THE CONSTITUTION OF CIVIC VIRTUE FOR A GOOD SOCIETY

THE CONSTITUTION, CIVIC VIRTUE, AND CIVIL SOCIETY: SOCIAL CAPITAL AS SUBSTANTIVE MORALITY

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INTRODUCTION

The central questions to be addressed in this article concern the Constitution’s dependence on civic virtue in citizens, the role of civil society institutions in fostering that virtue, and the implications for normative diversity within the overall constitutional order. The trajectory of my argument will be as follows. I believe that the well-working of our constitutional order depends upon the prevalence of certain civic virtues in the citizenry. It may be that the political order can and will survive the decline of civic virtue, but a price will be paid in terms of the ability of our political order to improve: the prevalence of civic virtues may be less important to political stability and economic prosperity than to the constitutional pursuit of justice and other ideal ends. I am convinced that civil society institutions play a crucial role in fostering civic virtue, and that this recognition justifies a variety of political interventions in civil society, including those implicit in the establishment of the constitutional order itself. Finally, these interventions seem to me to have profound implications for the sorts of deep normative diversity—including religious diversity—that we should expect to flourish in our regime. In sum, if it is right that our liberal democratic constitutional order is to be understood as a shared normative project dedicated to the pursuit of ideal ends like justice, then the question is: how do our institutions—including, but not only, specifically educative institutions—provide or fail to provide for the virtues that facilitate the success of this project? Our political and constitutional institutions may sometimes provide

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for civic virtue indirectly: by shaping social relations and civil society institutions that are themselves morally educative.

My response to the broad questions that have been set for us will be in some ways fairly narrow. I will begin by addressing the role of civil society institutions within our constitutional order, and will do so by focusing on Robert D. Putnam’s important account of social capital. His discussion highlights two themes of capital importance: first, the dependence of the constitutional order of an extended republic on sub-communities and associations, and second, the importance for the constitutional order of shaping or constituting those sub-associations in its own image and for its own purposes (not entirely but importantly). Putnam’s argument is not that groups, associations, and social networks are good; it is in effect more subtle and problematic than that. Implicit in his account is a distinctive and substantive social ideal: an account of civic virtues and the good society, which are constituted and supported by certain kinds of groups and particular patterns of group life. I will not take up the much debated question of whether “social capital” is in decline. I leave that question aside in order to bring out the substantive distinctiveness of the ideal of civil society prefigured in Putnam’s account of social capital. The distinctiveness of this ideal raises deep questions about the place of social and normative diversity in a liberal democratic constitutional order. Were Putnam simply promoting a bland diet of “sociability” the diversity problem would not arise (the question would then be: why should we expect that participation in groups tends to support specifically liberal democratic virtues?). As we shall see, however, when civil society is understood as a substantive social ideal—one containing resources that advance a specifically liberal democratic project—then many associations, groups, and social networks will not qualify as contributors to civil society. Indeed, in this case we will find that the institutional structures and public policies that promote “good” forms of social capital tend to have a deeply non-neutral impact on particular associations, including religious associations.

The problems I want to explore arise directly from basic constitutional principles. Freedom of association is a basic right and freedom of religious association is guarded with political intensity. Can public policy promote better rather than worse forms of community and association while respecting freedom of association? If we promote a particular ideal of civil society through public policy,

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do we violate constitutional or moral obligations that government should remain neutral toward private associative choices, especially choices among religious associations? How far can government go in favoring better rather than worse forms of community when the better and worse features of these different communities directly implicate religious differences?

I want, therefore, to emphasize the deeply non-neutral dimensions of an ideal of civil society directed toward the promotion of specifically liberal democratic civic virtues. In describing the ideal form of a liberal democratic civil society, and suggesting that we should make plans to bring it about, Putnam argues, in effect, that public policy should favor regime-supporting forms of association, including religious association. This is a deeply non-neutral agenda, and I don’t see how this can be avoided by any critical account of civil society that seeks to use associations and groups to promote civic virtues.

These conflicts—arising from the desire to promote a civically healthy society on the one side and, on the other side, the desire to respect freedom and diversity—are being brought into sharp focus by proposals that would extend the already widespread practice of channeling public monies to faith-based institutions that help administer social welfare programs. A huge array of government services are already administered by faith-based non-profit organizations. Religiously-based organizations form a substantial portion of the non-profit sector: religiously-based hospitals, nursing homes, schools, and social service programs are vital social service deliverers in the United States, and they are, like other non-profits, heavily dependent on public monies. Many school voucher proposals would invite religious communities to take control of another large and extremely important swath of public policy. Meanwhile, the “Charitable Choice” provision attached to the 1996 welfare reform

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2. As of 1992, there were 1.4 million non-profit associations in the United States. In 1990, non-profit associations earned a total estimated income of $316 billion. The non-profit sector employs 11% of the American workforce, or 16 million people. This sector includes a majority of American hospitals, and a substantial portion of our nursing homes and educational institutions, as well as the bulk of social service delivery. Non-profit organizations are deeply dependent on government funding, which comprises 31% of the sector’s total income. Religiously-based institutions compose a substantial portion of the non-profit social service sector. Consider the striking fact that government funding accounts for 75% of the annual budget of the Roman Catholic Archdiocese of New York: $1.75 billion. Nearly $200 million a year goes to Catholic Relief Services from various government contracts and grants. Prominent Catholic, Jewish, and Protestant groups receive large portions of their revenues from government sources. See Stephen V. Monsma, When Sacred and Secular Mix: Religious Non-profit Organizations and Public Money 3-4, 10 (1996). Stephen Bates reports similar findings for non-sectarian charities: 60% of the revenues for “Save the Children” are government provided, 78% for CARE, and 80% for the United Cerebral Palsy Association. Stephen Bates, National Service: Getting Things Done?, A Cantigny Conference Series Special Report 45 (1996).
legislation could make it harder for public regulations to influence the ways that religious institutions deliver publicly funded services.\textsuperscript{3} Opponents of these developments worry that public monies are being used to subsidize religious activities, including proselytizing and perhaps (under voucher schemes) indoctrination. On the other hand, many proponents welcome these developments, including easing regulations on faith-based institutions. If government wants to enter into partnerships with faith-based social service organizations, it should respect the autonomy and integrity of its religious partners. The strings that come attached to public monies—in the form of regulations—should therefore be kept to a minimum.

These concerns with the religious autonomy and integrity of publicly funded faith-based welfare agencies have been ably articulated in recent books by Stephen V. Monsma and Charles L. Glenn.\textsuperscript{4} Monsma and Glenn urge greater appreciation and support for the work being done by publicly funded faith-based organizations. They object, however, to the “non-neutrality” of public principles that brand some religious institutions as more worthy of public support than others. They argue that an excess of regulations, conditions on funding, and pressures toward professionalization undermine the autonomy and integrity of faith-based organizations. They question the Supreme Court’s oft-expressed concern that public funds should not flow to “pervasively sectarian” organizations, or organizations whose ethos expresses “sectarian exclusivity.” They condemn the “non-neutrality” toward different faiths that is expressed in such sentiments, which they find running through not only court opinions but various forms of government regulation. Glenn charges that the government uses the term “sectarian” unfairly to cast aspersions on “the wrong kind of religion,” and to exclude some religious communities from the delivery of publicly-funded social services.\textsuperscript{5}

I am not going to address these issues in detail.\textsuperscript{6} Instead, I will focus on the apparent implications of Putnam’s project for these general

\textsuperscript{3} According to Charles L. Glenn, the “Charitable Choice provision requires that, if states choose to contract for social services with federal welfare funds, they must allow faith-based organizations to compete on equal terms and may not impose conditions that affect their religious practices.” Charles L. Glenn, The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies 8 (2000). The provisions of Charitable Choice, however, are fairly complex: it mandates that religious institutions must be allowed to maintain a religious environment by displaying religious symbols, and they retain the right to use religious criteria in hiring, firing and disciplining employees, but they remain subject to other anti-discrimination laws. They may not discriminate against clients on the basis of religion, and they may not require beneficiaries to participate in any religious exercise. Federal contract funds may not be used to pay for worship services, sectarian instruction, or proselytization. \textit{Id.} at 107-10.

\textsuperscript{4} See Monsma, \textit{supra} note 2; Glenn, \textit{supra} note 3.

\textsuperscript{5} Glenn, \textit{supra} note 3, at 82-83.

\textsuperscript{6} I have addressed Monsma’s version of some of these charges elsewhere in
charges. The non-neutrality of which Glenn complains, and indeed the bias against "sectarianism," turns out to be integral to how civil society supports liberal democracy.

I. THE NORMATIVITY AND PARTICULARITY OF "SOCIAL CAPITAL"

Robert D. Putnam's recent work seems to me a signal contribution to our understanding of what it takes to promote a good society within a liberal democratic constitutional framework. His account has distinctive normative implications, combining liberal and communitarian values: the healthy civic order is a regime of liberal communities. This account has decided implications for the forms of diversity that will flourish within the liberal democratic constitutional framework of an extended republic.

Consider two statements about religious communities and their relation to a healthy democracy. The first comes from Putnam's famous study of good government in Italy, *Making Democracy Work*. He found:

Membership rates in hierarchically ordered organizations (like the Mafia or the institutional Catholic Church) should be negatively associated with good government; in Italy, at least, the most devout churchgoers are the least civic-minded. All these expectations are consistent with the evidence of this study.... Good government in Italy is a by-product of singing groups and soccer clubs, not prayer. 7

And as Putnam puts it elsewhere in his study of Italian democracy, "Organized religion, at least in Catholic Italy, is an alternative to the civic community, not a part of it.... In today's Italy, as in the Italy of Machiavelli's civic humanists, the civic community is a secular community." 8

A very different note is sounded at the end of Putnam's more recent book, *Bowling Alone: The Collapse and Revival of American Community*:

I challenge America's clergy, lay leaders, theologians, and ordinary worshippers: *Let us spur a new, pluralistic, socially responsible "great awakening," so that by 2010 Americans will be more deeply engaged than we are today in one or another spiritual community of meaning, while at the same time becoming more tolerant of the faiths and practices of other Americans.* 9

What is notable about this summons to revivalism is that it both

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8. *Id.* at 107-09.

recognizes that "[f]aith-based communities remain... a crucial reservoir of social capital," and equally that not every form of religious enthusiasm contributes to the public good. The desired revivalism will be "pluralistic [and] socially responsible" and "at the same time" even "more tolerant" than are today's religious communities.

There is an exquisite balancing act packed into these statements, that I want to explore. This balancing act in effect seems to me essential to the success of the liberal democratic constitutional experience. Although Putnam's account is not anti-religious, it does insist that not all religious communities contribute to the civic health of a liberal democratic order. Some religions (like the more traditional forms of Roman Catholicism) seem to undermine at least some important civic virtues, especially the civic virtues of generalized cooperativeness that, as we shall see, are of greatest concern to Putnam. Religious communities may or may not contribute to civil society, when civil society is understood as the set of communities, patterns of association, and personal attitudes that contribute to the well-working of liberal democracy.

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But what is "social capital" and what does it imply about the good society and civic virtue? Societies are high in social capital when trusting attitudes prevail and cooperative activities abound among citizens. The phrase is meant to identify a central feature of good citizenship and the importance of social networks to sustaining it: virtuous citizens are active in cooperative groups, associations, and social networks. They are personally connected and ready to take part in collective endeavors. "Civic virtue is most powerful when embedded in a dense network of reciprocal social relations." Groups and associations are important as venues in which individuals learn to be trustworthy. In such venues, cooperative individuals earn the friendship and esteem of their peers, and the reputation for reliability invites the trusting cooperation of others. Groups, associations, and social networks nurture cooperation by bringing individuals into repeated interaction. In a society with thick networks of groups and associations individuals will have many opportunities to offer to cooperate with others, and to accept or spurn offers of cooperation. Their confederates will likewise have many opportunities to witness or hear about these transactions. Reputations can be built up or made to suffer, and where social networks are dense, information spreads more easily and widely.

10. Id. at 408.
11. Id. at 409 (emphasis omitted).
12. Id. at 19.
providing individuals with an incentive to exhibit qualities that make them eligible for future cooperative endeavors.¹³

Virtuous citizens on this account actively manifest their cooperativeness in social activities and networks of all kinds: formal and informal, civic, cultural, and recreational. This connectedness yields direct and specific benefits to individuals, as well as benefits to uninvolved third parties, and the democratic society at large. Participation in social networks provides specific benefits to people looking for jobs, for example, as well as aid in dealing with various personal or social problems. When individuals develop and utilize contacts in this way, it becomes more likely that they will be enlisted in helping others. In a society with lots of social networks, the failure to reciprocally assist others or the propensity to shirk one’s responsibilities are more likely to become widely known. A society with fairly dense social networks is, therefore, favorable to the emergence of generalized norms of reciprocity: individuals are more likely to do their part knowing that others are also doing their part. Where such a generalized norm exists, it makes sense to trust other people in general. A general norm of trustworthiness makes social and economic endeavors of all sorts more efficient, as people do not need to spend resources monitoring each other and enforcing rules. Indeed, they need not resort as frequently to legal action. There are wider civic benefits as well. Those who are socially connected seem to play a more active and informed role in various sorts of civic and political activities: they are more likely to read the newspaper and stay informed, and the very existence of social connections helps transmit information about the problems of other people.¹⁴

All of this seems to be quite plausible, and Putnam musters a great deal of theory and evidence in his two books to make the case for these propositions in the context of democratic practice. I will not try to prove these claims here, rather I will use them as a plausible way of fleshing out the now very old and widespread belief that the well-being of modern mass democracies depends in part on the vigor of the associations, groups, and social networks that exist within society—a belief advanced by thinkers from Adam Smith to Alexis de Tocqueville, to Emile Durkheim, to much of the post-World War II “mass society” and civic culture literature in social science (as well as Catholic social thought and the idea of “subsidiarity”). Indeed, the controversial substantive features of Putnam’s social ideal are also rooted in these older accounts.¹⁵

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¹⁴ Putnam, Bowling Alone, supra note 9, at 288-90.

¹⁵ I have explored some of these sources in Stephen Macedo, Community, Diversity, and Civic Education: Toward a Liberal Political Science of Group Life, 13
Putnam argues that participation in groups and social networks of many kinds is declining. For example, it is well known that participation in politics and many community and civic associations has declined over the last 35 years. In politics, Putnam argues that political moderates, in particular, are participating less, thus leaving the field to ideological extremists at both ends of the spectrum. In addition, he finds declining participation in clubs and civic organizations, and even cites evidence that people are “schmoozing” less: they have less contact with their neighbors, play cards less, bowl in leagues less frequently, and it is less common for families to eat meals together. Furthermore, charitable giving as a percentage of income, though not as a total dollar amount, is down; but volunteering is up among the young, perhaps because of service programs in schools (or as a “rational choice” colleague suggested to me, because college admissions officers now put more emphasis on “service” related activities). People’s trust in one another has also declined a great deal, and various measures of incivility are up (one thing drivers are giving more of than they used to is “the finger.” The causes of declining participation, sociability, trust, and civility are complex, but appear to include (according to Putnam) rising pressures of time and money, suburbanization and sprawl, more time spent commuting, the rise of privatized and isolated forms of entertainment (especially TV viewing), and the passing of older generations whose civic enthusiasms were heightened by the shared experience of World War II.

All of this adds up to a picture of a steep decline in social connectedness and trust in the last third of the 20th century. Putnam depicts this with energy and imagination (though I am sure debates will rage around his claims). The alleged consequences for individual and social well-being are extensive and serious. Putnam cites striking evidence that connected, socially active people lead much happier and healthier lives. Places that are high in social capital have low mortality rates from disease, low crime rates, low rates of cheating on taxes, and these places are higher in indices of child health, welfare, and education (in high social capital states, such as Minnesota, Garrison Keiller is right, all the children are above average). Though the country as a whole is witnessing a decline in social capital, indexes vary widely across the states. As a nation we are becoming less like Minnesota, Vermont, and Utah, and more like Mississippi, Louisiana,
and Georgia (states that represent the high and low ends of social capital respectively).\(^{23}\)

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I do not want to belabor Putnam’s argument, or his claims about declining social capital. I want to focus instead on the substantive vision of a well-working democracy that this account implies.

Putnam’s concerns, as stated thus far, are liable to sound unobjectionable even if somewhat exaggerated. Who is against cooperation? Not to mention good health, a long life, and an active citizenry? But what, we want to ask, is the specific payoff of this account for a liberal democratic constitutional order? Why should we think that the account of social capital is especially relevant to the questions at hand, namely, civic virtue in a liberal democratic constitutional order in particular? There are in fact features of Putnam’s story that draw it close to the substantive needs of our constitutional project. One crucial feature is the emphasis on generalized reciprocity.

In his book on Italy, Putnam emphasized the importance of “cross-cutting” associations and memberships. According to Putnam, social cleavages and associational boundaries should not constantly overlap and reinforce each other. If they do, divisions in society will run very deep, and cooperative trusting relations across society are liable to be impossible. Where social divisions and group memberships are complex and cross-cutting (rather than reinforcing) broad forms of cooperativeness are far more likely. Individuals in complex cross-cutting social networks are more likely to be open to new and broader forms of association.\(^{24}\)

Deep social cleavages are liable to reinforce and be reinforced by vertical patterns of authority. Where individuals are distrustful and unengaged with others or engaged only in narrow tribalistic or deeply bounded groupings, they are liable to need to look upward to centralized authorities to settle disputes. In civic regions, on the other hand, where cooperation and trust are widespread and cut across group lines, authority tends to be horizontal. Consequently, norms emerge out of ordinary social interactions, and fewer rules need to be imposed from above. Cooperation may first develop out of the primordial bonds of families, kinship ties, inward looking tribes and villages, but social capital—the generalized reciprocity that supports liberal democratic civic virtues—will tend to be broad and somewhat weak, to “cut across social cleavages” and “nourish wider cooperation.”\(^{25}\) Or, as Mark Granovetter puts it, “[w]eak ties are

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23. Id. at 287-95.
25. Id. at 175.
more likely to link members of different small groups than are strong ones, which tend to be concentrated within particular groups." Hence Granovetter's oft-quoted emphasis on "the strength of weak ties." 26

The same point is made in Putnam's more recent account, where he stresses the difference between "bonding" and "bridging" associations. Bonding associations appear as the more primitive form: they are "inward looking and tend to reinforce exclusive identities and homogeneous groups. Examples... include ethnic fraternal organizations, church-based women's reading groups, and fashionable country clubs." 27 Bonding associations tend to be exclusive, and to heighten distinctions between insiders and outsiders. "Bridging" associations are more specifically attuned to the values and virtues required by a liberal democratic social order: they are "outward looking and encompass people across diverse social cleavages. Examples... include the civil rights movement, many youth service groups, and ecumenical religious organizations." 28

Bonding associations have their uses. The intensity of the bonds they sustain can provide "crucial social and psychological support for less fortunate members of the community," and might also induce people to take risks on fellow members that outsiders would not, such as providing start-up financing. 29 Although bonding associations cannot be altogether left behind, their exclusivity makes them intrinsically problematic in a liberal democratic context. Bonding social capital "bolsters our narrower selves," and "by creating strong in-group loyalty, may also create strong out-group antagonism." 30 Accordingly, bonding social capital is sometimes harmful. Bridging social capital, on the other hand, is always to be welcomed: it is an unambiguous good because it generates all the benefits of social cooperation as well as "broader identities and reciprocity." 31

Putnam does not make much of the fact, but he is obviously sorting and ranking basic human goods. Our liberal democratic constitutional order as a whole stands, after all, for particular goods and values, such as social peace, tolerance and individual freedom, equality of respect among persons, friendship and cooperation among all citizens, commercial prosperity, and (at least once all these are secured) political moderation. Particular religious and moral visions often come into conflict with these goods. For instance, material success and worldliness may be seen as corrupting, and a great emphasis on equality of respect among citizens may be seen as at odds with the

26. Id. (quoting Mark S. Granovetter, The Strength of Weak Ties, 78 Am. J. Soc., 1360, 1376 (1973)).
27. Id.
28. Id.
29. Id.
30. Id. at 23.
31. Id.
judgmentalism needed to sustain a commitment to severe forms of self-control and the renunciation of worldly pleasures. There are communities of people who do what they can to maintain boundedness around their lives and communities in order to support ethical visions at odds with mainstream values: they will not place a high value on broad social cooperation and reciprocity. Indeed, religious communities that view today's popular culture as essentially corrupt are unlikely to celebrate "the strength of weak ties." Weak ties turn out to be "strong" only when it comes to mainstream forms of "success," like getting a job. Networks of "weak ties" remain pitifully weak when it comes to supporting efforts to live up to demanding traditional sexual and moral codes concerning such things as the permanence of marriage, the wrongness of pre-marital sex, and other matters that are counter to the cultural mainstream. Weak ties link all citizens together in networks of reciprocal cooperation, bridging potentially deep social cleavages, and promoting comity and political moderation, but all of these good things seem likely to come at the "cost" (if one regards it as a cost) of drawing us all into a shared and fluid cultural milieu.

II. HOW SOCIAL CAPITAL SUPPORTS SPECIFICALLY LIBERAL DEMOCRATIC VIRTUES

In what ways is this account of civic virtue (which Putnam ably articulates and elaborates, but did not invent) especially appropriate to a modern, extended, liberal democratic commercial republic such as ours?

I argued at the beginning of this article that our constitutional order seems to depend upon certain widespread civic virtues. I would not argue, however, that our constitution depends upon the sorts of demanding virtues promoted by some versions of classical or civic republicanism. It might be noble for citizens to develop traits of character that lead them to put aside their self-interest whenever it comes into conflict with principles based on the good of all. Demanding, self-interest-denying forms of civic virtue will not easily be reconciled with liberty, as Madison rightly emphasized in Federalist No. 10. If we wish to preserve liberty, then we should prefer forms of civic virtue that do not require us to make war upon (though they may require us to temper, broaden, and elevate) the core tendencies of free self-governing individuals in a modern, commercial polity such as ours.

It is significant, therefore, that the virtues that Putnam seeks to promote are not too far removed from the requirements of a prosperous economy and a diverse and extended liberal society. The central motive upon which his account rests is not altruism but reciprocity. What is good for society on this account also appears to be good for the self-interested individual. On the one hand, isolation
leads to depression, health problems, a shorter life, and a tougher road to economic advancement. On the other hand, scheming selfishness is really not the best way to get ahead, at least in favorable social circumstances (where there are enough social networks to reward cooperatives). Or maybe we should put it this way: it is not unrealistic to think that by promoting social capital, we can create a social environment in which cultivating the virtues of cooperativeness are the best bet for the self-interested individual. Putnam has forwarded an account of civic virtue that is motivationally realistic and consistent with overarching constitutional commitments to freedom and equality in a commercial republic.

“Social capital” also has inclusive and egalitarian aspects. It is most bountiful where there is a prevalent norm of “generalized reciprocity,” that is, where citizens trust people in general, and not only their particular groups of confederates: where their cooperativeness is not limited to their long-time neighbors, or fellow parishioners, their union brothers and sisters, their fellow Irishmen, or any other particular affiliation or identity. Social capital begins in particular associations and local social networks, but at its best it transcends these limitations: virtuous citizens on this model are willing to trust and cooperate with everyone, or at least with all who are prepared reciprocally to exhibit trusting cooperation (all of one’s fellow citizens if we consider a particular country, but there is no reason why cooperative patterns should not extend beyond national borders). Moreover, in regions characterized by low social capital, class differences are also exacerbated.

Putnam admits that associations and social networks are not always good, and he is certainly right. One of the great worries about the revival of concern with groups and associations is that these partial loyalties could detract from our most inclusive loyalties, the widest forms of tolerance. The key is to promote generalized reciprocity, or an openness to trusting cooperation with any and all. Putnam emphasizes that the most intolerant individuals tend to be socially isolated. The important claim here is that liberalism—broad attitudes of tolerance—and strong communities (of a certain sort at least) tend to go together. Generalized reciprocity builds democratic forms of community—encompassing all citizens—at the expense of intense shared commitments among sub-communities, whether religious, racial, ethnic, or otherwise.

One might worry that promoting people’s embeddedness in social groups and associations could undermine individual freedom. Embeddedness in groups could fix people’s identities, at least if that

32. Id. at 20-22 (emphasizing generalized reciprocity); Putnam, Making Democracy Work, supra note 7, at 182-83 (same).
33. Putnam, Making Democracy Work, supra note 7, at 111.
embeddedness is very deep. Such sometimes seems to be the case with the "constitutive commitments" that Michael J. Sandel has recommended as an alternative to liberalism: these are commitments that define us more deeply than our capacities for critical reflection and choice.\(^\text{34}\) But here again, Putnam's "communitarianism" remains firmly liberal. According to his ideal, individuals are embedded in a multiplicity of cross-cutting ties and affiliations, and the complexity of commitments thus created, and the conflicts among various affiliations, helps sustain both individual freedom and the capacity for critical reflectiveness on one's particular commitments. This trait is important not only for freedom but for our capacity to think about what justice requires in a diverse society. Where multiple communal affiliations do not overlap and reinforce each other, they do not bar critical reflection and choice but spur critical reflection and choice. Liberal individuals are not best understood as atomistically isolated from social ties, but rather as complexly committed to a variety of associations and affiliations whose sometimes conflicting demands call for critical consideration, reflection, and judgment. So, Putnam's ideal of civil society is consistent with, and indeed supportive of, liberal freedom and the character traits of critical reflectiveness associated with liberal justice. Of course, the fact that multiple commitments elicit critical reflection also means that free individuals are not deeply or ineluctably committed to anything: a secure identity is not given, unshakeable beliefs are not easily available. A certain shallowness of commitment may go along with this model of freedom, and some will see that shallowness as the unattractive corollary of Putnam's jaunty celebration of "the strength of weak ties."\(^\text{35}\)

Putnam's view seems to me to conform with distinct and substantive liberal democratic values and virtues:

- it rests on realistic links with commercial self-interest (at both the individual and collective level): trustful individuals and societies are more efficient and prosperous;
- it is egalitarian and inclusive: it pushes citizens toward regarding everyone as a potential cooperator—the test is behavioral, not ascriptive;
- it is consistent with liberal tolerance: the right sorts of community memberships enhance tolerance;
- it is consistent with liberal freedom: cross-cutting and complex memberships promote the fluidity of individual commitments, and the maintenance of a critical perspective on group-based values;
- it promotes the pursuit of justice: it is consistent with critical

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\(^{34}\) Michael Sandel, Liberalism and the Limits of Justice (1982).

\(^{35}\) I argue for the centrality of multiple commitments and critical distance on one's commitments, by way of responding to communitarian and civic republican critics of liberalism, in Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism (1990).
reflectiveness, and it promotes knowledge of the circumstances of others, and active engagement in social causes;

- it promotes democratic political activity and knowledge (as Putnam emphasizes, though I have not) as well as moderation and willingness to compromise.

Putnam's is a liberal-democratic account of the virtues: it promotes liberal democratic individuals and supporting community structures. There is nothing particularly new here, but this is a useful account of the importance of particular social structures to liberal democratic civic virtues, one that is already proving to be influential.

III. SOCIAL CAPITAL, RELIGIOUS COMMUNITIES, AND NORMATIVE DIVERSITY

Religious communities like any other community, can tend in the direction of either bonding or bridging, with the latter being the more inclusive, civic, and liberal democratic in orientation. In his study of Italy, Putnam found that the uncivic regions are more traditionally Catholic: where church attendance is high, divorce is rejected, and religious marriages are strongly favored over civil ones, rates of civic participation are low.\textsuperscript{36} The civic regions were characterized both by greater evidence of secularism, but also by stronger lay involvement in religious affairs.\textsuperscript{37} Traditional Catholicism and clericalism promote hierarchical patterns of authority and dampen civic activity, whereas in the civic regions authority tends to flow horizontally across congregations and citizens themselves.\textsuperscript{38}

In his study of America, Putnam found that mainline Protestant and Catholic churches seem to help mobilize civic engagement. They have the qualities of bridging associations. Instead of monopolizing their congregants' attention or discouraging wider social involvements, members of these communities tend to become involved in helping to lead secular civic groups. Putnam found the mainline churches (Protestant and Catholic) to be schools of liberal democratic civic engagement. Evangelical churches, on the other hand, tend to be more exclusive bonding associations. They invest their social capital "at home more than in the wider community,"\textsuperscript{39} they work to reinforce "life-style boundaries within the dominant culture,"\textsuperscript{40} and their members do not tend to become active leaders in wider civic associations. They are more concerned with reaffirming their faith.

\textsuperscript{36} Putnam, Making Democracy Work, supra note 7, at 107-09.
\textsuperscript{37} Id. at 127.
\textsuperscript{38} Id. at 173.
\textsuperscript{39} Putnam, Bowling Alone, supra note 9, at 77.
\textsuperscript{40} Id. (quoting Wade Clark Roof, America's Voluntary Establishment: Mainline Religion in Transition, in Religion and America: Spiritual Life in a Secular Age 132, 134 (Mary Douglas & Steven Tipton eds., 1983).
and less concerned with bettering the larger society.\textsuperscript{41} Fundamentalist and evangelical churches offer more intense forms of communal commitment, but this inward-looking intensity seems positively to discourage investments in efforts to improve the wider society. Conservative congregations offer fewer "social outreach services or programs."\textsuperscript{42} Strikingly, while black church involvement has always been regarded as essential to the mobilization for civil rights, the story was not so simple: "black civic engagement was positively correlated with involvement in mainline black churches, but negatively associated with involvement in black fundamentalist denominations."\textsuperscript{43} In sum, two trends with respect to church attendance in America bode ill for social engagement and civic virtue: the decline of ("more worldly") mainline denominations, and the revitalization of evangelical churches, which Putnam describes as "an insurgent, more disciplined, more sect-like, less 'secularized' religious movement."\textsuperscript{44}

With the reappearance of that nasty word "sect," let us recall Charles L. Glenn's complaint that it is, in effect, no more than a way for courts and other public agencies to discriminate arbitrarily against the "wrong" (socially marginalized? or less popular?) religious communities. Is a discriminating, critical stance toward differing churches and faiths arbitrarily or defensibly discriminatory? Here again is Glenn (quoting an article by Richard A. Baer entitled "The Supreme Court's Discriminatory Use of the Term 'Sectarian'"):

"Throughout American history,... 'sectarian' has been used to exclude and to ostracize. It is a term used to disparage and marginalize particular groups of Americans and particular kinds of thinking.... [It] always implies that there exists a contrasting mainstream, a right way of thinking, a common position that deserves to be accepted by everyone."\textsuperscript{45}

But, Glenn observes, "Baer argues that the Supreme Court's use of \textit{sectarian} is by no means neutral."\textsuperscript{46} Indeed I'm sure it is not, but let us get back to Baer:

Thus the Court refers to 'sectarian exclusivity,' 'narrower sectarian purposes,' 'sectarian division,' 'sectarian controversies,' 'political fragmentation on sectarian lines,' and 'sectarian bickering and strife.' Terms such as 'bitter controversies,' 'proselytizing function,' and 'bias' are closely conjoined with the term 'sectarian.'...\textsuperscript{...}

\textsuperscript{41} Id. at 77-79.
\textsuperscript{42} Id. at 78.
\textsuperscript{43} Id.
\textsuperscript{44} Id. at 77.
\textsuperscript{45} Glenn, supra note 3, at 82 (quoting Richard A. Baer, Jr., The Supreme Court's Discriminatory Use of the Term "Sectarian," 6 J. L. & Pol. 449, 449-51 (1990)).
\textsuperscript{46} Id. (italics in original).
Conversely, the Court uses more neutral or even positive language in conjunction with the terms ‘secular’ and ‘nonsectarian.’

Glenn joins Baer in complaining of the arbitrariness and unfairness of the concern with sect-like churches: the pejorative “sectarian” is applied simply to “the wrong kind of religion.”

I do not want to survey and assess the accuracy of this account of the Supreme Court’s use of the category of sectarianism, but rather would suggest that (insofar as Glenn’s account is correct) the Court may be on to something constructive, contrary to what Glenn seems to think. According to Glenn, the use of “sectarian” as a pejorative term in the courts follows in the footsteps of Thomas Jefferson, Horace Mann, and others who preferred “rational and moralistic” versions of Protestantism freed from the “superstition” of traditional forms of religiosity. Jefferson, Mann, and others take the stance they do in politics, Glenn seems to assume, because they desired to advance the true religion, as they understood it. What we can now see, in light of our discussion of Putnam, is that there is a political or civic case for being concerned about “sect-like” communities of all sorts, whether religious or otherwise.

The case against sects emerges under the rubric of an analysis of “bonding” associations. The qualities that have been ascribed to “sectarian” organizations, by Glenn and Baer’s account, track pretty well the worrisome qualities that Putnam ascribes to “bonding” associations. They are all qualities that encourage the inward-looking concern with doctrinal matters at the expense of wider forms of social cooperation and a focus on the engagement with social problems (“exclusivity,” “narrowness,” encouraging “division,” preoccupied with “sectarian controversy,” etc.).

There is a civic basis for the concern with “sect-like” communities. Putnam articulates it, but he has hardly invented it. Regulations and policies that reflect the “bias” against sect-like communities will indeed have non-neutral impacts on differing faiths and religious communities and organizations, but insofar as the justification is civic, it will not be so easy to say that the policies are simply arbitrary and unfair.

47. Id. (quoting Baer, supra note 45, at 453 (omission in original)).
48. Id. (quoting Baer, supra note 45, at 459 (italics in original)).
49. In one way, of course, Putnam’s argument represents a proposed alliance of democratic theory and religion. It was not so long ago that John Dewey argued that all traditional religions—by which he seemed to mean all religious communities that include a belief in a transcendent being and otherworldly rewards—were at odds with democracy’s “common faith.” See John Dewey, A Common Faith (1934). Dewey’s core concern was that any religious group that focuses human attention on otherworldly or transcendent rewards would draw energies away from the project of social reform in the here and now. The thrust of Putnam’s claim is that irrespective of the ultimate or transcendent motives for participating in religious communities, many churches are agencies that promote rather than detract from wider involvements in
Many of the features of public policy that Glenn complains of can be linked to values associated with the predominance of "bridging" associations. Which is not to say that courts and policy makers have been consciously and principally motivated by a desire to promote a Putnamesque vision of civil society. No doubt many at least have something like his vision of pluralism in the back of their minds. Nonetheless, liberal democratic values such as inclusion, equality, and individual freedom, will often support regulations and conditions on public funding schemes that have the effect of promoting bridging associations.

So with respect to school voucher experiments in Cleveland and Milwaukee, it is notable that in response to concerns expressed by courts and in legislative hearings, the receipt of publicly funded vouchers by religious schools has been attended by the following sorts of conditions: religious schools may decide how many students with vouchers they wish to take, but if they are oversubscribed they cannot pick and choose among children with vouchers on religious grounds (they may be allowed to prefer students with siblings already enrolled, and children who live in the school's neighborhood). In addition (in at least one of these cities) the schools may not impose mandatory religious exercises on children attending with vouchers. The primary justification for these conditions is no doubt equity: if vouchers are being publicly funded because religious schools provide a better education than public schools, all of the community's children should have a fair and equal chance of securing admission to those better schools. In addition, prohibition on mandatory religious exercises helps protect the freedom of children with vouchers. 50

The further effect of these conditions is to make religious schools that would otherwise be sect-like, bonding associations—exclusive to the children of a particular religious community—more like inclusive bridging associations that are open to educating all of the children in the community. This would seem to be exactly the sort of thing Glenn would object to. Indeed, evangelical schools in Milwaukee and Cleveland—those that view their curriculum in pervasively religious terms—have refused to accept children with vouchers. The conditions that come attached to vouchers require them to do things that in effect dampen the expression of their religious identity. By comparison, Catholic schools have had no difficulty accepting children under these voucher programs. 51

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So, a bias against "sect-like" religions runs through some voucher experiments. Other public programs have other conditions that tilt against the qualities of bonding associations and in favor of bridging associations. The extension of anti-discrimination requirements to publicly funded non-profits has the effect of undermining the ability of religious organizations to maintain their distinctiveness: it requires these organizations to be open to hiring otherwise qualified staff people who are not church members. Interestingly, the Salvation Army (which has an evangelical mission) seems to have moved in this direction without being required to. In hiring paid professional staffers, applicants are asked if they can support the Army's ethos and mission, but they are not required to be members of particular churches.

The Charitable Choice provision (mentioned above) seeks to protect religious organizations that receive public funds from having to downplay their religious missions. It does this in part by providing that these organizations should be able to base hiring decisions on religious grounds. The advisability of allowing this seems to me questionable, and more a matter of prudence than basic principle. It is also interesting, however, that Charitable Choice also insists on some of the same sorts of limitations on faith-based agencies that are found in some voucher experiments: agencies may not discriminate on religious grounds in deciding which clients to serve, and they may not require clients to participate in religious exercises as a condition of service. These types of limitations have made evangelical academies unwilling to accept students with vouchers in Milwaukee and Cleveland.52 Thus, Charitable Choice still allows public policy to tilt in the direction of equality and inclusion.53

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Sect-like communities sometimes have their public uses. Consider "Teen Challenge," a drug rehabilitation program that apparently enjoys rates of success that far surpass those of secular agencies. The agencies are staffed by "certified chemical dependency counselors" that treat drug addiction as a "complex disease." Teen Challenge regards drug addiction as rooted in sin, and its religious orientation is expressed "in every detail of its work."54 The key to breaking drug dependence, for Teen Challenge, is to develop a personal relationship with Jesus Christ, with the support of an intensely committed group of peers. Teen Challenge provides "a community within which recovery is strongly valued and indeed insisted upon as the condition of

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52. See id. (discussing the situation in Milwaukee).
53. See Glenn, supra note 3, at 107-10.
54. Id. at 62-63.
continued participation." Teen Challenge creates "close-knit Christian communities... in the intensive setting of a rural retreat," and insists on "[a] relatively high level of continuing participation in a church," so that reform "becomes a habitual mode of life." Teen Challenge in this way helps addicts find "a substitute purpose in life... a whole new way of living."

Glenn rightly notes that federal government guidelines that reject this approach, and that prefer a disease model of addiction (requiring medical treatment, psychological counseling and therapy) are hardly "neutral" with respect to the "goals and meaning of human life." He may well be right that government bureaucrats have unfairly ignored the success rates of Teen Challenge in seeking to deny it government funding (nearly 70% of Teen Challenge clients, according to a study Glenn cites, remain free of not only drugs but alcohol and nicotine seven years after beginning the program). Glenn may be right to urge that, when confronting horrible and life-destroying forms of addiction, the virtues of sects (bonding associations) should be appreciated and accommodated on public policy grounds. In other words, Teen Challenge may deserve government funding at least if—and it is a big "if"—the sorts of empirical studies cited by Glenn in support of it are sound. But this does not mean that the public policy of a liberal democratic constitutional order will or should adopt a "neutral" attitude toward the values that Teen Challenge stands for. The overall purpose of the public policy of this constitutional order will still be to prepare people to be liberal democratic citizens. And that means promoting an overall order in which the values of bonding, sect-like associations are, on the whole, subordinate to the virtues of bridging associations.

CONCLUSION

I suspect that the limits on the sorts of regulations that accompany the flow of public monies to non-profit agencies is often more a matter of prudence than of basic principle. Any secular or religiously based non-profit organization that finds the regulations accompanying public funds too intrusive, too burdening to the organization's moral or spiritual mission, is entirely free not to take the money. That is the principal, and most deeply principled guarantee of religious freedom. Churches and other associations are in this way entirely free to guard their own autonomy and integrity by not participating in public programs. Although these acts of disassociation are not costless, no sensible view of liberty should guarantee that the exercises of rights

55. Id. at 68.
56. Id.
57. Id.
58. Id. at 69.
are costless, or equally costly across groups. While a liberal society should respect freedom of association, including religious association, it need not guarantee that its institutions and policies provide a level playing field for the different groups that compete for members in society. Such a guarantee—which some commentators puzzlingly seem to call for in the name of a proper governmental “neutrality” toward religion—would be utterly impossible to realize, and socially divisive to establish as a central public preoccupation.⁵⁹

As a matter of principle it is important that the strings that come attached to public dollars flowing to religious non-profits are voluntarily accepted, and justified in terms of valid and important public purposes, such as equity, fairness, and the promotion of broad forms of social cooperation among citizens. Conditions and regulations should not impose huge burdens on non-profit institutions for the sake of trivial public benefits (this is a matter of judgment). And since there is a good case, I believe that the overall public good is advanced by the involvement of faith-based and other non-profit associations in social service delivery. It would be foolish to drive them off or to undermine their effectiveness gratuitously by imposing needless and meddlesome regulations (some of which may be supported by self-interested public bureaucrats who would rather not compete with non-public agencies).

But the fact is that public regulation and institutional design have a good deal of non-neutral work to do in governing public interactions with civil society institutions. I’ve written elsewhere about these ambitions, and the long history of conflicts generated by them around public schools and other institutions.⁶⁰

I am generally in favor of the trend toward taking greater advantage of intermediate associations and non-profit institutions in the delivery of social services.⁶¹ I believe that the recent preoccupation with civil society institutions is a healthy and timely one. But we should not

⁵⁹. Michael McConnell seems to call for such a form of neutrality as the baseline for measuring the legitimate effects of public policies on religious communities. Michael W. McConnell, Religious Freedom at a Crossroads, 59 U. Chi. L. Rev. 115, 169 (1992). John Tomasi also seems to want to argue for such a guarantee as a basic requirement of “political liberalism” as he understands it. See John Tomasi, Liberalism Beyond Justice: Citizens, Society, and the Boundaries of Political Theory (2001).


⁶¹. Sorting out the empirical evidence for the greater effectiveness of private non-profit service delivery will, of course, be no easier than in the vexing area of schooling, where researchers have been trying to measure for decades how and why Catholic schools, for example, may perform better than public schools for some children.
mistake what we are up to. If it is true that we can advance public purposes and spend tax dollars more effectively by relying on faith-based and other private agencies to deliver social services, such as drug rehabilitation, nursing and health care, education, and other social services, then regulation, policy and institutional design should be adequate to insure that our public purposes are served. Or to put it otherwise, I sympathize with the view that the well-working of the formal institutions of a liberal constitutional order depends on the health of informal social institutions and associations. This seems to me to point toward a complex public project: a project that will be deeply non-neutral with respect to normative diversity, a project that involves promoting—in the name of the public values associated with liberal democratic forms of social capital—some ways of life and making it harder to live others. The patterns of social life that support liberal democratic forms of civic flourishing embody definite rankings of competing human goods, which will be associated with some versions of religious truth and not others. In this sense, the project of promoting a healthy liberal democratic civil society is inevitably a deeply judgmental and non-neutral project.