

THE EVER-CHANGING INTERPLAY BETWEEN DEMOCRACY AND CIVIL SOCIETY

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SUMMARY

This essay, in four parts, begins by recalling the relationship between democracy and civil society at the dawn of the democratic era when several important institutions of civil society (church, landed families, guilds) were regarded as threats to democratic experiments. The second section traces the rise within civil society of large market actors whose power in the industrial era came to rival the power of governments. As the third section discusses, some mediating structures of civil society (families, neighborhoods, religious and workplace associations) weakened in the late twentieth century while the power of market actors grew stronger. The fourth section assesses the implications of these shifts for the future of democracy, concluding that weakness in the smaller structures of civil society undermines the moral foundations of democracy and the market alike.

The terms democracy and civil society are, to say the least, capacious. *Democracy* generally connotes a range of *political structures* through which popular consent may be expressed and related freedoms (especially of speech and association) may be protected. But democracy is also a set of *ideas* about equality, freedom and popular sovereignty which have transformed the political and social landscape of the world. *Civil Society*, in its broadest sense, encompasses all the institutions and social systems that lie between individuals and the state. But I suggest that an important distinction needs to be made between the megastructures of civil society (large corporations, foundations, special interest organizations) and smaller communities of memory and mutual aid.

The interplay between democracy and civil society changes from time to time and place to place, for political and social systems alike are always in flux. The assignment to write on that complicated topic is such a daunting one that I have sought the guidance of the best expert: Alexis de Tocqueville. Taking Tocqueville's analysis of the problem as a starting point, this essay endeavors to trace the key shifts in the relation between democracy and civil society from the dawn of the democratic era in the West, when civil society was perceived by many as a threat to fragile democratic experiments, to the present time when the power of the megastructures of civil society has come to rival that of nation states, while smaller elements (families, neighborhoods, religious groups, community and workplace associations) are showing signs of exceptional stress, if not deterioration.

I *Democracy and Civil Society at the Dawn of the Democratic Era*

Modern democracy was born in the struggle to replace hereditary monarchies with representative governments. In France, that struggle involved an all-out attack on the structures of civil society. Under the slogan, "there are no rights except those of individuals and the State," French revolutionaries targeted not only the feudal statuses of the Old Regime, but the Church, the craft guilds, and many aspects of family organization. They saw civil society as a bastion of inequality, a source of oppression to individuals, and a competitor with the State for the loyalty of citizens.¹ An unintended consequence of the revolutionary zeal to abolish the old *corps int erm ediaires* between citizen and state was that "civil society" became a major subject in continental European political thought throughout the nineteenth century. Tocqueville, Hegel, Marx, Durkheim and others wrote at length about what the relations were, or should be, among individuals, the institutions of civil society, and the state.

¹ Marcel Waline, *L'individualisme et le droit* (Paris: Domat Monchrestien, 1945), 323.

Tocqueville, in particular, speculated about what might ensue if the institutions of civil society, once regarded as too powerful, became too weak. He pointed out that, with increasing centralization of political power, the very same groups that had once seemed to stifle individual development and to obstruct national consolidation, might turn out to be essential bulwarks of personal freedom and to provide useful checks on majoritarian rule.

He speculated further that growing individualism, together with excessive preoccupation with material comfort, might weaken democracies from within by rendering their inhabitants susceptible to new forms of tyranny.² “Habits form in freedom,” he warned, “that may one day become fatal to that freedom.”³ As the bonds of family, religion, and craft fraternities loosened, he feared that men would become feverishly intent on making money or dangerously dependent on “a powerful stranger called the government.”⁴ That state of affairs, he surmised, could foster the emergence of despotism:

Far from trying to counteract such tendencies, despotism encourages them, depriving the governed of any sense of solidarity and interdependence, of good-neighborly feelings and desire to further the welfare of the community at large. It immures them, so to speak, each in his private life and, taking advantage of the tendency they already have to keep apart, it estranges them still more.⁵

Tocqueville was convinced that nothing could halt the advance of the democratic principle. He described himself as “constantly preoccupied by a single thought: the thought of the approaching irresistible and universal spread of democracy throughout the world.”⁶ The only question, so far as he was concerned, was whether it would produce free democratic republics or tyrannies in democratic form. His book

² Alexis de Tocqueville, *Democracy in America* (Garden City, N.Y.: Doubleday, 1969), 506.

³ Id. at 254.

⁴ Id. at 301.

⁵ Alexis de Tocqueville, *The Old Regime and the French Revolution*, (New York: Doubleday Anchor, 1955), XIII.

⁶ Tocqueville, *Democracy in America*, XIII.

on American democracy (an instant best-seller that went through twelve editions by 1848) urged Europeans not to resist the inevitable, but rather to work with all their might to assure that freedom was preserved in the coming regimes. From his observations in the United States, he was persuaded that everything depended on whether the citizens possessed the habits and attitudes needed to sustain liberty within democracy. If democratic nations should fail, he wrote, “in imparting to all citizens those ideas and sentiments which first prepare them for freedom and then allow them to enjoy it, there will be no independence left for anybody, neither the middle classes nor for the nobility, neither for the poor nor for the rich, but only an equal tyranny for all.”⁷ To those who shared that way of thinking, civil society – as the locus of the groups where the requisite habits and attitudes are formed – became a matter of crucial political importance.

Though civil society was of great interest to many nineteenth century continental thinkers, matters were different in the United States. At the time of the American Revolution, land ownership was more evenly distributed than anywhere in Europe, and most Americans lived in self-governing towns and cities. About four-fifths of the (non-slave) population were independent farmers, small businessmen, and artisans.⁸ The revolutionaries had no interest in radically restructuring society; their aim was to achieve independence from England. As soon as they were free of the colonial yoke, the Founders concentrated on producing an ingenious design for a republic with democratic elements, a Constitution with vertical and horizontal separation of powers, and a system of checks and balances. The design was for a *federal* system which left authority over matters that immediately touched the lives of citizens mainly in the hands of state and local governments. Except for the Founders’ concern to control the power of “factions” (special interests),⁹ civil society received relatively little attention in American po-

⁷ Id. at 315.

⁸ Robert Heilbroner, “Reflections – Boom and Crash,” *The New Yorker*, August 28, 1978, 52, 68.

⁹ *The Federalist*, Nos. 10 and 51 (James Madison).

litical thought until the twentieth century – when it became apparent that large corporations were acquiring sovereign-like power, and that many of the mediating structures of civil society were in distress.¹⁰

The chief interest of the American experiment, in Tocqueville's view, was not as a model for any other nation to copy, but rather as affording concrete evidence that the benefits of democracy need not be purchased at the price of liberty. To those of his readers who were fearful that democracy meant mob rule (tyranny by the majority), he said: "American laws and mores are not the only ones that would suit democratic peoples, but the Americans have shown that we need not despair of regulating democracy by means of laws and mores (*les moeurs*)."¹¹

What did Tocqueville mean when he wrote of "regulating" democracy by laws and mores? He described with admiration how the American Constitution and federal system provided checks on pure majoritarianism. But the French visitor, who regarded the weakening of communal governments as seriously undermining the prospects for democracy in France, saw the small self-governing townships of New England as furnishing another kind of check. They served as schools for political self-restraint. By affording many opportunities for participation in government, they permitted citizens to acquire "clear, practical ideas about the nature of their duties and the extent of their rights."¹² "Local institutions are to liberty," he wrote, "what primary schools are to science; they put it within the people's reach; they teach people to appreciate its peaceful enjoyment and accustom them to make use of it. Without local institutions a nation may give itself a free government, but it has not got the spirit of liberty."¹³

¹⁰ The work that sparked interest in the study of civil society in the United States was Robert Nisbet's *The Quest for Community* (New York: Oxford University Press, 1953). Recent works of note include: Robert Bellah et al., *Habits of the Heart: Individualism and Commitment in American Life* (Berkeley: University of California Press, 1985); Amitai Etzioni, *An Immodest Agenda* (New York: McGraw-Hill, 1983); Nathan Glazer, *The Limits of Social Policy* (Cambridge: Harvard University Press, 1988); and Council on Civil Society, *A Call for Civil Society* (New York: Institute for American Values, 1999).

¹¹ Tocqueville, *Democracy in America*, 311.

¹² *Id.* at 70.

¹³ *Id.* at 63.

The French visitor was equally struck by the vigor and variety of the *social* groups that stood between the individual and government. He saw a country where most men, women and children lived on farms or were engaged in running a family business (both forms of livelihood involving intense cooperation among the participants). These families – the first and most important teachers of the republican virtues of self-restraint and respect for others – were surrounded by a myriad of religious, civic and social associations. Those latter groups provided settings where “every man is daily reminded of the need of meeting his fellow men, of hearing what they have to say, of exchanging ideas, and coming to an agreement as to the conduct of their common interests.”¹⁴

Though he had high praise for the U.S. Constitution, he insisted repeatedly that the success of the American version of the democratic experiment was due less to the laws than to their mores – the widely shared habits and beliefs that constituted the true and invisible constitution of the republic.¹⁵ “Laws,” he wrote, “are always unsteady when unsupported by mores; mores are the only tough and durable power in a nation.”¹⁶ (In this respect, he was reminding his post-Enlightenment contemporaries of an older tradition of political philosophy. The Athenian Stranger in Plato’s *Laws*, for example, says of unwritten customs: “[W]e can neither call these things laws, nor yet leave them unmentioned...for they are the bonds of the whole state, and...if they are rightly ordered and made habitual, shield and preserve the...written law; but if they depart from right and fall into disorder, then they are like the props of builders which slip away out of their place and cause a universal ruin – one part drags another down, and the fair superstructure falls because the old foundations are undermined.”)¹⁷ Undergirding both laws and mores, Tocqueville discerned the influence of religion. “Religion,” he wrote, “is considered as the guardian of mores,

¹⁴ Tocqueville, *Old Regime*, xiv.

¹⁵ Tocqueville, *Democracy in America*, 308.

¹⁶ Id. at 274.

¹⁷ Plato, *The Laws*, 793b, c.

and mores are regarded as the guarantee of the laws and pledge for the maintenance of freedom itself.”¹⁸ His message was clear – the health of the structures of civil society would be decisive in determining whether future citizens of emerging democracies would enjoy equality in liberty or endure equality in servitude.

II *Democracy and Civil Society in the Industrial Era*

As Tocqueville predicted, the democratic principle spread. In the latter half of the nineteenth century, it showed its strength in the legislatures of the industrialized republics. Universal (male) suffrage brought a steady increase in legislation aimed at improving conditions in factories and tenements, and in some places establishing rudimentary social security systems. In Europe, this legislation laid an early foundation for modern “social” democracies. In the United States, however, the Supreme Court, in its first vigorous exercise of the power of judicial review, held many of these laws unconstitutional as violations of property rights and freedom of contract. In Russia, revolution set in motion a chain of events that foreclosed the development of democracy there for nearly a century and corroded the substance of civil society.

Meanwhile, the Industrial Revolution was producing three momentous transformations in civil society. It would be hard to say which of these related changes was more consequential for the future – (1) the movement of most remunerative work outside the home, (2) the rise of large market actors whose power rivaled that of government,¹⁹ or (3) the bureaucratization of both political and economic structures.²⁰

Much has been written about political implications of the latter two developments, but over time the transformation of family life that took place when most men became wage earners was to have political

¹⁸ Tocqueville, *Democracy in America*, 47.

¹⁹ A.A. Berle and Gardiner Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1934); Morris Cohen, “Property and Sovereignty”, 13 *Cornell Law Quarterly* 8 (1927).

²⁰ Max Weber, *Economy and Society* (Berkeley: University of California Press, 1978).

consequences too. The separation of home and work ushered in a wholly new way of life. It represented an advance in the sense that, if the man's salary was large enough, his transition to wage work brought relief for his wife and children from the hard life of the family farm or shop. But this new sort of family turned out to be less secure for women and children. Their economic welfare now depended entirely on the husband and father, while he was no longer so dependent on them. (A telling sign of the change was the shift that took place in child custody law: as children became liabilities (in the economic sense) rather than assets, the traditional legal presumption in favor of fathers was replaced by a presumption in favor of maternal custody.) The divorce rate began slowly to climb.

The expansion of business enterprise, even in its early phase, caused Tocqueville to realize that minority tyranny could reappear in the democratic era. He noted that the rising entrepreneurial class, unlike the aristocracies of old, did not seem to feel obliged by custom to come to aid of its servants or relieve their distress:

The industrial aristocracy of our day, when it has impoverished and brutalized the men it uses, abandons them in time of crisis to public charity to feed them....I think that generally speaking the manufacturing aristocracy which we see rising before our eyes is one of the hardest that have appeared on earth. ...[T]he friends of democracy should keep their eyes anxiously fixed in that direction. For if ever again permanent inequality of conditions and aristocracy make their way into the world, it will have been by that door that they entered.²¹

By the early twentieth century, it was apparent – even to friends of capitalism – that large market actors had acquired a great deal of influence over the political process and everyday life.²² In a 1927 essay, an American philosopher, later associated with the political thought of Franklin Roosevelt's New Deal, suggested that the powers of large property owners over persons who are not economically independent ap-

²¹ Tocqueville, *Democracy in America*, 557-58.

²² Berle and Means, 352-57.

proached what historically has constituted political sovereignty. “It may well be,” Morris Cohen wrote, “that compulsion in the economic as well as the political realm is necessary for civilized life. But we must not overlook the actual fact that dominion over things is also dominion over our fellow human beings.”²³

The centralization and bureaucratization of government meant that politics and economic life were increasingly dominated by large, impersonal organizations. The family home came to be regarded by many as a “haven in a heartless world.”²⁴ That haven, however, was coming under siege.

III *Democracy and the Free Market Advance; the Mediating Structures Falter*

In the aftermath of World War II, the democratic principle again extended its reach. New nations emerged with constitutions in democratic form, and, together with mature republics, pledged themselves to the goal of realizing “better standards of life in larger freedom.”²⁵ To the demands that democracy itself places on civic competence and character, many countries added the demands of the welfare state. The countries that embarked on these ambitious ventures seemingly took for granted that civil society would continue to supply the habits and attitudes required by democracy, the economy and the expanding welfare system. Meanwhile, however, the institutions upon which republics had traditionally relied to foster republican virtues and to moderate greed were falling into considerable disarray.

Nowhere is this more apparent than in the case of the family. Even the prescient Tocqueville did not foresee how deeply the ideas of equality and individual liberty – and even the market ethos – would affect rela-

²³ Morris Cohen, 8.

²⁴ Christopher Lasch, *Haven in a Heartless World: the Family Besieged* (New York: Basic Books, 1977).

²⁵ Preamble, Universal Declaration of Human Rights (1948).

tions among family members. He had confidently asserted that “Democracy loosens social ties, but it tightens natural ones.”²⁶ “Orderly and peaceful” homes, he thought, could be depended upon to produce self-reliant citizens who knew how to respect others, to compromise differences, and to restrain their own tendencies toward selfishness.²⁷ Habits acquired in the home would provide the foundation for developing further skills of communal living in other sites such as schools, workplaces, and towns. Women, as the first and main teachers of children, were key to the whole system:

There have never been free societies without mores, and...it is woman who shapes these mores. Therefore everything which has a bearing on the status of women, their habits, and their thoughts is, in my view, of great political importance.²⁸

Who could have foreseen the series of turbulent changes that, beginning in the mid-1960s, shook up the roles of the sexes, transformed family life, and wrought havoc with the mediating institutions of civil society? The sexual revolution and sudden shifts in birth rates, marriage rates, and divorce rates caught professional demographers everywhere by surprise. In 1985, French demographer Louis Roussel summed up the developments of the preceding two decades: “What we have seen between 1965 and the present, among the billion or so people who inhabit the industrialized nations, is... a general upheaval across the whole set of demographic indicators, a phenomenon rare in the history of populations. In barely twenty years, the birth rate and the marriage rate have tumbled, while divorces and illegitimate births have increased rapidly. All these changes have been substantial, with increases or decreases of more than fifty percent. They have also been sudden, since the process of change has only lasted about fifteen years. And they have been general, because all industrialized countries have been

²⁶ Tocqueville, *Democracy in America*, 89.

²⁷ *Id.* at 291.

²⁸ *Id.* at 590.

affected beginning around 1965.”²⁹ Two related developments also had serious implications for society’s seedbeds of character and competence – an unprecedented proportion of mothers of young children began to work outside the home, and an unprecedented proportion of children were spending all or part of their childhood in fatherless homes. The societies affected had, in fact, embarked on a vast social experiment.

At about the same time, there were signs of disturbance in schools, neighborhoods, churches, community and workplace associations – institutions that traditionally depended on families for support, and that in turn served as important resources for families. That was no coincidence. Not only had urbanization and geographic mobility taken their toll, but many of the mediating structures of civil society had relied heavily on the unpaid labor of women.

The movement of most women into the work force deprived many groups of volunteer workers; removed informal law enforcers (as well as “eyes and ears”) from many neighborhoods; and precipitated a care-taking crisis. The traditional pool of unpaid caretakers for the very young, the disabled, and the frail elderly was drying up, with no real replacement in sight – an ominous development for the most vulnerable members of society. The extent of the crisis can be appreciated when one takes account of the fact that the proportion of the population that cannot be self-sufficient (very young children, the ill, and the frail elderly) has hardly changed in the past hundred years.³⁰ The *composition* of the dependent population has shifted (with fewer children and more elderly in the mix than a century ago), but their *proportion* to the whole has remained relatively steady.

In the late 1980s, the rates of demographic change slowed in the countries affected. At present, they seem to have stabilized, but at new high or low levels, leaving a set of problems that no society has ever

²⁹ Louis Roussel, “Démographie: deux décennies de mutations dans les pays industrialisés,” in *Family, State, and Individual Economic Security*, ed. M.-T. Meulders-Klein and J. Eekelaar (Brussels: Story Scientia, 1988), I, 27-28.

³⁰ Mary Ann Glendon, *The New Family and the New Property* (Toronto: Butterworths, 1981), 90.

before had to confront on such a scale. In the United States, for example, divorce and non-marital births have brought about a situation where between a fifth and a quarter of young children currently live in single-parent homes, and over half spend at least part of their childhood in such households. The great majority of these homes are headed by women, and their economic circumstances are precarious: nearly half of all female-headed families with children under six live in poverty. The schools, churches, youth groups, neighborhoods and so on, that once provided assistance to such families in times of distress are in trouble too. They not only served as reinforcements for, but depended on, families, neighborhoods, and each other for personnel and reinforcement.

The developing nations are apparently following a similar trajectory, but at an accelerated pace. Many are simultaneously undergoing democratization, industrialization, urbanization, and the separation of home and business. In the 1990s, the world passed through a largely unremarked watershed: for the first time in human history, a majority of the earth's inhabitants no longer live in small farming and fishing villages.³¹

Whatever else may be said about these new conditions, they have impaired civil society's capacity for fostering the habits and practices that make for democratic citizenship. As an insightful journalist observed, we are experiencing a "fraying of the net of connections between people at many critical intersections....Each fraying connection accelerates the others. A break in one connection, such as attachment to a stable community, puts pressure on other connections: marriage, the relationship between parents and children, religious affiliation, a feeling of connection with the past – even citizenship, that sense of membership in a large community which grows best when it is grounded in membership in a small one."³²

Observers across the political spectrum have expressed concern about the implications of these developments for the quality of the work force, the fate of the social security system, and the incidence of

³¹ As predicted by Richard Critchfield, *Villages* (New York: Doubleday, 1983).

³² William Pfaff, "Talk of the Town," *New Yorker*, August 30, 1976, 22.

crime and delinquency. Less attention has been paid, however, to the *political* implications – the likely effect upon the world’s democratic experiments of the simultaneous weakening of child-raising families and their surrounding and supporting institutions in civil society. Not only have the main institutions that fostered non-market values in society become weaker, but the values of the market seem to be penetrating the very capillaries of civil society.

Surely Tocqueville would have asked: Where will modern republics find men and women with a grasp of the skills of governing and a willingness to use them for the general welfare? Where will your sons and daughters learn to view others with respect and concern, rather than to regard them as objects, means, or obstacles? What will cause most men and women to keep their promises, to limit consumption, to stick with a family member in sickness and health, to spend time with their children, to answer their country’s call for service, to reach out to the unfortunate, to moderate their own demands on loved ones, neighbors, and the polity?

The findings of recent surveys of the political attitudes of young Americans are disquieting. In 1999, over a third of high school seniors failed a national civics test administered by the U.S. Department of Education, and only nine percent were able to give two reasons why it is important to be involved in a democratic society.³³ A previous study found a sense of the importance of civic participation almost entirely lacking: “Consistent with the priority they place on personal happiness, young people reveal notions...that emphasize freedom and license almost to the complete exclusion of service or participation. Although they clearly appreciate the democratic freedoms that in their view, make theirs the ‘best country in the world to live in,’ they fail to perceive a need to reciprocate by exercising the duties and responsibilities of good citizenship.”³⁴ When asked to describe what makes a good citizen, only

³³ Chris Hedges, “35% of High School Seniors Fail National Civics Test,” *New York Times*, November 21, 1999, 16.

³⁴ People for the American Way, *Democracy’s Next Generation* (Washington: People for the American Way, 1989), 27.

12 percent mentioned voting. Fewer than a quarter said that they considered it important to help their community to be a better place. When asked what makes America special, only seven percent mentioned that the United States was a democracy. Such attitudes cannot be dismissed simply as a function of immaturity, for a comparison with earlier public opinion data revealed that the 1990 cohort knew less about civics, cared less, and voted less than young people at any time over the preceding five decades.³⁵

IV *Democracy and Civil Society in the Era of Globalization*

At first glance, democracy appears triumphant at the dawn of the twenty-first century.³⁶ Republics in democratic form have spread across Eastern Europe and Latin America and into many parts of Asia and Africa. A majority of the world's countries, over a hundred nations, now call themselves democratic, though "democratizing" would be a more accurate term in some cases.³⁷ Scholars tell us that democracies are disinclined to go to war with one another, and that no famine has ever occurred in a democracy.³⁸ Democratic principles and ideas are increasing urged upon, and have been adopted by, many institutions of civil society.

The future of the world's democratic experiments appears clouded, however, by several overlapping developments.

1. In the first place, there are a number of reasons to be concerned about *the atrophy of the democratic elements in modern republics*. The *centralization of government* has drained decision-making power away from local governments that once served as "schools for citizenship"

³⁵ Michael Oreskes, "Profiles of Today's Youth: They Couldn't Care Less," *New York Times*, 28 June 1990, A1, D21.

³⁶ Francis Fukuyama, *The End of History and the Last Man* (New York: Free Press, 1992).

³⁷ Barbara Crossette, "Globally, Majority Rules," *New York Times*, August 4, 1996, s. 4, p. 1; Fareed Zakaria, "The Rise of Illiberal Democracy," *Foreign Affairs* (November-December 1997).

³⁸ Fukuyama, *The End of History*; Amartya Sen, *Development as Freedom* (New York: Knopf, 1999).

and afforded the average citizen opportunities to participate. *Globalization* has drained power from the nation state. Non-representative *special interest groups* and lobbies often play the decisive role in shaping legislation and administrative action.³⁹ A development in some countries which could spread to supra-national tribunals is the overly *ambitious exercise of judicial power* to invalidate popular legislation, as well as to use hyper-individualistic interpretations of rights to undermine the mediating institutions of civil society. All in all, it is increasingly difficult for most men and women in today's democratic regimes to have a say in framing the conditions under which they live, work and raise their children.

2. As discussed above, democratic experiments are also threatened by *the decline of the mediating structures*. Character and competence do not emerge on command. They are acquired only through habitual practice. Those habits will either be sustained or undermined by the settings in which people live, work, and play. Democracies therefore cannot afford to ignore nurture and education, or the social and political institutions where the qualities and skills that make for good citizenship and statesmanship are developed and transmitted from one generation to the next.

3. Third, the megastructures of civil society have acquired such power as to raise *the spectre of new forms of oligarchy*. In terms of economic resources and ability to shape policy and events, the influence of some market actors, foundations, and special interest organizations exceeds that of many nation states. Indeed, nation states seemingly have little power to affect the large economic forces that shape the lives of their citizens. The status and security of most people are increasingly dependent upon large corporate employers or government. In the United States, for example, only about ten percent of the working population is self-employed, about a third works for large firms,

³⁹ In the United States, for example, political campaigns of both major parties are mainly financed by big business. Leslie Wayne, "Business is Biggest Campaign Spender, Study Says," *New York Times*, October 18, 1996, 1.

and about a fifth for federal, state or local governments.⁴⁰ Age-old routines of family life have been adjusted to conform to the demands and time-tables of the economy. The general standard of living has risen in many places, but at the same time disparities have widened between rich and poor. Troubling questions arise: Has “emancipation” from the oppressive aspects of older ways of life merely afforded men and women the opportunity to develop their talents to fit the needs of the market? Have women been freed from one set of rigidly bounded roles only to become unisex hominids whose family life must regularly be subordinated to the demands of the workplace?

And what will the new oligarchs be like, if the democratic elements in modern republics should one day atrophy? The men and women who hold key positions in governments, political parties, corporations, mass media, foundations and so on are often quite remote from the concerns of the average citizen. Strong ties to persons and places, religious beliefs, attachment to tradition and even family life are apt to be less important to those at the top than to the men and women whose lives they affect. Decision-makers have tended to be rather free in adopting measures that undermine the delicate communities on which others depend for practical and emotional support⁴¹ – as witness the organization of work and schooling, the planning of cities, programs for public assistance, all too frequently designed without considering the impact on families and neighborhoods.

Modern mass media render the problem of “soft tyranny”, identified by Tocqueville, more acute than in his day. Modern tyrannies, he predicted, would prefer the kind of power that acts upon the will, rather than the crude use of force. Unlike ancient despots who frequently resorted to physical oppression, new forms of despotism would “leave the body alone and go straight for the soul” – to the point that “even

⁴⁰ Heilbroner, 68; Glendon, *The New Family*, 156.

⁴¹ Robert E. Rodes, Jr., “Greatness Thrust Upon Them: Class Biases in American Law,” 1983 *American Journal of Jurisprudence* 1, 6. See also Wilson Carey McWilliams, “American Pluralism: The Old Order Passeth,” in *The Americans*, 1976, ed. Irving Kristol and Paul Weaver (Lexington: Heath, 1976) 293, 315.

desires are changed.⁴² Social theorists like Christopher Lasch and Charles Reich argued in the 1970s that “a new man” had already begun to emerge. According to Reich:

The deepest problem has to do with the kind of people that [new forms of dependency on large public and private organizations] create. Each person is increasingly tied to his status role. He is forced more and more to *become* that role, as less and less of his private life remains. His thoughts and feelings center on the role and he becomes incapable of thinking about general values, or of assuming responsibility for society....Thus a nation of people grows up who cannot fight back against the power that presses against them, for each, in his separate status cubicle, is utterly apart from his fellow men.⁴³

4. That is not the kind of talk that people like to hear. Nevertheless, *materialism and extreme individualism* have taken a toll – and perhaps has even set the stage for regimes where individual liberty will be lost, or confined to matters that distract from politics. As Tocqueville wrote, “What can even public opinion do when not even a score of people are held together by any common bond, when there is no man, no family, no body, no class and no free association which can represent public opinion and set it in motion? When each citizen being equally impotent, poor, and dissociated cannot oppose his individual weakness to the organized force of the government?”⁴⁴ In a country which permits its fonts of public virtues to run dry, he warned, there would be “subjects” but no “citizens.”⁴⁵ One wonders: Is the unlimited sexual liberty so relentlessly promoted on all fronts today a kind of consolation prize for the loss of real liberty in the political and economic sphere? A kind of latter-day bread and circuses?

5. Finally, there is the corrosive effect on the polity of a spreading lack of confidence that there are any common truths to which men and

⁴² Tocqueville, *Democracy in America*, 255, 434-35.

⁴³ Charles Reich, *The Greening of America* (New York: Random House, 1970); see also, Christopher Lasch, *The Culture of Narcissism* (New York: W.W. Norton, 1979).

⁴⁴ Tocqueville, *Democracy in America*, 314.

⁴⁵ Id. at 93-94.

women of different backgrounds and cultures can appeal. Many serious twentieth century thinkers argue that tyrannies, old and new, whether majoritarian or of minorities, are rooted in nihilism.⁴⁶ Hannah Arendt, for example, wrote: “The ideal subject of totalitarian rule is not the convinced Nazi or the convinced Communist, but people for whom the distinction between fact and fiction (i.e., the reality of experience) and the distinction between true and false (i.e., the standards of thought) no longer exist.”⁴⁷ Pope John Paul II, another first-hand observer of totalitarianism in operation, has put it this way:

[T]otalitarianism arises out of a denial of truth in the objective sense. If there is no transcendent truth, in obedience to which man achieves his full identity, then there is no sure principle for guaranteeing just relations between people. Their self-interest as a class, group or nation would inevitably set them in opposition to one another. If one does not acknowledge transcendent truth, then the force of power takes over, and each person tends to make full use of the means at his disposal in order to impose his own interests or his own opinion, with no regard for the rights of others.⁴⁸

In view of the atrophy of democratic participation, the disarray among the small structures of civil society, the menace of oligarchy, and the spread of materialism, hyper-individualism and popular “nihilism without the abyss” (to use the expression of the late Allan Bloom), what can one say about the prospects for democracy and civil society?

Whither Democracy and Civil Society?

At the dawn of the democratic era, it seemed to Tocqueville that the irresistible advance of democracy was leading to only two possi-

⁴⁶ *Veritatis Splendor*, 99; *Centesimus Annus*, 44. See also, Michael Novak, “Truth and Liberty: The Present Crisis in Our Culture,” *59 Review of Politics* 1 (1997).

⁴⁷ Hannah Arendt, *The Origins of Totalitarianism* (New York: Meridian, 1958), 474.

⁴⁸ *Centesimus Annus*, 44.

ble outcomes – democratic freedom or democratic tyranny.⁴⁹ Today, with the democratic nation state and the mediating structures of civil society weakened, the market seems to be about where democracy was then. The market is both a set of institutions and a powerful idea, fate-laden and irresistible, with the potential to improve the lives of men and women everywhere or to subject them to new forms of tyranny. The great challenge is to shift probabilities in the first direction.

This overview of democracy's ever-changing relationship to civil society suggests four tentative conclusions: (1) For the benefits of democratic society and the free market to be realized and their destructive potential minimized, the explosive energies of free politics and free economics must be disciplined and directed by a vibrant moral culture.⁵⁰ (2) The moral culture depends, in turn, on the health of the mediating structures of civil society. (3) Paradoxically, liberal democracy and free markets pose threats, not only to each other, but to the seedbeds of the very qualities and institutions both need in order to remain free and function well. (4) The corrective may lie in another paradox: democratic states and free markets may need to refrain from imposing their own values on all the institutions of civil society. In other words, it may be necessary to preserve certain mediating structures that are not necessarily democratic, egalitarian, or liberal, and whose main loyalty is not to the state and whose highest values are not efficiency and productivity.

Could law and policy help to revitalize, or at least avoid further harm to the fragile institutions upon which political freedom and economic vitality depend? Unfortunately, we do not know very much about how to encourage, or even to avoid damage to the social systems that both undergird and buffer the free market and the democratic polity. In fact, we probably know even less about the dynamics of social environments than we do about natural environments.

⁴⁹ Tocqueville, *Democracy in America*, xiv (1848 Preface).

⁵⁰ See George Weigel, "The Priority of Culture," *The Pilot*, June 7, 1996, 11.

One thing we have learned through trial-and-error is that intervention, even with the most benign motives, can have unintended and harmful consequences. In an address to the French National Assembly, anthropologist Claude Lévi-Strauss called attention to the endangered state of social environments, but cautioned at the same time against regulatory hubris. Two hundred years after the French Revolution attacked civil society, he told the legislators that the problem today is to restore civil society:

Notwithstanding Rousseau, who wanted to abolish any partial society in the state, a certain restoration of partial societies offers a final chance of providing ailing freedoms with a little health and vigor. Unhappily, it is not up to the legislator to bring Western societies back up the slope down which they have been slipping....[But] the legislator can at least be attentive to the reversal of this trend, signs of which are discernible here and there; he can encourage it in its unforeseeable manifestations, however incongruous and even shocking they may sometimes seem. In any case, the legislator should do nothing that might nip such reversal in the bud, or once it asserts itself, prevent it from following its course.⁵¹

Evidence is accumulating that the idea of “regulating” complex social systems (in the sense of controlling their development or ensuring desired outcomes) is an illusion.⁵² Interventions can shift probabilities, but often in unanticipated ways. Prudence thus suggests proceeding modestly, preferring local experiments and small-scale pilots to broad, standardized, top-down programs. Often, the principle of “do no harm” will be the best guide. At a minimum, that would require attention to the ways in which governmental or business policies may be undermin-

⁵¹ Claude Lévi-Strauss, “Reflections on Liberty,” in *The View From Afar* (New York: Basic Books, 1985), 288.

⁵² See, for example, Mitchell Waldrop, *Complexity: The Emerging Science at the Edge of Order and Chaos* (New York: Touchstone, 1992); Michael Novak, “Hayek: Practitioner of Social Justice ‘Properly Understood,’” (Lecture delivered at the University of Chicago, October 28, 1999).

ing fragile social structures, or discouraging persons who devote time and effort to the nurture of future citizens.

Is there reason to hope that the fine texture of civil society can be reinvigorated? One close observer of changes in the political capillaries of democracies finds hope in the fact that many kinds of micro-governments are spontaneously emerging at the neighborhood and community level in Europe and the United States. George Liebmann, whose three densely-packed monographs on civil society deserve to be better known,⁵³ has studied the emergence of such phenomena as *woonerven* (residential street control regimes) in The Netherlands, neighborhood councils in the Nordic countries, local law enforcement in the 25,000 communes of France, and business improvement districts and residential community associations in the United States. He found that many of these groups have evolved from small spontaneous cooperative endeavors into responsive and effective “sub-local” governments. Though some of these associations are controversial, Liebmann contends that they are spreading and are likely to spread further, as a reaction to the centralization and bureaucratization that have dominated political and social life for most of the century. They may be the “schools for citizenship” of the twenty-first century.

At the national level, another encouraging sign is experimentation with the delivery of social services such as education, health care and child care through smaller seeded institutions (religious groups, workplace associations) rather than state-run bureaucracies.⁵⁴

Yet another hint that the “ever-changing interplay” between democracy and civil society may be moving in a more positive direction is increasing interest in the principle of subsidiarity: “a community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should

⁵³ George Liebmann, *The Little Platoons: Sub-Local Governments in Modern History* (Westport, Ct: Praeger, 1995); *The Gallows in the Grove: Civil Society in American Law* (Westport, Ct.: Praeger, 1997); *Solving Problems Without Large Governments* (1999).

⁵⁴ Peter L. Berger and Richard John Neuhaus, *To Empower People: From State to Civil Society* (Washington, D.C.: American Enterprise Institute, 1996).

support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good.”⁵⁵ The editor of a magazine that follows such developments, predicts that the most important political issues in the twenty-first century will be either global or local:

Problems are migrating up and down all over government, in search of the appropriate place for solution....Citizens are essentially looking for two forms of public authority: intimate ones in their community that can deal with their needs in a humane way, and regional ones big enough to impose some order and stability on economic life. The governments they have are mostly too remote and bureaucratic for the first job and too small and weak for the second one.⁵⁶

Ultimately, what will be decisive for democracy and the free market alike is not the seedbeds of civil society (which can produce weeds as well as flowers), but the seed. The seed is the human person, uniquely individual, yet inescapably social; a creature of unruly passions who nevertheless possesses a certain ability, individually and collectively, to create and abide by systems of moral and juridical norms.

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