Civil Society, Civic Virtue, and Liberal Democracy

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I am implicated in both of the reports that come in for their share of criticism in the pages of this symposium. Each of these reports represents something rare in both politics and academia—namely, an effort to find common ground among individuals with shared concerns but very diverse political and moral outlooks. To some extent, each represents a compromise among these perspectives; each participant would have written a somewhat different report. Under the circumstances, my most useful contribution to this symposium may well be a statement of my personal views and of the reasons for them. Along the way, I shall reply to the objections leveled against the two reports.

To begin, I see the vocabularies of economics and culture as complementary, not contradictory. Among other things, I favor raising the minimum wage, increasing the earned income tax credit, helping low-wage workers with subsidies for health care, child care, and job training, expanding Head Start, and broadening federal support for public education in low-income communities. I do not believe that civil society, however vigorous, could or should replace a national governing agenda.

Nor do I believe that civil society is self-sustaining in the absence of the state. As many central European countries are learning the hard way, civil society requires a framework of legislation that secures the possibility of associational self-constitution and perpetuation over time. Moreover, many civil associations have entered into, and some depend upon, partnerships with the public sector to address public problems. (Along with many others, including both contenders for the year 2000 Democratic presidential nomination, I have advocated the expansion of such partnerships.) It is an exaggeration, however, to suggest that civil society is
somehow a creation of government. Indeed, the modern idea of civil society was developed in response to the independence of revealed religion from state authority, and to the growing diversity of creeds. So, for example, the public law of the United States recognizes, and to some extent regulates, the Catholic Church. But it would be a wild exaggeration to suggest that U.S. public law "constitutes" the Church. It is, therefore, a complicated matter, but not (as Professor Tushnet suggests) inherently paradoxical, to seek the revitalization of civil society as a check on government.

To say, as I do, that the vocabularies of economics and culture are complementary is to deny that one is reducible to the other. William Julius Wilson, frequently cited in these pages, is a first-rate scholar and an honest man. And because he is both, he has reexamined the evidence and has come around to the view that cultural change is an important, ineliminable, independent variable in any comprehensive explanation of phenomena such as the decline of marriage in African-American communities.

Nor do I believe that civil society should be understood exclusively, or even primarily, as a school of citizenship. Indeed, casual inspection reveals the multiplicity of functions voluntary associations can perform in contemporary regimes. These associations can serve as sites of resistance against tyranny and oppression. By strengthening social bonds, they can reduce the dangers of anomie. Through their internal dialogue and activities, they can help form opinions that shape deliberation in public institutions. They provide vehicles for the non-instrumental expression of moral convictions as norms for the wider society. They offer opportunities for groups of citizens to conduct important public work through collective mechanisms outside the control of government. And yes, they can foster the virtues that modern democratic societies need and can nourish the habits of civic engagement.

It is because I do not believe that fostering citizenship is the only legitimate or important function of civil society that I join Nancy Rosenblum in rejecting what she calls the "logic of congruence." But it is important to see that this rejection is a two-edged sword. On the
one hand, there is no guarantee that any particular civil association will reinforce liberal democratic virtues and beliefs. On the other hand, there is no requirement—moral or legal—that every association mirror liberal democratic norms and structures. So while the editors of this symposium endorse Rosenblum’s overall position, they reject her critique of the Roberts v. United States Jaycees decision. They cannot have it both ways. Rosenblum’s general stance leads directly to her specific conclusions about the inappropriateness of government intervention to enforce gender equality throughout civil society. To reject her conclusion is necessarily to reject the premises on which it rests.

Nor do I accept the view that asserting and exercising rights are per se inimical to virtue. Here is what I do believe and have stated repeatedly in my published work:

First, there is a distinction between real and bogus rights. The right to vote is a real right. The right to welfare is a bogus right. (That is why it is perfectly consistent to support the Voting Rights Act while opposing the National Welfare Rights Organization.) Claiming a real right is central to human dignity and virtue; asserting a bogus right is just the reverse.

Second, there is a distinction between rights and rightness. To say “I have a right to do X” is not necessarily to conclude that “X is the right thing for me to do.” Even though I may have the right to address someone in uncivil and insulting terms, there may nonetheless be compelling reasons for me not to do so. To fill in the gap between rights and rightness, we need a much richer moral vocabulary, including some account of the virtues.

It is possible to argue that this virtue-talk is beside the point because liberal democracy can be sustained through the artful arrangement of institutions that use unrefined passions and interests to check one another. I think it is fair to say that this brand of institutionalism is a distinctly minority view today, certainly among ordinary citizens and increasingly among scholars as well. People who disagree vigorously about political agendas nonetheless agree that


5. Obviously, the objections against imposing state norms on voluntary associations can be evaded by relabelling these associations as “public” (accommodations, or whatever). This is precisely the strategy against which Rosenblum protests. See generally Nancy L. Rosenblum, Compelled Association: Public Standing, Self-Respect, and the Dynamic of Exclusion, in FREEDOM OF ASSOCIATION 75 (Amy Gutmann ed., 1998). So to categorize the Jaycees as a public accommodation is to reject one of the crucial premises of Rosenblum’s argument.
sustainable self-government requires certain belief, dispositions, and habits, which for brevity's sake may be called "civic virtues."

To acknowledge this is to open rather than close the conversation. For we must then grapple with two questions: Is civil society a reliable or sufficient source of whatever virtues liberal democracy may require? And what is the actual substance of these virtues, anyway?

I can answer the first question straightforwardly. I have never claimed that civil society is or could be sufficient, and neither have most of the individuals lumped together under the civil revivalist rubric. That is why I have argued for a strong program of civic and character education in our public schools. And that is why some of the sharpest and most controversial recommendations in the report of the National Commission on Civic Renewal revolve around a mandatory program of civic education throughout the primary and secondary school years.6

As to the second question, it is surely necessary to ask on what basis anyone could offer a substantive account of liberal democratic virtues suitable for a culturally and morally diverse society. Along with others, I have argued that such an account can only be functional or instrumental, encompassing the traits of character and habits of the heart needed to sustain civic independence and self-government amidst diversity. I have spelled out just such an account in considerable detail.7 I freely acknowledge what I have argued for a decade: the relationship between civil society and liberal democracy is an empirical rather than philosophical issue. That is precisely why I make such extensive use of empirical evidence in my work.

This brings me to the family. Professor Fineman suggests that the empirical evidence connecting family structure to child well-being is shaky and controversial.8 In support of this critique, she approvingly cites a recent unpublished paper by Andrew Lister. Buried in one of her footnotes is the following sentence: "Lister stated . . . that the 'best research' does seem to indicate that growing up in a single parent family is not good for children"9—which is my position. Anyone with even minimal social science competence is aware of the need to hold

9. Id. at 542 n. 80.
background variables constant, and the best research does just that. Indeed, the McLanahan and Sandefur study, which Fineman cites as a source of "caveats," concludes that after holding background variables constant, there is an independent effect of family structure on child well-being.\textsuperscript{10} Other researchers, such as Johns Hopkins' respected Andrew Cherlin, have examined new data sets and have concluded that even after correcting for levels of intra-family conflict, there is an independent effect of divorce on child well-being.\textsuperscript{11}

Not surprisingly, given the weight of the evidence, Professor Fineman endorses Lister's suggestion that we change the focus from empirical issues to the "moral balancing involved in setting family policy."\textsuperscript{12} I am happy to take up that challenge. Indeed, moral balancing is exactly what is required, because the interests of parents do not always coincide with the interests of children and because the interests of women do not always coincide with the interests of men.

In a free society, individuals have the right to constitute their own lives—up to the point where a particular form of self-constitution contradicts a binding obligation. For example, grown children are not morally free to define their lives in a manner that neglects their responsibility to help care for aging parents. There is a range of legitimate ways in which we can discharge this responsibility. But we are not at liberty to ignore it outright, in the name of liberation, self-actualization, or whatever.

Similar considerations are at work in relationships between parents and minor children. The act of begetting a child (or of accepting a child through adoption) creates responsibilities that we are not free to ignore. It is for this reason that the state has the right to impose and enforce child support awards. It is for the same reason that the state can legitimately shape the laws of marriage and divorce to promote the best interests of children. Being a parent is not consistent with unlimited "self-constitution."

Let me get one issue off the table. Domestic violence is not a

\textsuperscript{10} SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 95-133 (1994).

\textsuperscript{11} See generally PAUL R. AMATO & ALAN BOOTH, A GENERATION AT RISK: GROWING UP IN AN ERA OF FAMILY UPHEAVAL (1997); Andrew J. Cherlin et al., Effects of Divorce on Mental Health Through the Life Course, in HOPKINS POPULATION CENTER PAPERS ON POPULATION (WP 97-1, 1997); Andrew J. Cherlin et al., Parental Divorce in Childhood and Demographic Outcomes in Young Adulthood, 32 DEMOGRAPHY 299 (1995); P. Lindsay Chase-Lansdale et al., The Long-Term Effects of Parental Divorce on the Mental Health of Young Adults: A Developmental Perspective, 66 CHILD DEV. 1614 (1995).

\textsuperscript{12} Fineman, supra note 8, at 543.
private matter, and it cannot be condoned. The state rightly intervenes to prevent and—that failing—to punish abuse. On any plausible view, it gives the abused parties the moral and legal right to terminate the marriage and restrict the parental rights of the abuser.

But it does not follow that all desires or frustrations within marriages trigger a legitimate right of exit. Childless couples are free to act in ways that couples with minor children are not. Husbands who break up their marriages to pursue their secretaries are harming their children and wronging their spouses. Wives who break up their marriages because of a lack of emotional intimacy with their husbands are likewise harming their children. The man may feel better in the new relationship; the woman may feel better when rid of a spouse she experiences as remote and unresponsive. But the children typically feel worse, and many suffer long-term harm from their parents' heedless actions. Are these facts morally irrelevant? Is the law forbidden to take cognizance of them?

Let me extend this argument. Whatever may be the case for peasant societies, most fifteen year olds in advanced industrial societies are not equipped to be parents. The public sector can provide material assistance, of course, but that does not begin to close the competency gap. It is wrong to bring a child into the world if one is not adequately prepared to raise the child. It is not an instance of intrusive moralism for society to recognize and act on this fact. "Private" harm to children imposes public costs, and poorly raised children are less likely to become good citizens—however one defines citizenship.

The relationship between economic and cultural change is more complex than many fashionable accounts would suggest, a fact of considerable significance for family policy. For example, Professor Fineman notes that the rate of poverty among families rose substantially between 1977 and 1993.13 What she does not say is that...
much of this increase stemmed from the surge in the percentage of families headed by single parents. The past generation has been relatively good for married couples but bad for single-parent families.\(^\text{14}\) On a related note: Professor Fineman takes me to task for allegedly overlooking the existence of poverty among two-parent families.\(^\text{15}\) Of course I do not. The point I am making is statistical: holding other variables constant, two-parent families are far less likely to be living in poverty than are single-parent families. To say, as I do, that stable intact families are the single best anti-poverty program is not to suggest that it will be sufficient in every case. That is why I favor, in addition, the wide range of programs I enumerated at the beginning of this article to provide income and supplementary services to low-income working families.

Nor is the relationship between family well-being and recent public policy as straightforward as Professor Fineman suggests. It is at most a half-truth to claim the policy shifts at the national level have exacerbated rising income inequality. The 1986 Tax Reform Act championed by Bill Bradley closed numerous loopholes used only by the wealthy.\(^\text{16}\) The 1993 Clinton economic program raised taxes on the upper one percent of all families while dramatically increasing the Earned Income Tax Credit and removing millions of low-income Americans from the tax rolls altogether.\(^\text{17}\) Medicaid has been expanded, as has support for child care.\(^\text{18}\) Indeed, over the part fifteen years, inflation-adjusted federal assistance to low-income working families has increased nearly tenfold.\(^\text{19}\) To be sure, there has been an historic shift away from open-ended income supports for families with no worker outside the home. But even the welfare reform act of 1996, which Professor Fineman excoriates, yielded a net increase in federal support for low-income families, and its overall results have thus far

1989, or 1973 to 1999—would yield a different result.

14. For all this and much more, see generally Sawhill, supra note 13.

15. See Fineman, supra note 8, at 540.

16. See Henry J. Aaron et al., The Rock Road to Tax Reform, in SETTING NATIONAL PRIORITIES, supra note 13, at 211.

17. See generally Gary Burtless, Growing American Inequality: Sources and Remedies, in SETTING NATIONAL PRIORITIES, supra note 16, at 137 (discussing the structure of the current federal tax system and proposing tax reform).


19. As David Ellwood shows, inflation-adjusted federal spending for low-income working families rose from less than six billion dollars in 1984 to nearly $52 billion in 1999. Ellwood, supra note 18, at 2, 4.
exceeded the expectation of its detractors (and of its supporters as well).20

The real disagreement between us goes far deeper than these policy disputes. Professor Fineman evidently believes that the basis of family policy should shift from the male-female dyad to a maternal model subsidized by the state. I believe that the state should supplement, not supplant, the efforts of mothers and fathers to raise their children. Professor Fineman evidently believes that fathers are dispensable. I disagree. As Professor Fineman observes, some women feel that it is "easier" to do without fathers.21 Maybe so. But that choice is not necessarily better for their children. And while women have the legal right to make that choice, the state is under no obligation to facilitate it.

We reach, finally, the "troubling [moral] accountings" for which the editors of this symposium and Professor Roberts take me to task.22 My basic argument is straightforward: a number of fundamental changes have occurred in our public culture over the past four decades. Some are positive, while others are negative. Taken together, these changes have transformed American society. But whether the results have left us, on balance, better or worse off is not as simple a question as many suppose.

It seems unobjectionable on its face to suggest that not all these changes have the same moral valence. So the real objection must lie elsewhere. I suppose one could argue that the trends I regard as negative—violent crime, drug abuse, teen pregnancy, among others—are not really negative after all. But the defenders of these sorts of activities as expressions of personal freedom or of revolutionary outrage against capitalist oppression are much rarer than they were a quarter century ago.

More interestingly, one could argue that these trends in our public culture are apples and oranges, with no real connections among them. Let me address this challenge head-on. Like the rest of my generation,

20. For example, while welfare rolls have declined sharply, the child poverty rate has fallen from 22% to 19%, the lowest rate in more than a decade; meanwhile, the labor force participation rate of low-wage unmarried women with children has surged from 32% to 50% in just the past five years. See David T. Ellwood, The Working Poor Policy Brief, Figure 2 (Nov. 1999) (unpublished manuscript, on file with author); Isabel Sawhill, Antipoverty Effectiveness of Policies for the Working Poor, Chart 5 (Nov. 1999) (unpublished manuscript, on file with author).

21. Fineman, supra note 8, at 544.

I lived through a tumultuous period in which the undoubted fact that some hierarchies are illegitimate was taken as warrant for the conclusion that all hierarchies are illegitimate, in which the undoubted fact that some norms are arbitrary and repressive was taken as evidence that all are, and in which the undoubted fact that some differences are socially constructed fortified the ideological prejudice that all are. I believe—unrepentently—that the process of claiming real rights helped generate a climate of opinion in which others were emboldened to assert bogus rights. This is not—repeat, not—an argument against claiming real rights. It is an argument against imputing the moral value of real rights to any and every claim advanced in the name of expanding rights.

I suppose my critics could reject the distinction between real and purported rights. They would be unwise to do so. Rights, let us recall, are claims advanced against political power—even the power of democratic governments. A public arena densely packed with rights-claims is one that will necessarily be less responsive to democratic majorities.

Professor Fineman is uncomfortable with the use of even sophisticated means for assessing public sentiment and judgment. On the surface, the objection is to the accuracy of these survey instruments. But the real objection is to the idea that public judgments, however accurately represented, should influence public policy, at least when these judgments lead to policy conclusions that the critics do not like.

It is not my view that democratic public judgment ends all debate about the wisdom and morality of public decisions. But surely in a democracy it is the beginning of wisdom to take public judgments into account. When an overwhelming majority of the people concludes that it is morally unacceptable to continue welfare as we know it, the burden of proof rests on a democratic political system that resists this conclusion. Similarly, when survey after survey stretching over a decade reveal profound public ambivalence about the moral condition of American society (and about the overall effect of the cultural changes of recent decades), democratic social theorists would be well advised to give these views respectful consideration.

Indeed, the people have good reason for their ambivalence. While they value the increase in autonomy and individual choice, they fear that these gains have come at the expense of social bonds they also

23. See Fineman, supra note 8, at 523-33, 541-42.
value. And while they endorse the deconstruction of oppressive hierarchies, they are not convinced that the revitalized communities they desire are possible without some form of authority.

I believe that it is important, morally as well as politically, to engage seriously with these deeply felt public beliefs. For if academic political and social theory fails to do so, it runs the risk of missing the kind of public engagement and influence it seeks and of speaking to and for itself.