

## 2. Restoring Civil Society

### **Congress should**

- before trying to institute a government program to solve a problem, investigate whether there is some other government program that is causing the problem in the first place and, if such a program is identified, begin to reform or eliminate it;
- ask by what legal authority in the Constitution Congress undertakes an action, thereby subjecting itself to the rule of law;
- recognize that when government undertakes a program; it displaces the voluntary efforts of others and makes voluntary association in civil society appear redundant, with significant negative effects; and
- begin systematically to abolish or phase out those government programs that do what could be accomplished by voluntary associations in civil society, whether business enterprises, self-help groups, or charities, recognizing that accomplishment through free association is morally superior to coercive mandates and almost always generates more efficient outcomes.

Thomas Jefferson observed in 1788 that "the natural progress of things is for liberty to yield and government to gain ground." The truth of his observation has been amply demonstrated in recent decades. As political society—government—grows, civil society retreats. It is in civil society—the realm of liberty—that mankind flourishes. It is from civil society that industry, civility, rectitude, science, and prosperity arise.

If civil society is to be restored, the members of the 105th Congress must reexamine the relationship between political society and civil society, replacing edicts and mandates with the rule of law and substituting voluntary cooperation for coercion.

No challenge is more serious today than the restoration of civil society. Pundits cite violent crime; family breakdown; the waning of some tradi-

tional institutions; blighted inner cities; and a decline in civility, honesty, and trust as evidence of a crisis in civil society. And few topics have received as much attention in recent years as this one. Politicians and pundits on both left and right have attempted to exploit the theme for their own purposes, which often hinge on expanding governmental powers to manipulate citizens in order to attain whatever outcomes the manipulators desire. The impulse to do so, however, is fundamentally at odds with civil society, as it has been commonly understood for centuries. As the distinguished historian of civil society Antony Black has noted, "We may identify the central ideal of civil society as personal independence, and its central imperative as respect for persons."

### ***What Is Civil Society?***

Civil society can be difficult to understand; it is individualistic without being atomistic and is made up of associations without being collectivist. Civil society is a spontaneous order, a complex network of relationships and associations based on the freedom of the individual, who voluntarily assumes obligations and accepts responsibility for his or her behavior.

Some people define civil society to encompass only nonprofit organizations and to exclude entirely commercial organizations, contractual relationships, and other forms of voluntary cooperation. But dividing the world into the separate spheres of for-profit business enterprises, the institutions of the state, and "everything else" (called "civil society") makes little sense. It is far more fruitful to distinguish institutions on the basis of some shared characteristic; "everything else" does not denote an essential and therefore truly distinguishing characteristic. The thoughtful conservative Don Eberly of the Civil Society Project considers civil society a "third sector" made up of associations "that operate neither on the principle of coercion, nor entirely on the principle of rational self-interest." But, in attempting to set out a third sector, he has contrasted government and the market on the basis of principles as different in kind as apples and triangles. Coercion is a characteristic of actions toward people, not a motivation; "rational self-interest" is a kind of motivation, not a characteristic of action. Self-interested persons can act coercively or in accordance with the principles of voluntarism, just as persons acting coercively can be motivated by altruism or by self-interest. What distinguishes government from the market is coercive force, present in the one case and absent in the other. Eberly's attempt to create a third category of everything other than business and government fails.

The clearest and most relevant characteristic to use to distinguish among institutions is whether people interact voluntarily or coercively. Civil society is based on voluntary participation, whereas the state, or political society, is based on coercion. Thus, civil society includes families, businesses, self-help groups, religious institutions, charities, trade associations, Girl Scout troops, and an infinite variety of other kinds of associations. No one is coerced into joining them, and they have no coercive power to force their desires on the unwilling. Political society encompasses those institutions that exercise coercion, whether in their financing (e.g., taxation), their participation (e.g., conscription), or their activities (e.g., economic intervention in or prohibition of peaceful activity). Government is the institutionalization of coercion. Some amount of political society is necessary to protect civil society from even more coercive predators, whether domestic or foreign. But political society always presents the danger of overstepping its bounds and must be kept in check by the Constitution.

### ***Restraining Political Society***

As Thomas Paine noted at the very founding of our new nation, "Society in every state is a blessing, but government, even in its best state, is but a necessary evil; in its worst state an intolerable one." Thomas Jefferson stated in the 1798 Kentucky Resolutions (protesting the Alien and Sedition Acts), "Free government is founded in jealousy, not in confidence; it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power." The mission of protecting civil society and restraining political society is at the very foundation of our Republic.

The Founding Fathers had good reasons for restraining government and subjecting the state itself to the rule of law. Coercive intervention creates conflict and sets citizen against citizen. As Adam Ferguson noted in his 1767 *Essay on the History of Civil Society*, "Men, in general, are sufficiently disposed to occupy themselves in forming projects and schemes; but he who would scheme and project for others, will find an opponent in every person who is disposed to scheme for himself."

Coercion allows some people to shift responsibility for the consequences of their acts to others; it disrupts the normally expected relationship between cause and effect. At the same time, it enervates the citizens, as they come to see their fates determined, not by their own voluntary acts, but by the holders of power.

A few examples illustrate the dangers presented by replacing voluntary interaction among free and responsible persons with coercion.

- Social Security has made the middle classes dependent on the state for their retirement income; they have been forced to finance a pay-as-you-go system that cannot keep its promises. Not surprisingly, taxpayers have failed to save and invest adequately, as the responsibility of saving for their retirement was lifted from their shoulders, just as their money was lifted from their wallets. If Social Security is not privatized, there will be massive intergenerational struggles, as payroll taxes on working people will have to rise by nearly 50 percent over current levels simply to meet the obligations of the present system. (That projection is based on moderate assumptions concerning inflation, demographics, and unemployment; the scenario is bleaker if we introduce less optimistic assumptions and catastrophic if we include Medicare in the equation.) Returning Social Security, in some form, to civil society is an imperative.
- The many transfer programs of the welfare state have made the poor dependent on the state and have made the most basic of all forms of association, the family, seem redundant. The numbers have fallen slightly in the past year, but the long-term trend over the past two decades is disturbing; there has been nearly a doubling in the rate of out-of-wedlock births to teenagers. Today nearly a third of all births in America are to unmarried mothers, and the proportion is over two-thirds among African-Americans, the most seriously affected population. Individuals no longer need fear the full consequences of their behavior, as the responsibility for the consequences of unwise choices can be shifted to others. The result is a rise of irresponsibility. Out-of-wedlock birth is the single most significant factor in the growth of poverty in America today. The consequences have been disastrous for everyone, except, of course, for political society's poverty industry: the welfare bureaucracies. Irresponsibility and restrictions on the poor that make it more difficult for them to better their own lives (e.g., onerous licensing laws and minimum wage laws) have led to the institutionalization of dependency. If poverty is to be ameliorated or eliminated, political society must give way to self-help, mutual aid, and charity, which is to say, to civil society.
- Intervention by the federal government into voluntary economic enterprises costs the American people \$500 billion in lost wealth every year and has generated enormous investment in the negative-sum

game of lobbying, influence seeking, and corruption. As political society's redistributive powers have grown, more and more trade associations have relocated to Washington, D.C.—where wealth is redistributed rather than created—and more and more business firms have invested in Washington lawyers and lobbyists rather than in engineers and factory workers. The process will continue unabated until we restore incentives to invest in production of wealth rather than in its redistribution.

- The war on drugs costs the taxpayers \$15 billion per year in taxes and is responsible for about half of the violent crime in major cities today, for the enriching of organized crime syndicates, for the glorification of the life of the violent drug dealer over that of the honest shop clerk or factory worker, and for the militarization of inner-city gang warfare. By attempting to take responsibility for personal virtue from individuals, the clumsy mechanisms of political society have had disastrous consequences for all. In order to realize a society of responsible and virtuous individuals, responsibility for virtue must be removed from political society and returned to the families, churches, synagogues, neighborhoods, and mutual aid associations that make up civil society.

A primary reason for the negative consequences of the replacement of civil society by political society is that the link between rights and responsibility, between cause and effect, has been broken. The exercise of rights leads to social harmony and personal virtue only when the consequences cannot be shifted to unwilling parties. Any disjunction between rights and responsibility affects, not only the poor, but all of society. To take but one high-profile example from recent years, when the federal government insured savings-and-loan deposits, wealthy depositors sought the highest rates of return, ignoring the riskiness of the institutions' loan portfolios and thereby shifting responsibility for bad investments onto the shoulders of the taxpayers. The result of that off-budget loan guarantee system was the transfer of nearly \$150 billion in taxpayers' money to depositors and an implosion of America's savings-and-loan system. Similar examples can be found in almost every field of endeavor, affecting all income groups, races, religions, and areas of the country.

### ***The Condition of Civil Society***

Restoring civil society is a moral imperative. There is no more important issue on the political agenda today. The picture, however, is not an entirely

bleak one, for the retreat of civil society in the face of advancing political society has been uneven. In some areas, civil society has even advanced, as political society has been restrained and pushed back; notable examples are the partial but progressive deregulation in recent decades of telecommunications, which has opened up so many opportunities for people to communicate and form new communities, and of financial services, which has allowed individuals and families greater control over their own investments. Despite all the advances of political society in recent decades, America still has a vigorous and robust civil society that provides employment for nearly 130 million persons, generates \$7.5 trillion in annual production, and brings forth technological innovation on a daily basis. And charity and mutual aid are also growing in civil society; Americans gave \$125 billion to private charities last year, and mutual aid organizations from Alcoholics Anonymous to the Promise Keepers to shelters for battered women offer mutual support to help individuals become stronger and more virtuous and to resist the temptations of irresponsible or self-destructive behavior.

Still, a better measure would be, not how numerous or how big those institutions and practices are relative to 10, 20, or 50 years ago, but how robust and vigorous they are compared to what they *would* be if they were not so hampered by political society. Between 1970 and 1975 the number of pages printed annually in the *Federal Register*—a fairly good index of regulatory intervention in the economy—tripled over the annual average since 1947, and the average has remained in the higher range since 1975. It is instructive to compare economic growth rates during the period between 1947 and 1973 with those of the period since 1973. The average annual rate of economic growth from 1947 to 1973 was 3.7 percent, but it was only 2.5 percent from 1974 to 1995. Compounded over a period of 22 years, the difference between actual economic growth and what it *would* have been had growth rates not declined (the growth deficit) is staggering, representing an enormous sum that could have been saved and invested, spent on education, or used to finance a higher standard of living. And that larger base, combined with the higher rate of economic growth, would be multiplied greatly in the future. Another and perhaps more telling measure of the difference between current wealth and what we could produce is the sagging rate of productivity growth, which was 2.25 percent for the first three-quarters of this century but began a long-term tumble in the mid-1970s; since 1992 the rate of productivity growth has been a paltry 0.3 percent per year, perilously close to the zero productiv-

ity growth rate in the period before the Industrial Revolution. That is far, far below the rate that led to a doubling of personal income per generation in the first several decades after World War II. (The story of what has happened in the years since 1973 is a complex one, with an enormous rise in some kinds of regulation, a decline in the rate of growth of the adult population, a dramatic decline in the net national savings rate, and a roughly 5 percentage point rise in taxes as a share of gross domestic product compared to the late 1960s, but the rise in economic intervention and in taxation undoubtedly bears most of the blame for declining economic growth and lagging productivity growth.)

### *Reviving Civil Society*

Recently, various programs and projects have been initiated to 'revive' civil society through government subsidization or fiat. E. J. Dionne Jr. of the Brookings Institution describes the Brookings research agenda on civil society as studying "government's role in promoting civic life." That assumes that government's role is positive rather than negative. And 19 bills to "renew America," most of which involve the federal government directly in conservative social engineering, have been introduced in the Senate by Sen. Dan Coats (R-Ind.) and in the House by Rep. John Kasich (R-Ohio); those bills include the Role Model Academy Act, the Character Development Act, and the Family Reconciliation Act. But such efforts are likely to fail, not only because of the flawed concept of civil society ("everything else") on which they rest, but also because of the mismatch between principles, between the coercive principle of political society and the voluntary principle of civil society. Political society may exercise coercion to protect individual rights from predators and thus protect the institutions of civil society, but coercion cannot call free associations into being, nor are subsidies administered by political agents likely to solve any more problems than they cause. Indeed, such subsidization carries the danger that with it will come strings, that civil society will be absorbed into or reduced to merely an extension of political society. That is not merely fatalism; it can be observed in practice. The so-called Volunteers of America organization gets 96 percent of its funding from government. Catholic Charities, which relies on government for 65 percent of its budget, has emerged as a significant voice defending the welfare state that funds it. Such institutions have been captured by political society.

Social and political processes are **dynamic**—one change leading to another—rather than static. As political society captures one form of

association after another, it leaves in its wake one problem after another, each of which calls for another government agency or power to solve it. But such a dynamic process can go in the other direction as well. As one form of association after another is liberated from political society, social problems are ameliorated or solved, entailing less demand for political authority to solve them. One example would be the repeal of the prohibition of alcohol, which was followed by a dramatic decline in violent crime and the rise of Alcoholics Anonymous and other associations that help people deal with the temptations of drink. Another would be the deregulation of trucking that has led, not only to lower prices, but to the development of the just-in-time delivery system that has saved billions of dollars in inventory costs and made the economy far more competitive, efficient, and responsive. And looking into the future, we should anticipate the initiation of a similar dynamic process following the repeal of restrictions on self-help, such as licensing laws, and the elimination of welfare hand-outs, so that unskilled people could obtain employment—and with employment both skills and wealth—and escape the dependency of the welfare state, thereby moving up the economic ladder of success.

The statist ideologue sees nothing *except* political society. To eliminate a coercively financed subsidy or a coercive mandate is, he believes, to eliminate altogether the activity subsidized or mandated. Thus, when it is proposed that we end state funding for the arts and return art to civil society, the ideologue foresees, not art being produced and appreciated in civil society, but the elimination of art. Hillary Clinton exemplified that attitude when she said recently, "This is an ominous time for those of us who care for the arts in America. A misguided, misinformed effort to eliminate public support for the arts not only threatens irrevocable damage to our cultural institutions but also to our sense of ourselves and what we stand for as a people." The historical record indicates otherwise. Authentic American cultural institutions such as jazz, bluegrass, and rock music do not owe their origin or their flourishing to 'public' support—if by public one means support from government. And it is not only music that flourishes in civil society, but theater, the plastic and visual arts, and much more. The 17th-century flourishing of painting owed more to Europe's first extended experiment in limited government and civil society, the Dutch Republic, than to political society. As historian Jonathan Israel notes in his new and authoritative work on the Dutch Republic, by 1650 "there were approximately two and a half million paintings in Holland, most admittedly copies, or pictures of poor quality, but a sizable proportion,

some 10 percent, pictures of quality.” That was due to the growth of civil society, not royal (or presidential) patronage.

Hillary Clinton's error is not a new one. In 1850 the French economist Frederic Bastiat accurately described the statist mentality: "When we oppose subsidies, we are charged with opposing the very thing that it was proposed to subsidize and of being the enemies of all kinds of activity, because we want these activities to be voluntary and to seek their proper reward in themselves. Thus, if we ask that the state not intervene, by taxation, in religious matters, we are atheists. If we ask that the state not intervene, by taxation, in education, then we hate enlightenment. If we say that the state should not give, by taxation, an artificial value to land or to some branch of industry, then we are the enemies of property and of labor. If we think that the state should not subsidize artists, we are barbarians who judge the arts useless." But to insist that an activity not be carried on coercively is not to oppose the activity per se, but only the coercion. If shoe production and sales were a state monopoly, advocates of privatization would undoubtedly be accused of being "against shoes," when in fact civil society produces more and better shoes than political society.

## *Conclusion*

The genius of the Founders of this nation was to establish a political society for the primary purpose of protecting civil society. The former was to be carefully structured and explicitly limited, while the latter was understood to be unlimited, experimental, and able to grow and change in response to the needs or wishes of its members. Article I, section 8, of the Constitution provides a short but exhaustive list of the powers of Congress, concluding with the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." Not only must laws passed by Congress be "proper," they must be "*necessary*" (not merely "sufficient," "expedient," or "politically popular") to carry out the carefully enumerated powers of government. "Necessary" means that, without the power or law, the purpose could not be achieved. If the purpose can be achieved in some other way, such as through the voluntary mechanisms of civil society, the proposed power fails the test of necessity.

The Founders envisioned an island of political society surrounded by a vast sea of civil society, not, as some see matters today, the other way

around. With the notable exception of the very uncivil institution of slavery, the system worked relatively well, with limited government providing the legal framework and protection for the American experiment in liberty. But political society emerged with a vengeance in the 20th century, in a variety of malignant forms. It is a moral imperative for Americans to reclaim their heritage as a free people and their right to live in a civil society.

The revival of civil society can only take place when political society is restrained and reduced to its rightful role: protecting the lives and liberties of the people. Political society can do no more than provide the framework for virtue, industry, and responsible behavior; it cannot mandate them. The moral awakening that is necessary will come, not from the corrupted centers of political society, but from the remaining healthy sectors of civil society.

### **Suggested Readings**

- Bastiat, Frederic. *Selected Essays on Political Economy*. Edited by George B. de Huszar. Irvington-on-Hudson, N.Y.: Foundation for Economic Education, 1964.
- Black, Antony. *Guilds and Civil Society*. Ithaca, N.Y.: Cornell University Press, 1984.
- Boaz, David. *Libertarianism: A Primer*. New York: Free Press, 1997.
- Crane, Edward H. "Defending Civil Society." *Cato's Letter*, no. 8. Washington: Cato Institute, 1994.
- Epstein, Richard. *Simple Rules for a Complex World*. Cambridge, Mass.: Harvard University Press, 1995.
- Ferguson, Adam. *An Essay on the History of Civil Society*. 1767. Cambridge: Cambridge University Press, 1995.
- Gellner, Ernest. *Conditions of Liberty: Civil Society and Its Rivals*. New York: Penguin Books, 1994.
- Green, David G. *Reinventing Civil Society*. London: Institute of Economic Affairs, 1993.
- Hayek, F. A. *The Road to Serfdom*. Chicago: University of Chicago Press, 1944.
- Israel, Jonathan. *The Dutch Republic: Its Rise, Greatness, and Fall, 1477-1806*. Oxford: Clarendon Press of the Oxford University Press, 1995.
- Locke, John. *Two Treatises of Government*. 1690. Cambridge: Cambridge University Press, 1988.
- Pilon, Roger. "Freedom, Responsibility, and the Constitution: On Recovering Our Founding Principles." *Notre Dame Law Review* 68 (1993): 507-47.
- Shipman, William G. "Retiring with Dignity: Social Security vs. Private Markets." Cato Institute Social Security Privatization Paper no. 2, August 14, 1995.
- Tanner, Michael. *The End of Welfare: Fighting Poverty in the Civil Society*. Washington: Cato Institute, 1996.

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