsoever.[401] Nonetheless, tax law permits registration and GOTV activities on the part of public charities, as long as a charity's activities are not partisan, i.e., not biased for or against a political party or a candidate for office.[402] This means, among other things, that a charity's registration and GOTV efforts cannot be confined to potential voters of a single party or for a specific candidate or candidates, and public charities must encourage people to register and vote based upon "neutral" reasons, e.g., a person's civic duty to vote or his or her self-interest.[403] At the same time, charities are permitted to target students, minorities, immigrants, low-income groups, or women, despite the likelihood that voters in these groups will tend to favor a particular party or candidate.[404] It is also possible for them to call the attention of potential voters to specific issues and highlight the importance of the election for their resolution.[405] Private foundations are also required to act in a nonpartisan fashion in registering voters and encouraging or enabling them to get to the polls. However, the guidelines for their activities were laid out by Congress and are more restrictive than the IRS's rules for public charities.[406]

By their terms, the voter registration and GOTV rules do not address the problem of inequality of political representation because nothing requires charities or other exempt organizations to target underrepresented populations. In fact, the exempt organizations most likely to register underrepresented populations and encourage them to vote are charities; yet because of the prohibition against charities engaging in political campaign activities,[407] they risk losing their exemptions if

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section 501(c)(4) cannot be considered part of their exempt purpose and requiring that their exempt purpose be their primary purpose).

401 *See supra* note 343 and accompanying text.

402 *See* INTERNAL REVENUE SERVICE, EXEMPT ORGANIZATIONS CONTINUING PROFESSIONAL EDUCATION TECHNICAL INSTRUCTION PROGRAM 427 (1993) [hereinafter 1993 CPE TEXT] (on file with author); Milton Cerny, *Current Issues Involving Lobbying and Political Activities As They Affect Exempt Organizations*, TAX NOTES TODAY, July 8, 1998, Doc. 98-20145 [hereinafter *Current Issues*], *available at* LEXIS, 98 TNT 130-11. For a clear and nontechnical description of the rules for charities engaged in registration and get-out-the-vote activities, see COLVIN & FINLEY, RULES OF THE GAME, *supra* note 355, at 21.

403 For a detailed account of acceptable target groups, see Cerny, *Current Issues*, *supra* note 402.

404 *See id.* (citing Priv. Let. Rul. 92-23-050 (Mar. 10, 1992) and Gen. Couns. Mem. 39,811 (June 30, 1989)).

405 *See* COLVIN & FINLEY, RULES OF THE GAME, *supra* note 355, at 21. According to the IRS, the FEC criteria for determining whether registration and get-out-the-vote activities are nonpartisan are similar to the factors used in the Service's inquiry. *See* 1993 CPE TEXT, *supra* note 402, at 427-28 (citing 11 C.F.R. §§114.4(b)(2), (c)(1)).

406 *See* I.R.C. § 4945(f) (2000); Treas. Reg. § 53.4945-3 (1972).

407 *See* sources cited *supra* at note 340. There is no *de minimis* exception to the provision prohibiting charities from participating or otherwise intervening in a political campaign. *See* United States v. Dykema, 666 F.2d 1096, 1101 (7th Cir. 1981). In practice, however, the Service appears to take into consideration whether the violation is intentional. *See* 1993 CPE

their registration and get-out-the-vote activities are found to be partisan under the tax law. To the extent of this risk, the Code's regulation of exempt organizations may, as a practical matter, be tilted against increased representation of disadvantaged groups in the political process. Any asymmetry in treatment between charities and other exempt organizations is accentuated by the fact that charities are not allowed to establish PACs, or affiliated organizations exempt under section 527 of the Code, to engage exclusively in political activities.[408] Thus, unlike section 501(c)(4) organizations, charities do not have a vehicle for avoiding the prohibition against political campaigns. These tax law restrictions on charities are, however, largely offset by the fact that a charity can usually form an affiliated section 501(c)(4) organization to engage in political campaign activities or to set up a PAC as long as the charity prevents any of its funds from being used by the affiliate of its PAC.[409] The net effect, then, of the asymmetry in regulatory regimes appears to be that charitable contributions entitling taxpayer-contributors to deduction from income cannot be used to fund political campaign activity directly or indirectly, but they can be used by charities to engage in nonpartisan voter registration and GOTV efforts.

One way for federal tax law to create the socioeconomic conditions that are correlated with participation would be to afford favorable tax treatment to the flow of funds to charitable entities actively engaged in improving the lives of needy populations. This could be achieved by treating contributions to entities engaged in direct services to the needy more favorably than other contributions, for example, by allowing a tax credit rather than a deduction for such contributions or for contributions that are earmarked for direct services to any charity committed to using them in the manner provided.[410] The Code already contains provisions favoring donations to public charities as compared with private ones. Section 170 contains a two-tier system that allows individuals to lower their taxable income by deducting a maximum of 50 percent of their contribution base for donations made to public charities, as compared with 30 percent of that base for private foundations.[411] The rationale for

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TEXT, *supra* note 402, at 418–19. *See also* Lee A. Sheppard, *Big Bird Is a Democrat; And the Consequences*, 25 EXEMPT ORG. TAX REV. 373, 375 (1999) (describing two Technical Advice Memoranda in which organizations that violated the prohibition repeatedly were fined under I.R.C. § 4955 rather than losing their exemptions).

408 *See* Treas. Reg. § 1.527-6(g) (1980).

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

410 For a legislative proposal to this effect, see Charity To Eliminate Poverty Tax Credit Act of 2001, H.R. 673, 107th Cong. (2001).

411 *See* I.R.C. § 170(b)(1)(A), (B)t(2000). *See also* I.R.C. § 170(b)(1)(E) (authorizing the higher limit for certain foundations). For charitable contributions by corporations, *see* I.R.C. § 170(b)(2).

the law as written appears to be favoring charities with public support over those funded by a single high-wealth individual or family. In practice, however, it takes very little in the way of public support to qualify an entity for public charity status.[412] More importantly, nothing in any of the public support formulas ensures that a charity thus funded will be devoted to activities on behalf of chronically underrepresented groups.[413]

For political reasons, it is unlikely that the present, generous treatment of charitable contributions could be reduced for any charities based upon the nature of an entity's mission. Nonetheless, it might be politically feasible to allow tax credits rather than deductions for contributions to charities devoted to helping underrepresented populations, as might a proposal to link an increase in the contribution cap for donations to such charities.[414] Similarly, a tax credit for donations segregated by charities to fund direct services to needy populations (earmarking), rather than requiring the charities themselves to devote themselves to such services to the exclusion of other types of activities, could attract political support.

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

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412 *See* Chisolm, *Exempt Organization Advocacy*, *supra* note 347, at 285 (noting that public charity status can be obtained when there are fewer than 20 contributors annually). *See also* Treas. Reg. § 1.170A-9(e)(3) (2002) (providing that an alternative to the usual public support formula can be satisfied if only 10 percent of the annual revenue of a charity is from public support as long as certain facts and circumstances are met). If the facts and circumstances are met, the 10 percent public support test could be satisfied with a minimum of five donors. *See id.*

413 *See* Chisolm, *Exempt Organization Advocacy*, *supra* note 347, at 284–87. Professor Chisolm's proposal is to deny charities the ability to lobby unless they represent underrepresented groups. *See id.* at 287–88.

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

purposes, or for the prevention of cruelty to children or animals.[415] To encourage charitable efforts to help needy populations, a comparable activities-based deduction could be introduced and made available to select categories of noncharitable exempt organization.

The optimal strategy for encouraging exempt organizations and their donors to address social and economic inequalities would therefore be for tax law to connect the deduction for charitable contributions as closely as possible to certain types of activities rather than to certain types of entities. Such activities would include direct assistance to the unemployed, the working poor, the hungry, the homeless, the abused, the disabled, and the sick. For efforts of this kind to have long-term effects, they should be designed to enable the recipients to acquire the skills and experience necessary to become self-supporting, increase their job and income levels, and have more stable homes. Social service programs in the wake of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) provide a few models of comprehensive support, including transportation, health, and child care subsidies during the transition from welfare to work, that have enabled large numbers of individuals and families formerly receiving welfare payments to improve their standard of living.[416] In sum, society as a whole and individual communities must address the types of inequalities that undermine the representative nature of the political process. Exempt organizations, including but not limited to charities, are well-suited to play an important role in this effort. Optimally, these organizations as a group need to be better educated so that they recognize the potential they have to improve the circumstances of low-status individuals and educate them about ef-

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415 *See* I.R.C. § 170(c)(4).

416 *See, e.g.*, Wis. Dep't of Workforce Dev., Wisconsin Works (W-2) Program Resource Page (describing Wisconsin's benefits program available to employed individuals and their families), *available at* http://www.dwd.state.wi.us/dws/w2 (last updated Jan. 21, 2004); Press Release, Manpower Demonstration Research Corporation, Minnesota's Welfare Reform Brings Dramatic Results for Long-Term Recipients and Their Children (describing the Minnesota Family Investment Program, Minnesota's pilot welfare reform program in effect from 1994 to 1998), *at* http://www.mdrc.org/PressReleases/mfip-pr.htm (last visited Mar. 12, 2004). The positive long-term effects of PRWORA on reducing poverty have been mixed. *See* CHRISTINE DEVERE, CONGRESSIONAL RESEARCH SERVICE, WELFARE REFORM RESEARCH: WHAT DO WE KNOW ABOUT THOSE WHO LEAVE WELFARE? (Penny Hill Press 2001) (on file with author); Melissa G. Pardue, *Sharp Reduction in Black Poverty Due to Welfare Reform*, BACKGROUNDER (Heritage Found., Washington, D.C.), June 12, 2003, at 1, *available at* http://www.heritage.org/research/welfare/bg1661.cfm (last visited Mar. 12, 2004). At the same time, the situation of black children in extreme poverty has worsened. *See* CHILDREN'S DEFENSE FUND, ANALYSIS: NUMBER OF BLACK CHILDREN IN EXTREME POVERTY HITS RECORD HIGH (2003), *available at* http://www.childrensdefense.org/familyincome/childpoverty/extremepoverty.pdf (last revised May 28, 2003). Of course, the fact that the minimum wage has not changed since 1997, among other factors, makes it difficult for those at the bottom of the economic ladder to climb up very many rungs.

fective ways to influence the political process or other aspects of civic life.[417]

D. THE COMMUNITY MORALITY PERSPECTIVE

According to the fourth perspective on civic engagement, civic renewal will never succeed in the absence of concurrent moral renewal, and participation in voluntary associations by itself is inadequate to develop the necessary moral foundation for civic life.[418] As noted above, the moral renewal project is far more controversial than other aspects of civic renewal because of the wariness in a democratic society of using legal institutions to encourage values or attitudes linked to one or more specific understandings of human well-being or fulfillment. Democratic societies, especially liberal democratic societies, tend to demand substantive neutrality from public policy and government actors in situations where moral and other human purposes are at issue.[419]

Those who advocate invigorating the moral culture in the United States believe that there exists a core of common values that the vast majority of Americans accept, or could be persuaded to accept, without acting contrary to their existing beliefs, including those associated with their religion or other comprehensive views.[420] As noted above, these values fall under the headings of our responsibilities to ourselves, to our families, and to our communities.[421] As a consequence, these thinkers seek to identify the elements of a secular moral consensus that is capable of commanding widespread allegiance without sacrificing the country's commitment to the separation of church and state or imposing a specific idea of goodness or well-being on the population as a whole. To be successful, these efforts must influence people's behaviors as well as their values and opinions.

The civic renewal perspective advocating moral renewal exhibits a range of views concerning the degree to which government actions and public officials, as contrasted with private parties, can or should seek to encourage particular moral beliefs and practices. Some civic renewal advocates emphasize the role of institutional or governmental actions. Among these are efforts to use tax incentives and appropriations to encourage individuals and companies to adopt practices deemed beneficial

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

418 *See supra* Part I.D.

419 *See, e.g.*, BRUCE A. ACKERMAN, SOCIAL JUSTICE IN THE LIBERAL STATE 10–12 (1980). *But see supra* notes 76-80 and accompanying text.

420 *See supra* notes 120-136 and accompanying text.

421 *See supra* note 130.

to the moral fabric of society, especially in the area of family policy.[422] The Earned Income Tax Credit (EITC), for example, has been widely hailed for increasing employment among the poor and enhancing family stability in addition to its direct economic effect of alleviating poverty.[423] Because employment and family stability are themselves civic goods with potential ripple effects on both the non-civic and civic well-being of individuals, as well as on their families and neighborhoods, continuing and enlarging the program's scope has attracted bipartisan support[424] and induced at least sixteen states to design similar credits.[425]

Marriage and divorce concerns have also given rise to repeated attempts on the part of state legislatures to adopt family-friendly policies. For example, Louisiana, Arizona, and Arkansas have passed legislation creating an alternative, lifetime commitment marriage license that requires those who elect it to undergo extensive preparation before getting married, sign a legally enforceable document binding the parties to seek counseling to preserve the marriage if marital difficulties develop, and agree to an extended waiting period for a divorce except in extreme cases, e.g., if one spouse abuses the other or the children or if one spouse

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422 Using the tax code to promote public policy has long been controversial. *See* Charles A. Borek, Comment, *The Public Policy Doctrine and Tax Logic: The Need for Consistency in Denying Deductions Arising from Illegal Activities*, 22 U. BALT. L. REV. 45, 49–56 (1992) (examining the development of the public policy doctrine with respect to the tax code).

423 The credit provides a cash wage supplement to low-income working individuals and families. It was initially enacted in the Tax Reduction Act of 1975 § 204, 89 Stat. 26, 30, and greatly expanded in 1993. Omnibus Budget Reconciliation Act of 1993 § 13131, 26 U.S.C. § 32 (2000). *See* NICHOLAS JOHNSON, CENTER ON BUDGET AND POLICY PRIORITIES, A HAND UP: HOW STATE EARNED INCOME TAX CREDITS HELP WORKING FAMILIES ESCAPE POVERTY IN 2001, at 6 (2001) [hereinafter A HAND UP] (noting that EITCs have been enacted in states with Republican, Democratic, and bipartisan leadership). *See also* Anne L. Alstott, *The Earned Income Tax Credit and the Limitations of Tax-Based Welfare Reform*, 108 HARV. L. REV. 533, 533 (1995) (noting that the EITC has "assumed a central role in U.S. social welfare policy").

424 *See* ROBERT GREENSTEIN, CENTER ON BUDGET AND POLICY PRIORITIES, SHOULD EITC BENEFITS BE ENLARGED FOR FAMILIES WITH THREE OR MORE CHILDREN? 1 (2000); JOHNSON, A HAND UP, *supra* note 423, at 6.

425 As of the end of 2001, sixteen states had enacted state EITC credits. *See* JOHNSON, A HAND UP, *supra* note 423, at 6.

goes to jail for a serious crime.[426] Less controversial[427] are state efforts to include a course on marriage skills as part of the high school curriculum.[428] In one county in Michigan, the mayor, college presidents, judges, attorneys, business leaders, and clergy have established a community marriage policy that seeks to raise public awareness regarding the value of marriage, as well as to provide counseling and other services similar to those provided in other states.[429] Perhaps the most well known legislative efforts to strengthen families are the various federal and state

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426 *See* LA. REV. STAT. ANN. §§ 9-272, 9-273, 9-307 (1997); ARIZ. REV. STAT. Ann. §§ 25-901, 25-903, 25-904 (2001); ARK. CODE ANN. § 9-11-803 (1998). For in-depth analysis of Louisiana's covenant marriage law, see Katherine Shaw Spaht, *Louisiana's Covenant Marriage: Social Analysis and Legal Implications*, 59 LA. L. REV. 63 (1998); Joel A. Nichols, Comment, *Louisiana's Covenant Marriage Law: A First Step Toward a More Robust Pluralism in Marriage and Divorce Law?*, 47 EMORY L.J. 929 (1998) [hereinafter *Louisiana's Covenant Marriage Law*]. Similar bills have been introduced in numerous state legislatures, so far with little success. *See* Nichols, *Louisiana's Covenant Marriage Law*, *supra*, at 973–74 (noting twelve states in which covenant marriage bills were introduced in 1998); H.J. Cummins, *Covenant Vows Would Make Parting Harder*, STAR TRIB. (Minneapolis), Jan. 5, 2000, at 1A (noting that covenant marriage bills were considered by the legislatures in 17 states in 1999, although none was enacted). For a current and comprehensive list of bills introduced, see Americans for Divorce Reform, Covenant Marriage Links, *available at* http://www.divorcereform.org/cov.html#anchor1274910. Estimates are that only three percent of couples marrying in Louisiana or Arizona have chosen covenant marriages. *See* Pam Belluck, *States Declare War on Divorce Rates, Before Any 'I Dos,'* N.Y. TIMES, Apr. 21, 2000, at A1 [hereinafter *States Declare War*]. Ten percent of those who participate in state sponsored counseling break the engagement, and in one town, the divorce rate dropped forty percent in ten years. *See* Nichols, *Louisiana's Covenant Marriage Law*, *supra*, at 977.

427 The Louisiana law has been criticized by clergy, feminists, the ACLU, and constitutional scholars. *See* Nichols, *Louisiana's Covenant Marriage Law*, *supra* note 426, at 952–67.

428 In Florida, for example, a course on marriage and relationship skills is a requirement for graduation. *See* Marilyn Gardner, *An 'I Doe that Lasts*, CHRISTIAN SCI. MONITOR, June 23, 1999, at 15. Utah insures that marriage education courses are available in high schools, but does not make them mandatory. *See* Belluck, *States Declare War*, *supra* note 426, at A1 (discussing efforts in several states to strengthen marriage through educational measures). One state currently offers financial incentives to encourage low-income married couples to stay married by relieving some of their financial distress. *See* W. VA. CODE ANN. § 9-9-6 (2003) (authorizing up to an extra $100 a month in aid to married parents who receive cash assistance from the state). In its 2001 budget request, the Bush administration included $100 million for state programs to encourage welfare recipients to get or stay married. *See* WHITE HOUSE, WORKING TOWARD INDEPENDENCE 19-21 (2002), *available at* http://www.whitehouse.gov/news/releases/2002/02/welfare-reform-announcement-book-all.html (last visited Apr. 2, 2004). Opponents of such programs believe that the financial incentives may lead abused wives to stay in abusive relationships. *See* Patricia Harrison, *Marriage Initiatives Deserve Our Support*, GREENVILLE NEWS (S.C.), Oct. 6, 2002, at 3G. Supporters argue that the marriage education classes funded by the programs will reduce the amount of domestic abuse. *See id.*

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

family and medical leave laws.[430] Government efforts to increase civic values directly through education have also been undertaken repeatedly in the last two decades, especially at the local level, through changes in the curriculum[431] and public service requirements.[432]

Many advocates of moral renewal prefer private solutions to moral concerns, whether on grounds of efficiency or ideology. Legislation and other official acts seem especially unsuited to achieve the core objective of increasing the pervasiveness of public-spirited attitudes.[433] This strand of the moral renewal perspective views parents as potentially the most effective and appropriate repository of moral education of any

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430 *See* Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654; National Conference of State Legislatures, State Family and Medical Leave Laws, *available at* http://www.ncsl.org/programs/employ/fmlachart.htm (last visited Mar. 12, 2004).

431 One trend in this connection consists of proposals to increase character education among children by expanding the moral content of school curricula, e.g., by introducing service learning as a component of the curriculum. *See generally* B. DAVID BROOKS & FRANK G. GOBLE, THE CASE FOR CHARACTER EDUCATION: THE ROLE OF THE SCHOOL IN TEACHING VALUES AND VIRTUE (Studio 4 Productions 1997) (1983); KEVIN RYAN & KAREN E. BOHLIN, BUILDING CHARACTER IN SCHOOLS: PRACTICAL WAYS TO BRING MORAL INSTRUCTION TO LIFE (1999); Thomas Lickona, *The Decline and Fall of American Civilization: Can Character Education Reverse the Slide?*, WORLD & I, June 1996, at 285. Character education has been described as "not a separate course . . . rather, it's a whole-school effort to create a *community of virtue* where moral behaviors such as respect, honesty, and kindness are modeled, taught, expected, celebrated, and continuously practiced in everyday interactions." *Id.* at 299. *See also* Christian Educators Association International, Character Education Links and Resources (listing links to web sites with character education materials), *available at* http://www.ceai.org/members.htm (last visited Apr. 2, 2004).

432 Hundreds of school boards and municipalities now have mandatory public service requirements for students in primary or secondary school. *See* Sumathi Reddy, *Helping Out Is Required to Graduate*, NEWS & OBSERVER (Raleigh, N.C.), May 22, 2000, at B3; Marina Dundjerski & Susan Gray, *A Lesson in Mandatory Service*, CHRON. PHILANTHROPY, September 10, 1998, at 1. *See also* Janoski et al., *Being Volunteered?*, *supra* note 234, at 516–17 (concluding that "encouraging children to get involved in social clubs and community service organizations while in school" can be beneficial in later years). To date, the only state to mandate community service as a condition of graduation is Maryland. *See* MD. REGS. CODE tit. 13A, § 03.01(F)(11) (2003) (providing that each local high school system should include activities, programs, and practices that "provide appropriate opportunities for students to participate in community service"). This mandate, passed in 1992, was first applied to the high school classes graduating in 1997. Maryland Student Service Alliance, Maryland's Service-Learning Graduation Requirement, *available at* http://www.mssa.sailorsite.net/require.html (last visited Mar. 12, 2004). In implementing the mandate, the Maryland State Board of Education gave all twenty-four school districts the option of having students complete seventy-five hours of service, including "preparation, action, and reflection components and that, at the discretion of the local school system, may begin during the middle grades" or devising their own student service program, subject to approval by the Superintendent of Schools. *See id.* For details of the variety of models chosen by the local school districts, see *id.*

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

kind.[434] Groups of concerned parents have, in fact, been the driving force behind numerous projects to improve the moral climate of the neighborhoods in which they live and their children grow up. Regardless of whether they turn to market[435] or legal[436] strategies, such efforts are animated by a belief that some materials and environments are inappropriate for children if they are to grow into morally healthy adults. Another recent private initiative, the public journalism movement, resulted from a collaboration among parents, community leaders, and the media. By making a commitment to give more prominent coverage to topics such as community efforts to solve local problems and profiles of individuals who are active on behalf of their communities, this movement has attempted to combat public cynicism and increase people's sense of responsibility, awareness of public problems, and confidence in their ability to influence the quality of their surroundings.[437]

These brief observations illustrate how complex and multidimensional the civic response to any aspect of community morality concerns must be. They also raise in a concrete fashion a question as to the utility of participation in voluntary associations for the moral renewal enterprise.

1. *Impact of Voluntary Associations on Community Morality*

The empirical evidence regarding the impact of participation in voluntary associations on the moral values and behaviors of participants lends support to the view of those civic renewal advocates who believe

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434 *See* NATIONAL COUNCIL ON CIVIC RENEWAL, NATION OF SPECTATORS, *supra* note 117, at 6, 8, 9-10, 12-13; INSTITUTE FOR AMERICAN VALUES, CALL TO CIVIL SOCIETY, *supra* note 114, at 7, 19–20; *supra* note 152 and accompanying text.

435 The software industry has responded to parents' desire to keep pornography, violence, or other offensive material out of the surroundings of their children by marketing special computer filtering software. Examples of such efforts include rating systems for movies, records, books, television, and computer games to enable adults to screen these items before permitting their children to see or hear them. For links to voluntarily adopted ratings systems for movies, television, records and CDs, and computer, video, and Internet games, see ParentalGuide.org, Parental Media Guide, *available at* http://www.parentalguide.org (last visited Mar. 12, 2004).

436 The Federal Trade Commission monitors annually the entertainment and other industries' compliance with their self-regulating standards, including the standards against advertising R-rated products in magazines and other media with a significant under-age audience. *See* FED. TRADE COMM'N, MARKETING VIOLENT ENTERTAINMENT TO CHILDREN: A REVIEW OF SELF-REGULATION AND INDUSTRY PRACTICES IN THE MOTION PICTURE, MUSIC RECORDING & ELECTRONIC GAME INDUSTRIES (2000). For a list of available Internet filtering software, see SmartParent.com, Blocking/Filtering Software, *available at* http://www.smartparent.com/protect.htm (last visited Mar. 12, 2004).

437 *See, e.g.*, Judith Lichtenberg, *Beyond the Public Journalism Controversy*, *in* CIVIL SOCIETY, *supra* note 2, at 341, 342–44, 352. *See also* PETER LEVINE, THE NEW PROGRESSIVE ERA: TOWARD A FAIR AND DELIBERATIVE DEMOCRACY 157–65 (2000) (examining the public journalism movement and the arguments of those who criticize it). On the subject of public journalism generally, see ASSESSING PUBLIC JOURNALISM (Edmund B. Lambeth et al. eds., 1998).

that participation in voluntary associations (other than families) does not necessarily produce or nurture moral values and practices of members. Rather, it appears that people's moral values and attitudes are learned primarily at home or in school and then become a significant determinant of the likelihood that people will participate in civic life. Helping and community-oriented behaviors in particular, as contrasted with self-interested behaviors, were found to be the product of friendship and other social ties as well as socialization by parents.[438] Research has also shown that altruistic and ideological motivations are better predictors of civic activity than is economic self-interest or professional advancement.[439]

Research has, however, confirmed the correlation between participation in nonpolitical associations and certain types of involvement in political life. Yet the causal link turned out not to be values or attitudes of public-spiritedness or citizen responsibility learned from participation in civil associations. Rather, it seems that self-selection by those who join civil associations in the first place, coupled with mobilization of some members by others within the group, are the primary reasons for the correlation between participation in civil associations and political participation.[440]

Nonetheless, there is some evidence that participation in voluntary associations can have a positive impact on members' moral values or public-spiritedness, in particular, those associations whose mission includes character building. First and foremost, churches and religious institutions typically teach congregants the importance of helping those in need, whether within or outside the religious community.[441] In addition, several studies showed that, as a result of participation in non-religious voluntary associations, participants experienced an increase in empathy, nurturing, and self-confidence, although this effect was found only in participants exhibiting altruistic behavior prior to joining.[442] Further, some studies have concluded that through associational life members' pre-joining attitudes can be amplified and that members' attitudes change only when a significant majority of the other members of the group ex-

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438 *See supra* Part II.B.4.

439 *See supra* Part II.B.5.

440 *See supra* Part II.C.2-3.

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

442 *See supra* note 260 and accompanying text. *See also supra* notes 286-288 (empirical data suggesting that self-interested people are more likely to join instrumental voluntary associations, whereas people with helping orientations are more likely to be members of expressive organizations).

hibit a particular attitude.[443] Thus, moral socialization within voluntary associations typically depends on the prior existence of moral values outside of organizations, i.e., members' pre-joining attitudes and values. In other words, based upon the empirical evidence, the fourth perspective is correct in focusing predominantly on the creation and cultivation of moral and community-oriented values and practices outside associational settings.

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

2. *The Regulation of Exempt Organizations*

The previous section has argued that voluntary organizations are most useful for the maintenance or cultivation of civic health from the fourth perspective to the extent that they assist members of families and schools in conveying the basic moral norms essential for civic life. Apart from religious or religiously-affiliated institutions, few voluntary associations further this goal directly. The policy of the Internal Revenue Service is to refrain from evaluating applications for charitable or other categories of exempt status based upon substantive moral considerations. Thus, both organizations that support and those that oppose a position or objective with moral implications will receive exempt status, unless they advocate violence, criminal behavior, or other forms of lawlessness. On the few occasions in the past when the Service did deny charitable or exempt status based upon its notion of moral norms, the Service's actions were widely condemned and it eventually retreated.[444] Given the pluralistic nature of American democracy and the value accorded to diversity and tolerance, the Service's present practice can be defended on moral, as well as political and administrative, grounds. In this respect, to tinker with federal tax law and its enforcement would risk weakening the regulatory regime's contribution to the commitment to pluralism that is part of the moral foundation of civic life in the United States.

Because churches and other faith-based institutions are voluntary associations that engage in character building, some might argue that federal tax law should privilege them as compared with other voluntary associations. In point of fact, the Code already does privilege churches in various ways, e.g., by not requiring them to apply for recognition of

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[443] *See supra* notes 300–301 and accompanying text.

[444] *See supra* note 371.

exempt status,[445] exempting them from certain unemployment taxes,[446] restricting the government's ability to examine financial records,[447] exempting them from the requirement to file annual information returns,[448] among other exceptions to the rules governing charitable exempt organizations in general.[449]

In the United States, privileging religious organizations always raises special concerns, and lawmakers must walk a fine line between the establishment and free exercise clauses of the First Amendment. The most heated church-related controversy with civic implications has to do with what is known as "charitable choice," i.e., legislative authorization permitting faith-based entities to compete for federal social service contracts alongside other charitable organizations.[450] The most controversial current tax law issue with implications for the role of churches in civil society is raised by proposals to relax the rules governing advocacy engaged in by religious organizations.[451] As is the case with other organizations exempt as public charities, religious organizations are only permitted to lobby if their lobbying activities are not substantial.[452] They are not permitted to make the section 501(h) lobbying election; however, their exclusion from this provision was requested by the organizations themselves.[453] Like other exempt charitable organizations, religious institutions are absolutely prohibited from engaging in electioneering or

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445 I.R.C. § 508(c) (2000).

446 I.R.C. § 3309(b)(1) (2000).

447 I.R.C. § 7611 (2000).

448 I.R.C. § 6033(a)(2)(A)(i) (2000).

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

450 *See* Mike Allen, *Bush Uses Fourth to Extol Role of Faith*, WASH. POST, July 5, 2001, at A2 (noting that faith-based initiatives have "run into opposition from lawmakers of both parties who are concerned that it could blur the distinction between church and state and could be challenged in court on constitutional grounds"); Dana Milbank, *Bush Legislative Approach Failed in Faith Bill Battle; White House is Faulted for Not Building a Consensus in Congress*, WASH. POST, Apr. 23, 2003, at A1 (noting that "'faith-based' legislation—central to Bush's campaign promise to 'rally the armies of compassion'—had turned into a retreat"). For a useful summary of public perceptions, see PEW RESEARCH CENTER, FAITH-BASED FUNDING BACKED, BUT CHURCH-STATE DOUBTS ABOUND (2001), *available at* http://people-press.org/reports/display.php3?ReportID=15 (last visited Apr. 2, 2004).

451 According to a survey conducted by the Pew Research Center, 70 percent of respondents believe that churches should not endorse candidates, although nearly half also believe that churches should in general express positions about social and political topics. Pew Research Center, Americans Struggle with Religion's Role at Home and Abroad, *available at* http://people-press.org/reports/display.php3?PageID=388 (last visited Apr. 2, 2004).

452 *See supra* note 341.

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

campaign activities.[454] The penalty for violating either advocacy rule can be revocation of the organization's exempt status.[455] Alternatively, or in addition to revocation, excise taxes may be imposed upon the religious institution and its managers.[456]

Bills have been introduced in Congress to permit more extensive advocacy by churches. One such bill would enable houses of worship and certain other religious entities to lobby up to an annual expenditure cap of 20 percent of gross revenues and to engage in campaign activities as long as expenditures for such activities do not normally exceed 5 percent of gross revenues annually.[457] The justification given by supporters of the legislation is that the tax law limitations on advocacy violate the free speech and free exercise rights of religious institutions.[458] Critics of current tax law also argue that the advocacy restrictions interfere with

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454 I.R.C. § 501(c)(3) (2000). There is no *de minimis* exception to the prohibition.

455 Revocation of exemption rarely occurs. For a recent instance of revocation based upon the prohibition against campaign activity, see Branch Ministries v. Rossotti, 211 F.3d 137 (D.C. Cir. 2000). *See generally* Aprill, *Churches, Politics, and the Charitable Contribution Deduction*, *supra* note 336; Alan L. Feld, *Rendering Unto Caesar or Electioneering for Caesar? Loss of Church Tax Exemption for Participation in Electoral Politics*, 42 B.C. L. REV. 931 (2001); Patrick L. O'Daniel, *More Honored in the Breach: A Historical Perspective of the Permeable IRS Prohibition on Campaigning by Churches*, 42 B.C. L. REV. 733 (2001).

456 I.R.C. § 4955. The excise tax provision applies to violations by any entity exempt as a public charity under section 501(c)(3). The counterpart excise tax for private foundations is contained in I.R.C. § 4945.

457 *See* Bright Line Act of 2001, H.R. 2931, 107th Cong. § 2(a) (2001) (permitting such organizations to spend a maximum of 20 percent of gross revenues for all forms of advocacy, i.e. for lobbying and electioneering combined). The lobbying nontaxable amount for charitable exempt organizations making the section 501(h) election is the lesser of $1,000,000 or the amount determined by a table that takes into account the amount of exempt purpose expenditures. I.R.C. § 4911(c) (2000). There was no dollar maximum proposed in H.R. 2931. Thus, the bill would authorize religious institutions to engage in more lobbying than is possible for other exempt charities. *See also* Houses of Worship Political Speech Protection Act, H.R. 2357, 107th Cong. § 2(a)(2) (2001) (introducing a "no substantial part" political campaign activity standard for churches); Houses of Worship Free Speech Restoration Act, H.R. 235, 108th Cong. § 2 (2003) (permitting churches to engage in political endorsements during religious services, but not authorizing them to engage in campaign activities in general).

458 *Review of Internal Revenue Code Section 501(c)(3) Requirements for Religious Organizations: Hearing Before the Subcomm. on Oversight of the House Comm. on Ways and Means*, 107th Cong. 23-37 (2002) (statement of Colby M. May, Director, American Center for Law & Justice) [hereinafter *Hearing*]; *id.* at 53–56 (statement of D. James Kennedy, President, Coral Ridge Ministries). *See also* Edward McGlynn Gaffney, Jr., *On Not Rendering to Caesar: The Unconstitutionality of Tax Regulation of Activities of Religious Organizations Relating to Politics*, 40 DEPAUL L. REV. 1 (1990) (concluding that tax law restrictions on the activities of religious organizations encroach upon the free speech and free exercise rights of such organizations); Steffan N. Johnson, *Of Politics and Pulpits: A First Amendment Analysis of IRS Restrictions on the Political Activities of Religious Organizations*, 42 B.C. L. REV. 875, 887–94 (2001) (arguing that the two strongest state interests for content-based discrimination do not qualify as compelling under First Amendment free speech doctrine); Glenn Goodwin, Note, *Would Caesar Tax God? The Constitutionality of Governmental Taxation of Churches*, 35 DRAKE L. REV. 383 (1985-1986) (concluding that "any attempt to subject churches to taxation is unconstitutional").

religious autonomy by legislating which religious beliefs can be expressed openly in houses of worship and which cannot.[459] According to some commentators, however, religious autonomy and the integrity of the missions of houses of worship could be undermined, rather than strengthened, by enhancing the ability of religious institutions and their clergy to engage more frequently and openly in political campaigns or legislative battles.[460]

Whether the proposed liberalization of advocacy rules for houses of worship is constitutionally permissible, required, or even prohibited,[461] is beyond the scope of this Article. From a civic renewal perspective that emphasizes the foundational role of moral renewal, the question is whether the community-enhancing dimensions of religious organizations that would be furthered by expanding their advocacy opportunities outweighs any harm such activity could cause. The empirical evidence discussed earlier makes clear that church membership and attendance are positively correlated with civic involvement.[462] Participation in religious institutions has also been shown to be an important source of skills training and building the confidence of people from lower socio-economic classes so that they are equipped to participate in civic life.[463] Further, houses of worship have historically come to the aid of marginalized and disenfranchised populations. These efforts enhance civil society directly by alleviating poverty, hunger, and homelessness.

Permitting houses of worship to engage in greater amounts of advocacy might, then, increase the opportunities for congregations to influence legislation or campaigns, intensify pressure on officials and parties to adopt policies and enact legislation targeted to improve the conditions

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459 *See, e.g.*, STEPHEN L. CARTER, THE CULTURE OF DISBELIEF: HOW AMERICAN LAW AND POLITICS TRIVIALIZE RELIGIOUS DEVOTION 147 (1993).

460 *See* Frederick C. Harris, *Black Churches and Civic Traditions: Outreach, Activism, and the Politics of Public Funding of Faith-Based Ministries*, *in* CAN CHARITABLE CHOICE WORK? COVERING RELIGION'S IMPACT ON URBAN AFFAIRS AND SOCIAL SERVICES 140, 151–54 (Andrew Walsh ed., 2001); *Hearing*, *supra* note 458, at 42 (statement of Rev. C. Welton Gaddy, Ph.D., Exec. Dir., Interfaith Alliance); *id.* at 48 (statement of Rev. Barry W. Lynn, Exec. Dir., Ams. United for Separation of Church and State); *id.* at 59 (statement of Brenda Girton-Mitchell, Assoc. Gen. Sec'y for Pub. Policy, and Dir., Washington Office, Nat'l Council of Churches of Christ in the USA); *id.* at 93 (statement of the Islamic Supreme Council of Am.); *id.* at 109 (statement of Bill Aiken, Dir. Of Pub. Affairs, Soka Gakkai International-USA Buddhist Ass'n).

461 A liberalization of the advocacy rules for houses of worship could run afoul of the Establishment Clauses by affording religious entities preferential treatment when compared with other public charities. For example, previously, when Congress sought to authorize better treatment for religious donations of debtors who file for bankruptcy than the Bankruptcy Code affords to other preferential pre-bankruptcy transfers, it enacted legislation affording all pre-petition charitable donations special status to avoid an Establishment Clause attack. *See* Religious Liberty and Charitable Donation Protection Act of 1998, 11 U.S.C. §§ 544, 548 (2000).

462 *Supra* note 184 and accompanying text.

463 *Supra* notes 185-86 and accompanying text.

of marginalized or other needy populations, and expand on the types of civic skills that lead to an enhanced sense of political efficacy among congregants who currently are unable or unwilling to participate in civic life.

To evaluate these benefits, it is necessary to compare the range of advocacy activities currently available to houses of worship with those contemplated by the reform legislation. Under current law, churches, like other organizations exempt under section 501(c)(3), are able to lobby lawmakers at the federal, state, and local level as long as the extent of such activities is not substantial, and they can lobby administrative, executive, and judicial bodies without a dollar limit.[464] Nonetheless, the vagueness of the substantiality standard could chill advocacy by churches. The solution is not, however, to permit them to lobby without limit, as would be possible for affluent churches under one of the reforms proposed.[465] Rather, the lack of guidance for houses of worship should be remedied by amending existing section 501(h) to permit them to make the lobbying election available to all other public charities.

The more significant reform proposed would permit houses of worship to engage in electoral politics.[466] Under existing law, charities, including houses of worship, are permitted to discuss substantive issues during a campaign, even if the same issues are being debated by candidates, as long as they refrain from endorsing specific candidates during the discussion or pointing out the positions of one or more candidates on the issues being discussed. Clergy are permitted to express their own political preference as long as they do not do so in their official capacity. Churches are also permitted to allow candidates for elective office to speak at church events as long as all candidates for the same office are invited, no funds are raised, and no endorsements are made. Candidates may appear in their individual capacity at church events during a campaign, for reasons unrelated to their election, as long as the facts and circumstances of the event taken as a whole do not constitute a candidate endorsement by the house of worship or an event to support the individual as a candidate.[467] Clergy are not permitted to engage in electoral activities from the pulpit or at official church functions when they are serving in their official capacity. Houses of worship are also not allowed to distribute campaign literature or permit such materials to be distributed by others on their premises, although the distribution of nonpartisan voter guides is permitted.

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464 *Supra* notes 341, 381-382 and accompanying text.

465 *See supra* note 457.

466 *See supra* note 457.

467 Needless to say, the letter as well the spirit of the rule are often violated. To date, however, the Service has chosen not to enforce compliance aggressively.

It is unclear what would be the benefit to civic life were houses of worship permitted to spend five percent of their gross revenues, including contributions, on campaign activities and devote large amounts of volunteer time to activities intended to elect or defeat particular candidates. Because candidate debates and discussion of issues are already permitted under current law, presumably the proposed liberalization of the advocacy rules would enable churches to endorse candidates openly, pay for fundraising literature or events, and pay for media and other communications targeting the election or defeat of specific candidates. One consequence of the liberalization would thus be to embroil houses of worship in continuing controversies about the applications of campaign finance laws. Another would be to invite increased IRS scrutiny of church activities to determine whether statutory limitations were being respected. Churches that do not see politics as integral to their spiritual mission might nevertheless be diverted from their core mission because of congregants who pressure them to commit resources toward election activities. Houses of worship would risk becoming polarized whenever a diversity of political orientations or candidate preferences were held by congregants. And donations entitled to charitable contribution deductions would be spent on political activities, making churches the most desirable vehicle for campaign finance purposes, putting further pressure on them to consume their electioneering "allowance" to the maximum extent possible under the law. These risks to the historic spiritual mission of churches counsel caution.

In sum, there are very limited opportunities for tax law regulation of exempt organizations to promote the goals of the community morality perspective. It seems that voluntary associations can increase members' moral values and public spiritedness only when those who join already possess such characteristics or when the views of a majority of the members of an association converge on such values. Tax law, however, does not regulate the composition of members of groups seeking exempt status, nor should it. Character-building institutions already qualify for favorable tax treatment, and, as argued in this section, liberalizing the advocacy rules applicable to them would not necessarily enhance their contribution to the morals or public-spirited values of their members. It may be, therefore, that tax law best promotes the community morality perspective by preserving the integrity of the nonprofit sector as a sector. It does this through enforcing existing rules governing the organization and operation of exempt entities and various anti-abuse measures designed to prevent practices that can discredit the sector in the eyes of the public in general and volunteers and supporters of charities in particular.

CONCLUSION

This Article has argued that the civic renewal movement contains within itself multiple understandings of the nature of civic health. It has also taken the position that these understandings are sufficiently distinct that civil society theorists need to reflect more on the precise nature of their goals before advancing public policy objectives, especially in light of the potential conflicts among the goals given priority by the different perspectives. Because of the differences in the primary purposes associated with each of the four perspectives discussed in this Article, the civic renewal movement cannot be said to argue for any particular tax regime governing nonprofits, nor can the existing framework of regulation in the Code be said to advance or retard civic renewal without qualification. The analysis in Parts II and III, however, does permit some generalizations.

Given the empirical findings explored in this article, it no longer seems useful for civic renewal advocates to continue to portray associational life as critical for cultivating moral values and public spiritedness in individuals or promoting attitudes and practices conducive to reflective self-governance. In general, voluntary associations can at most serve as a vehicle for strengthening, harnessing, and directing their members' existing moral and public-spirited attitudes. In addition, small, highly participatory organizations may provide a forum for deliberation in some civil and political settings, in particular in groups that provide members with information, teach them skills, and afford them opportunities to entertain and discuss divergent views. However, such settings appear to be infrequent and to have given way increasingly to organizations with passive members and professional staffs. Civic renewal advocates who give priority to the deliberative or public-spirited aspects of civic health would thus do well to revise their expectations of the potential benefits of voluntary associations and recognize that increases in the "robustness of civic life," without more, could contribute to a civic climate at odds with the substantive civic values they seek to promote.

As was noted in Part III, there are few regulatory measures that can address these shortcomings of associational life given the unsuitability of the tax law—or any other regulatory regime—to scrutinize the composition of voluntary association members or the internal dynamics of such organizations. At most, the Code might be amended to provide incentives for contributions of service in addition to those currently available for contributions of property and to encourage balanced advocacy communications in more situations than is the case under current law. In addition, the Service needs to provide much more extensive guidance concerning the circumstances in which exempt organizations can distribute voter guides, legislative scorecards, and similar materials without

violating the restrictions on political campaign activity so that these organizations can contribute to informing the public about the agendas and accomplishments of public officials.

Voluntary associations can be effective in promoting some of the outcomes sought by the collective action perspective. Both nonpolitical and political associations have been shown to enable individuals to work together and influence the policy-making and legislative processes at the local, state, and national levels. This Article has argued that the Code's restrictions on the advocacy activities of exempt organizations do not in principle unduly restrict their ability to engage in these processes, although in certain instances, the extent of such activity must be limited or the activity undertaken through affiliated organizations in order to avoid the possibility of a loss of exemption. In general, the advocacy rules promote the integrity of the nonprofit sector by ensuring that organizations adhere to the mission for which they were originally granted exempt status. The complexity of the lobbying rules, however, increases the cost of compliance and may well cause some organizations, especially those with modest resources, to forego lobbying and grass roots advocacy altogether rather than pay for technical advice or risk putting their exemption in jeopardy. Civic life suffers when this happens, since small and low-budget organizations are among the groups most likely to provide opportunities for meaningful participation by members and volunteers.

One possible solution to the cost of obtaining information about permissible advocacy would be for Congress to fund and the Service to engage in educational outreach to such organizations, for example, through a web site dedicated to presenting advocacy information and examples of best practices in taxpayer-friendly language. The Service already has published a certain amount of information of this kind in regulations, rulings, and its Exempt Organizations Continuing Professional Education Technical Instruction Program publications, but these are at present difficult for non-experts to find on the Internet, and they sometimes employ technical distinctions that non-lawyers may not appreciate. Another solution would be to make the definitions of lobbying and the exceptions to the definitions uniform for all exempt organizations, regardless of whether they are public charities, private foundations, or noncharitable exempt organizations, and regardless of whether a section 501(h) election is in effect. This would still permit distinctions to be made in the rules applying these definitions to different categories of exempt entity, e.g., by varying the amount of lobbying permissible for each.

Voluntary associations also contribute to some of the objectives of the representative institutions perspective. Above all, such associations can reflect and promote the views of individuals who are habitually un-

derrepresented in the voting booth and in more intense forms of political participation. When organizations promote the concerns of such individuals, they have the potential to correct some of the imbalances in political representation between those with influence and access and those without. Associations thereby promote political equality by making the views and needs of these populations known to lawmakers and other officials and, presumably, increasing the share of political outputs allocated to their members or the populations they represent. In addition, to the extent that such groups succeed in improving the educational, health, income, and other conditions of underrepresented populations, they increase the likelihood that the people thus benefited will become more politically active in their own right, commensurate with their improved socio-economic status and educational level.

Tax law treats exempt organizations dedicated to improving the material conditions of the least advantaged in society in the same way as exempt organizations organized and operated for any other charitable purpose. This is consistent with Congress's apparent intent, and the Service's customary practice, not to make value judgments about the relative merits of charitable endeavors. Although this approach is, in general, to be preferred to the alternative, it seems consistent with several of the civic renewal perspectives to create tax incentives for private groups to work toward improving the material conditions of and educational opportunities for the least advantaged members of society with the ultimate goal of improving their self-sufficiency and the likelihood of their becoming more active participants in civic life. As described in Part III, this could be accomplished in various ways using tax incentives targeted at charities, other exempt organizations, or donors.

Other aspects of the rules governing the advocacy activities of exempt organizations are ripe for review. Individuals have been shown to "get involved" when they are recruited and mobilized by other individuals. Citizen recruitment in the form of voter registration, get-out-the-vote drives, and other kinds of voter mobilization is crucial to this process. However, the rules regulating the voter mobilization activities of charities and other exempt organizations are sparse, and they are often vague when they exist. If the voter mobilization engaged in by a charity is found by the Service to be partisan, the charity will violate the absolute prohibition against political campaign activity and risk revocation of its exempt status. Noncharitable exempt organizations risk suffering the same fate if their voter mobilization activities cause them to exceed the permissible amount of campaign activities. Given the documented importance of recruitment for increasing political participation and the high stakes for exempt organizations if they violate the rules, clarifying the relevant rules should be an urgent priority. A regulations project or gui-

dance initiative needs to be undertaken by the Service to elaborate in detail and with concrete examples which mobilization activities are permissible so that exempt organizations and their members can be actively involved in these activities without risk to their tax exempt status.

Proposals to revise the federal income tax law treatment of nonprofits with the goal of encouraging civic renewal should be guided by three general considerations. First, it is important to recognize that there are limits to the functions that organizations can serve. Second, in those areas in which associations can make meaningful contributions to civic life, different types of organizations and organizational activities are likely to result in distinct, sometimes competing civic impacts. Finally, efforts to improve civil society through the tax law must take into account the inherent limitations of tax law or any other legal regime in furthering social goals, however worthy.