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Towards a Rebirth of Civil Society[1]

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If the most remarkable political event of the twentieth century was the fall of the Berlin Wall and the demise of socialism, then its most auspicious intellectual realignment has been the widespread rediscovery of the virtues of free markets. Today the left and the right have reached a consensus that markets and supporting institutions, such as secure property rights, a sound currency, and a free capital market, are necessary for the material progress of both developed and developing nations.[2] Debate has not ended, however, it has only shifted to higher ground. Markets may be necessary for material progress but are they sufficient? And what exactly do we mean by progress? Growth in average income is not the only desirable aspect of an economy. Can a market economy protect workers from economic downturns? Can it provide for the downtrodden and unfortunate? And, rising to yet higher ground, what about non-material progress? Can markets be equitable? Can a market society develop community?

The authors of this volume join the debate on the higher ground. They argue that the scope for markets is wider than is now recognized and present exciting evidence that voluntary and contractual arrangements can also develop communities and deliver social services. In part, the evidence comes from a rediscovery of the history of voluntarism in social services. David Beito (chapter 8) and David Green (chapter 9), for example, recount the remarkable history of fraternal orders and friendly societies in nineteenth century America and Great Britain. The fraternal orders and friendly societies provided their members with medical care, unemployment insurance, sickness insurance, and many other social services before the welfare state. Nor were these institutions marginal to their times; Green notes, for example, that "When the British government introduced compulsory social insurance for 12 million persons under the 1911

[1] The editors would like to thank Timur Kuran for comments and Carl Close for painstaking editorial assistance throughout this volume.

[2] For evidence of the consensus at a popular level see Robert Heilbroner's (1990) admiring discussion of Friedrich A. Hayek and Ludwig von Mises and Cassidy's (1999) discussion of "the Hayek century." Excellent examples of the consensus at work can be found in the field of development economics, especially Nobel prize winner Amartya Sen's (1999) *Development as Freedom*, Klitgaard's (1991) *Adjusting to Reality* and Lal's (1999) *Unintended Consequences*.

National Insurance Act, registered and unregistered voluntary insurance associations already covered at least 9 million individuals."

The example of fraternal orders and friendly societies is an important one because it illustrates that the authors do not have a blinkered view of either markets or human nature. With respect to markets, too often the vital role of the non-profit sector has been ignored. Proponents of markets, especially neo-classical economists, tend to argue as if the profit-maximizing firm were always and everywhere an ideal and any attenuation of profit incentives, whether in a non-profit firm or in a government bureaucracy, an welcome divergence from this ideal. Proponents of government, while more supportive of the idea/ideal of non-profits, have tended to see the non-profit sector in capitalist societies as weak, frail and entirely marginal to the dominant ethos. Yet, in contrast to both views, the non-profit sector in the United States today accounts for some 10 percent of GDP and nearly 15 percent of total employment (Sokolowski and Salamon, 1999).[3] Moreover, the non-profit sector is a major player in such important industries as health, education, and high culture (and it was a major player in these industries long-before receiving any tax breaks or other regulatory advantages).

The authors of this volume manifestly include non-profits in the market sector. The inclusion is important because by focusing on for-profit firms proponents of markets may have overstated the case for markets narrowly conceived. Yet by ignoring the role of non-profits, opponents of markets may have *understated* the case for markets *broadly* conceived. Alternatively put, what conventional economics refers to as market failure may actually be a limited set of problems associated with for-profit firms and markets. If the term "market" is broadened to include non-profit firms and other voluntary but not for-profit organizations, the scope of such failure may be diminished.[4] Thus, rather than saying that the authors of this volume argue for a larger role for markets, it is more revealing to say that they argue for a larger

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[3] The non-profit sector has been growing over time. The figures quoted in the text are from 1995. Despite the history of voluntarism in the United States, the non-profit sector is even larger in some European countries. For a survey of global civil society see Salamon et al. (1999).

[4] Space precludes an extensive discussion of this point but an illustration is in order. A standard example of market failure is said to occur when buyers have difficulty measuring quality. Since buyers don't value what they cannot evaluate, sellers can increase profits by reducing quality, thereby cutting costs. Health care and education are sometimes said to fit this example (Barr 1998). It is naïve to think that government provision can solve this problem by fiat; an adequate argument must explain why the incentives to produce quality are greater under government provision than under private provision. Hart, Shleifer, and Vishny (1997) give one such reason - because there is no residual claimant, government agencies have fewer incentives to maximize profits than for-profit firms. Since cost cutting is driven by the desire for larger profits, government agencies have less incentives to cut costs and *may* therefore invest more in quality. The argument is not beyond question but regardless it applies equally well to non-profit firms as it does to governments. As a second example, Blank (2000) argues that government provision may result in higher quality because governments can attract workers who are motivated by "public service" rather than by purely pecuniary concerns and such workers are more likely to invest in non-observable quality. Again, although not without question, the argument also applies to workers in non-profit firms many of whom are motivated by the "mission" of their institution (many for-profit firms also try to instill such values in their employees, perhaps less successfully). See on these issues more generally Hansmann 1996.

role for *civil society*.[5]

One virtue of the term civil society is that it is not wrapped up in the same baggage as the term markets; in particular, to favor civil society is not necessarily to regard self-interest as the sole or even most important motivator of human action. Unfortunately, the market/government debate has often proceeded as if it were a debate between self-interest and other-regardingness. Yet there is growing support for the view that our ancestors learned to forge connections and developed a social nature for the practical reason that such connections enhanced survival, just as did their capacity for self-interest (Ridley 1996; Wright 2000). Humans are neither purely self-interested nor purely other-regarding; humans are individuals who join groups and they possess all the skills appropriate to such a classification. It should come as no surprise then that other-regardingness is not absent from markets and self-interest is not absent from government.

The issue, therefore, is not human nature but rather how different institutions channel human nature. Adam Smith argued that markets channel self-interest into socially beneficial directions - this is the meaning of his famous statement, "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest."[6] The public choice school of political economy argues that government institutions often channel self-interest in socially undesirable directions (e.g. Gwartney and Wagner 1988). But as of yet, *there is no well-developed theory of how other-regardingness is channeled by civil society or by government*. Although such a theory is not developed here, the authors provide some case-studies of the former process that we think will help to motivate such theory as well as stimulate more historical study.

The authors argue that the voluntary arrangements that were used in the past (and that in some cases are returning today) had much to offer. An overview of these episodes is presented in the transitions accompanying each section of the book. (Tabarrok's epilogue (chapter 15) also offers an overview of the papers from the perspective of economics and market-failure theory.) The point we wish to emphasize here is that the welfare state did not so much create new institutions as crowd-out the civic associations that people had spontaneously fashioned to provide “public goods,” “safety nets” and even law and order. Were the spontaneously created institutions of the civil society better than the government institutions which replaced them?[7] The papers in this volume cannot definitively answer this question, but it is remarkable enough that they show *the question is real*.

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[5] The term civil society, as used here, includes markets and also churches, clubs, associations, organizations, the family and other kinship groups - in *toto* what may be called the voluntary sector.

[6] B.I, Ch.2, Of the Principle which gives Occasion to the Division of Labour in paragraph I.2.2

[7] For those who would argue that the fact that government institutions replaced those of the civil society indicates that the former were superior the latter we would only note that in many areas the latter are now re-replacing the former!

The question comes at an propitious moment because for the first time in decades, increasingly severe failures in the government sector have led officials to ponder long neglected arguments for private provision. At this writing, privatized education, social security, highways, prisons, weather forecasts, various municipal services and medical savings accounts are either being implemented or making their way into "mainstream" political discourse in the U.S. and abroad. Reform is occurring in fits and starts but it is occurring.

To be sure, there is a renascent demand for government in the form of the command-and-control environmentalism that has steadily gained force throughout the developed world (Lal 1999).[8] Yet, even this new regulation is tempered by growing attention to more flexible, market-compatible ways to limit emissions and dispose of wastes and protect valuable wildlife stocks and endangered species. Emission bubbles, tradable pollution permits, riparian property rights, privatized elephant herds and fisheries, all of these approaches, once considered radical, are becoming commonplace not only in the United States but around the world.[9] Moreover, support for these sorts of policies is coming not just from proponents of markets but, perhaps more importantly, from environmentalists who are more interested in success than in ideology.

The international trend toward political divestiture and privatization marks a recognition by politicians in non-socialist, as well as formerly socialist states, that state planning has stifled cost cutting and innovation (Shleifer 1998). Privatization and competition restores efficiency and results in greater innovation. In the United States, communications, financial services, railroad, energy, and passenger air deregulation offer examples (Winston 1998, Poole and Butler 1999; Morrison and Winston 2000).

Moving farther afield, various school-voucher experiments have raised the possibility of a flowering and vital market in private education. And remarkably, the 1996 U.S. welfare reform bill includes a Charitable Choice clause that, although now used only to fund a few hundred groups, allows for the privatization of federal welfare through religious charities (Glenn, 2000; Geoly 1996).

These current efforts have prominent historical precursors that provide some useful lessons for today. A case in point is the centuries-old record of the private provision of social infrastructure. The work of Beito (chapter 8) and Green (chapter 9) in the history of social insurance in the United States and Great Britain has already been mentioned. In chapter 10, James Tooley examines the record of private education in the United States and Britain in the nineteenth century. Private education is not limited to the past or to developed nations, however; Tooley also examines the remarkable blossoming of private schools for the poorest of

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[8] Hopkins (1996) has estimated annualized regulatory costs in the United States over the period 1977 to 1995: "[e]nvironmental and risk protection" costs rose 179 percent (in constant 1995 dollars) while all other regulatory costs rose by just 2 percent.

[9] See Portney and Stavins (2000) and Anderson and Leal (1991).

the poor in modern day India. Bruce Benson (chapter 6) documents how law merchants met the demand for commercial rule-making and adjudication as extended trade networks developed in medieval and early modern Europe, and he also discusses modern example of private civil and criminal arbitration. Stephen Davies (chapter 7) describes how law and order was created in nineteenth century Britain before the introduction of public police. Private prosecution associations, a not entirely unfamiliar combination of legal insurance, private security guards and private investigators, were quite successful at controlling crime. Why then the shift to public policing? One clue lies in the fact - amazing to us today - that the English public opposed public policing and jeered the newly created Bobbies! Davies explains why (see also Tabarrok (chapter 15) for an attempt to draw some general lessons from this history.)

For the case of physical infrastructure, Davies (chapter 2) shows how land markets and private covenants met the challenge of the first wave of English urbanization; David Beito (chapter 3) recounts the rise of private places and self-governing enclaves in St. Louis; Daniel Klein (chapter 4) examines the history of private turnpikes in the United States in the early nineteenth century and Robert Arne (chapter 5) describes the first U.S. industrial park as an example of large scale non-residential development.

As noted above, educational vouchers, privatized welfare, and arbitration all mark a limited return to the production of social infrastructure within the bounds of civil society. For the case of physical infrastructure, however, the return is much more extensive. As a result of the migration of home-owners into developer created and managed suburbs modern-day American communities look increasingly like the private developments of nineteenth century Britain and St. Louis.[10] Across the United States, there are now approximately 205,000 such Common Interest Developments (CIDs) housing more than 42 million people (Treese 1999). This represents nearly 15 percent of the nation's housing stock, up from 3 percent in 1975 and 1.1 percent in 1970. The return to private communities is a "quiet revolution," little noticed by elites. Yet Nelson (chapter 13) argues that the return to private communities "represents the most comprehensive privatization occurring ...in the United States today" and "may yet prove to have as much social significance as the spread of the corporate ownership of private business property in the second half of the nineteenth century."[11] Urban planners may tout state planning as the way to develop "livable communities," but when given a choice, prospective homeowners are choosing privately planned, not state planned, communities.

Profit-seeking developers, not technocrats or visionaries, are the heroes of the CID episode. Just as Nobel prize-winner Friedrich Hayek and fellow Austrian economist Ludwig von Mises demonstrated the folly of top-down economic planning, Jane Jacobs explained the folly of

[10] Private communities are also prominent in Japan and some European countries; see Kajiura (1994) and van Weesep (1994).
[11] Nelson (p. XX and p.XX, this volume). The "quiet revolution" quote is from Barton and Silverman, cited in Nelson (p. XX, this volume).

top-down city planning. In both cases, the planners are fatally hobbled by their inability to tap local knowledge, the sheer magnitude of which would overwhelm them. In a competitive market in contrast, local knowledge reappears, lessening the dependence on politics and increasing flexibility; "public" goods (and spaces) in CIDs are provided more optimally at levels of spatial aggregation that do not coincide with municipalities; benefits capitalization more efficiently finances public goods provision; and optimal constitutional rules are developed. The fact that the actions of private developers now supply what had been thought to be "public" goods is thus beneficial. Foldvary (chapter 11) and Nelson (chapter 13) describe in greater detail the theory and practice of private communities with Nelson offering a way to bring the advantages of such communities to more traditionally governed neighborhoods.

In chapter 12, Boudreaux and Holcombe make the fascinating point that private communities also come equipped with privately created political structures. Every developer of a private community is also the "founding father" of a polis. Boudreaux and Holcombe argue that the choices of these founding fathers tell us something important about the best constitution. In contrast to some of the other authors, MacCallum (chapter 14), is in substantial agreement with critics of CIDs such as McKenzie (1994). But unlike such critics MacCallum does not favor a return to traditional governance but rather a moving forward to an even more private form of community built on the hotel model.

Deregulation and privatization in the United States has been proceeding since the late 1970s, albeit the twenty-five-year trend presents a decidedly mixed picture.   The rise of Superfund and environmental regulation at all levels proceeded concurrently with varying degrees of air, rail, truck, telephone and banking deregulation. CIDs are a shift away from some local governance but they must still grapple with top-down control from higher levels. In just the last few years, voters around the U.S. approved 72 percent of 240 state and local "growth control" measures. The new laws have substantially weakened the property rights of individual owners, replacing them with a bewildering array of stakeholders and what is in effect a property-rights commons. The tragedy of the commons invariably ensues (Epstein 1985). Ironically, these laws, often supported by self-described followers of Jane Jacobs, have revived the kinds of top-down urban planning which she had so effectively challenged in the 1950s and 1960s. It is still an open question whether the movement towards CIDs will not be frustrated by a movement towards political control from a higher level of government.

Unfortunately as governance moves to higher levels, the collective choice problem of democracy, the incentive individuals face to demand services when the think that others will pay, becomes ever stronger. Yet, the mobility of factors (long thought to induce governments to respect property) has recently increased. In part, this is driven by technological developments and is likely to accelerate. Increased mobility of people and capital forces governments to compete as never before, placing a serious check on Leviathan (McKenzie and Lee 1991). CIDs are part of this phenomenon, one more institution that has developed in Hayekian fashion to compete with faltering state institutions.

Yet, there may be more. A traditional attack on property rights centers on the premise of a conflict between self-serving behavior in the marketplace and impulses towards civility and civic association (Schumpeter 1943, Bell 1976). In a justly influential book, *Bowling Alone*, Robert Putnam (2000) has argued that community and social capital have been in steady decline in the United States since at least the 1950s and 1960s. Putnam has assembled a remarkable amount of data to document the decline and has well summarized a large body of work that shows that a deficit of social capital is associated with a host of negative social consequences such as increased crime, poor economic performance, and political disillusionment. It would be a mistake, however, to correlate this decline with "capitalism" as it coincides more closely with the rise of the welfare state. The rise of the welfare state and the diminution of property rights crowded-out the private provision of many collective goods and social services that had shown considerable merit. Moreover, the critics may be wrong in more ways than one as it has been argued that the virtues necessary for civility, civic association, *and* success in the marketplace are sapped by the welfare state (Murray 1984, 1988).

Putnam himself does not propose any grand unifying theory of social capital and its decline. Refreshingly, he is hesitant when pointing to causes of the decline and even more hesitant about proposing solutions. Yet Putnam does wrongly lump all CIDs with the much-maligned gated communities. In fact, less than 20 percent of U.S. CIDs are gated communities. Those that are gated are a response to government's inability to control crime (as are community-creating neighborhood crime-watch groups; Etzioni 1992). Nevertheless, Putnam's error is exemplary; CIDs are much more of a "solution" than a problem. They help to secure property rights and augment efficiency, providing and managing communal spaces and facilities.

Rather than undermining community, civil society may take root in the communal spaces, facilities and institutions now taking shape in response to market demands. A possible example is enhanced political participation by property owners in the direct governance of their major financial asset, their home. The primacy of local politics is well known and CID politics are as local as governance becomes. We do not yet know much about the links between CIDs and civil society but the pairing appears to be a more promising solution to the crisis in civic engagement than the spatial determinism of the New Urbanists which banks on mandated porches and bay windows to do the job.

If Americans are experiencing another Great Awakening, as Robert Fogel (2000) argues, then what some deride as an escape from community life could in fact become an escape *to* community. At its most promising, civic engagement could revive voluntary groups that supercede many of the welfare, environmentalist, and regulatory agencies of the modern state.

Just a few years before the fall of the Berlin Wall, Nobel prize-winner James M.

Buchanan (1990) worried that unless a constraining constitutional structure is resurrected, the overreaching state will continue to grow. Yet, it is no longer simply a one-way street; powerful forces are at work expanding both liberty and prosperity. The episodes documented in this collection show that we are rediscovering a rich array of voluntary institutions and arrangements that were crowded-out and regulated out-of-existence by the twentieth-century fling with socialism and progressivism. Many of these voluntary institutions are making a return.

After a century of debate there is now widespread agreement that markets enhance material welfare and reduce conflict. *The Voluntary City* shows that the scope for markets broadly conceived, i.e. the scope for civil society, is even larger than the current consensus recognizes. The voluntary arrangements of civil society are capable of producing a host of so-called public goods such as aesthetic and functional zoning, roads, planning and other aspects of physical urban infrastructure. Civil society can also produce social infrastructure including education, conflict resolution, crime control and many of the social services currently monopolized by the welfare state. Having done all this, can voluntarism foster civic resources in the modern age? Can it restore a "civic voice"? Communitarian theorists Michael Sandel (1996) and Robert Putnam (2000) fear a crisis for modern democracies unless the "civic strand of freedom" is strengthened. Can voluntary institutions do all this in a bottom-up fashion? If they can, then the events accompanying the fall of the Berlin Wall are much more auspicious than even the most daring have yet suggested. The payoffs from reduced state influence include expanded liberty and prosperity -- and perhaps much more.

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