Session 6 Recommended Reading:
Gregg, Samuel. "Markets, Morality, and Civil Society." The Intercollegiate Review. Fall 03/Spring 04.

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Subsidiarity: The "Other" Ground of Limited Government

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I recently participated in a conference on Catholicism and religious liberty attended by a variety of scholars, Catholic and non-Catholic. In the course of our discussion, we turned to the question of various grounds for limited government in the Catholic tradition, and some of us mentioned the principle of subsidiarity. Several scholars in the group, intelligent and well-read in political theory, interrupted to ask what subsidiarity was, never having heard of it.

This anecdote reflects a great failure of American Catholics, since it shows how ineffective they have been in making the riches of the Church’s social teaching known to their fellow citizens. Worse yet, I suspect that many Catholics would likewise be puzzled by a reference to subsidiarity. That is very unfortunate, because Catholics in America thereby lose an opportunity to make a valuable contribution to our country’s well-being. Subsidiarity, I want to argue, is a more satisfactory foundation for ideas of limited government than what the American tradition of political thought (drawn largely from Locke) offers.

This essay will reflect on some American notions of limited government, focusing on a contemporary form of liberalism that is particularly dangerous. It will then briefly describe the principle of subsidiarity and give several examples of it, trying to suggest why subsidiarity is a better ground for limited government than the more fashionable liberal alternative.
Americans and Limited Government

Americans have always been attached to the concept of limited government. At the time of its writing, the American Constitution was strikingly innovative in the extent of its concern to restrict the powers of the new national government (by enumerating those powers and by imposing some explicit limitations on them) and to provide for internal checks as well, by separating the various branches of the new government and establishing a series of checks and balances between them. This limitation on the powers of government, in fact, became in time one of the principal criticisms directed at it. Walter Bagehot, for example, argued in The English Constitution (1867) that the American Constitution was extremely defective and that it was saved from catastrophe only by the quality of American citizens:

The Americans now extol their institutions, and so defraud themselves of their due praise. But if they had not a genius for politics; if they had not a moderation in action singularly curious where superficial speech is so violent; if they had not a regard for law, such as no great people have yet evinced, and infinitely surpassing ours,—the multiplicity of authorities in the American Constitution would long ago have brought it to a bad end. Sensible shareholders, I have heard a shrewd attorney say, can work any deed of settlement; and so the men of Massachusetts could, I believe, work any Constitution.¹

I think Bagehot was wrong about the American Constitution, but he was certainly right to note that Americans have placed a heavy emphasis on dividing and limiting the powers of government. What he failed to see was the connection between the form of government and the American traits that he admired. One aspect of that connection is the topic of this paper.

What were the sources of the founders' insistence on limited government? There were many. Some commentators have seen in the political thought of the founding a kind of secularized Calvinism, emphasizing the corruption of human nature and the necessity, therefore, of never relying on its better elements.² Recent historical studies of the Revolution and of early American history have focused attention on various strands of "republican" thinking and the English "Country Party" opposition, with their deep suspicion of "corruption" in government.³ In addition to these powerful theoretical reasons supporting liberty, the founders of American government faced the simple fact of the pluralism of American beliefs, especially in the area of religion, which caused certain questions to be placed outside the sphere of politics, according to certain "articles of peace."⁴

Despite the importance of these sources, however, John Locke should still be considered the most significant intellectual influence on the formation of the American regime.⁵ Locke's political philosophy asserts that men in a state of nature are endowed with that fundamental desire for self-preservation that is the first law of nature, and that each man has the "executive power" to enforce that law. This state of nature turns out to be a not particularly secure or happy form of life—though Locke is not quite as blunt as Hobbes, who calls it "solitary, poor, nasty, brutish, and short." Men must form a social contract by which they give up the executive power to enforce their right to self-preservation and create a government for specifically limited purposes, namely, to protect life, liberty, and property. The foundation for liberty, then, is the desire for self-preservation and its corollaries (especially property, understood in a broad sense) and the limitation of legitimate governmental concerns to the protection of these rights.

Of course, many Americans were not simply Lockeans (much less Hobbesians) in their attitude to government, as is evidenced by various elements of American law that were not explicable on a Lockean understanding. The common law, for example, with its roots in medieval Christian constitutionalism, and the (mostly Protestant) Christianity of most Americans, with the various moral teachings associated with it, were also important elements of the regime.⁶ Nonetheless, the Lockean individualist principles in the long run proved to be the most influential, especially because of their impact on the early leaders of our nation. Our political culture has therefore tended to stress rights over duties, the individual pursuit of happiness over absorption in communal undertakings, and a moderate but relentless effort to acquire material well-being over the development of spiritual faculties.⁷ The great question is whether such a political culture can sustain itself successfully over time, and that is a question American government confronts starkly in the twentieth century.

America has continued to commit itself to the principle of limited government over the past two hundred years, but the character of that commitment has changed in important ways. Most obviously, the twentieth century has seen the rise of the liberal welfare state. The concern for equality that in the early years of American government was associated primarily with the limited purpose of preventing government from creating inequality was transformed, as government became a positive vehicle for the establishment of greater equality. Especially under the leadership of Franklin Roosevelt during the Great Depression and World War II, the scope and purposes of government broadened dramatically. American conservatives fought the establishment of the welfare state, and continue to view it grudgingly, but American public opinion has been so committed to its maintenance that a string of Republican presidents (including one as conservative and distrustful of "big government" as Ronald Reagan) has presided over its continued expansion rather than contraction.

But twentieth-century Americans have witnessed an even more important
phenomenon—one that has further limited governmental power on specific issues, but in a way that, in my opinion, actually leads to a more powerful and dangerous form of government power. This phenomenon is a liberal legal philosophy of libertarianism, acting under the banners of government “neutrality,” “nondiscrimination,” “privacy” (personal autonomy), and equality.8

This “antiperfectionist liberalism” contends that government may never base any action on the argument that one way of life is superior to another. All ways of life (at least insofar as they are tolerant of other ways of life) are to be treated equally. Government in principle is to be “neutral” on the question of normative human ends or purposes. Law and morality are to be kept separate. This push for a general principle of government neutrality is viewed as a logical extension of strict government neutrality with respect to religious questions.

The implications of this new libertarian principle are many and substantial. Let me point out just a few. First, its roots are found in a philosophy that is sceptical about any knowledge of human ends, and this inclines libertarians toward a general scepticism about whether human beings can obtain objective knowledge about the nature of reality. Under this dispensation, even our fundamental political principles are relativized. For example, freedom of speech can no longer be defended as the founders defended it—as an essential means to maintaining a free political system.9 Nor can it ever be defended in classical nineteenth-century style, as John Stuart Mill argued in On Liberty, on the grounds that freedom of thought and discussion is the most effectual method of obtaining the truth.10 Freedom of speech—or, better, freedom of expression—is justified instead as another form of self-actualization.11 The only “public orthodoxy” is that there is no public orthodoxy. Inculcating libertarian constitutional principles thereby becomes a way of teaching Americans to be relativists: there are no fundamental truths.12 (Of course, there is no perfectly consistent way of achieving a neutral teaching without fundamental truths. Ultimately, every form of education encourages some way of life or another, together with its “fundamental truths,” even if they are not so denominable. Even relativism has its fundamental truth that there is no truth, or at least no truth known with certitude.)

Second, freedom of action is to be broadly protected, in line with Mill’s “harm” principle.13 Unless a person directly and tangibly harms another, his action is his own concern and no coercive restrictions upon him are justified. Traditional efforts to legally regulate morality (e.g., laws prohibiting or restricting pornography, divorce, fornication, adultery, prostitution, abortion, sodomy) must give way to an emerging right to “privacy,” or more accurately, personal autonomy. Under this dispensation, no-fault divorce and abortion on demand (or something close to it) have become the law of the land.14 In fact, according to this view, government cannot discriminate on the basis of moral principles in its funding of various activities. For example, when government decides to fund art and childbirth, it must also be willing to subsidize pornographic works and abortion if it is to remain nondiscriminatory.15

Third, freedom of religion can no longer be based on the duty of each creature to worship the Creator as his beliefs dictate, as Madison argued in his Memorial and Remonstrance.16 In fact, freedom of religion does not distinguish between religion and irreligion, since separation of church and state demands absolute government neutrality on the topic.17 (This makes it very difficult to explain, however, why the founders bothered to single out religious speech and action for special protection, rather than letting them be subsumed under freedom of speech and privacy rights.) Under new views of church-state separation, when government funds activities (most notably education, but also health care and day care) it should keep those activities insulated from religion.18

This new libertarianism claims to be a realization of the principle of government neutrality, but in fact it constitutes strong government support for one particular way of life, one that is secularized and sceptical, hostile to revealed religion and to traditional morality. Its ultimate value is self-actualization, though it denies that there are any objective standards for determining the content of this self-actualization. It is not clear what foundation this ultimate norm has or could have—it is simply posited.19

While this new legal philosophy has gained considerable power in contemporary intellectual circles, including law schools, and exercises a corrosive effect on older mores and legal doctrine, it has never attained dominance to the point where it could simply sweep away older ideas and influences. Nonetheless, it aims to do so and has manifested growing power.20 Its victory would constitute an overthrow of the traditional American political and legal order. And yet, would it truly be an overthrow at all? One question that must be asked is whether it is a corruption of the political philosophy on which American government was founded, or whether it might not be in some important respects a working out of some of the logical implications of the principles dominant in that philosophy.

It is important to remember once more that the principles of the American political order were not perfectly unitary and coherent. It was not a simply “Lockean” regime, and it was certainly not simply a regime based on principles of medieval constitutionalism. It was a combination of these and others. Indeed, the very strength of the American regime has been its balanced character. Made for a modern pluralist society, its fundamental principles were basically Lockean, but it also contained a healthy admixture of “premodern” el-
ements, especially derived from its common-law roots and from the predominance of Christian morality in American society.  

Contemporary liberal movements can be viewed as attempts to ‘purify’ the American regime of its nonliberal elements. For example, traditional church-state separation in America was compatible with a generalized support for religion, without discrimination between different sects. That is why the Declaration of Independence could say that we are endowed with inalienable rights by our ‘Creator’ and why a 1952 Supreme Court decision could say that our political institutions ‘presuppose a Supreme Being.’

But modern Supreme Court doctrine has come to demand complete neutrality on religious questions, including the question of religion versus irreligion. If today’s Supreme Court still, somewhat incoherently, maintains some accommodation of religion, the tendency among legal intellectuals is toward a radical privatization of religion, a “naked” public square. In its extreme forms, this amounts to a virtual disenfranchisement of believers. For example, some have argued that moral opinions, such as those opposing abortion and homosexual acts, are essentially religious, and that laws based on them would therefore violate the First Amendment prohibition of establishment of religion.

The Court has also created a doctrine of “privacy” rights that has been a powerful weapon against laws that limit personal autonomy in the name of traditional understandings of moral duties (e.g., regarding abortion). It has, fortunately, refused to work out fully the logical implications of its doctrine, most notably in its refusal to strike down a state prohibition of homosexual acts in Bowers v. Hardwick (1986). But it has not done this in a particularly convincing fashion, basing its reticence to go further on a simple majoritarianism. In the absence of more principled limits, it may only be a question of time before the logic of personal autonomy works itself out.

But if those more traditional elements that are being removed from the mixture of principles on which the country was based were essential for the health of the regime, providing a balance to liberal emphasis on rights by their concern for duties derived from nature, then the process of purifying liberalism may end by destroying it.

The Principle of Subsidiarity

The foregoing analysis suggests that any notion of limited government based on purely Lockean or libertarian principles should give us real cause for concern. This should lead us to ask what might be a safer basis for the idea of limited government. That basis (a richer and fuller as well as safer one) can be found in Catholic social thought, in the principle of “subsidiarity.”

Catholic social thought, especially as formulated since the Second Vatican Council, is governed by one fundamental principle, the dignity of the human person. This, in turn, rests on the twin pillars of the principles of solidarity and subsidiarity. Solidarity emphasizes the priority of the common good above all parties, ideologies, or partial interests in society. All persons are obligated to contribute to the common good at all its levels. Hence, the Catholic Church is opposed to all forms of liberal individualism. But subsidiarity emphasizes that the common good is to be pursued in a particular way, one that has much in common with traditional notions of limited government.

The classic definition of subsidiarity was given by Pope Pius XI in his encyclical Quadragesimo Anno (1931):

As history abundantly proves, it is true that on account of changed conditions many things which were done by small associations in former times cannot be done now save by large associations. Still, that most weighty principle, which cannot be set aside or changed, remains fixed and unshaken in social philosophy: Just as it is gravely wrong to take from individuals what they can accomplish by their own initiative and industry and give it to the community, so also it is an injustice and at the same time a grave evil and disturbance of right order to assign to a greater and higher association what lesser and subordinate associations can do. For every social activity ought of its very nature to furnish help to the members of the body social and never destroy or absorb them.

Political and social tasks ought to devolve upward toward larger communities only when they cannot be performed adequately by lower ones, beginning with that most fundamental unit of human community, the family. The Church’s social teaching is thus opposed to all forms of collectivism. This is a fundamental principle, not merely a useful rule of thumb. Note the force with which Pius XI spoke: He refers to “that most weighty principle,” acting against which is “gravely wrong,” “an injustice,” “a grave evil and disturbance of right order.” Such a principle holds out hope of being a very solid foundation for limited government. But what are its own foundations?

Unlike the tendency in American political thought toward an “anti-perfectionist” view of liberty, the foundations of subsidiarity are not merely negative. The foundations of subsidiarity, this is to say, go beyond the simple fear that higher political authorities will abuse their power. The reasons are deeper and more powerful, more principled, because they would apply even in the case of a good ruler and not merely in the “accidental” case of a bad one. They reflect the primacy of the person over things in the Church’s social teaching.

The goal of the political community is the common good, and that means preeminently the good of the citizens of whom the community is composed. The highest good of politics is not some external product of the political com-
community’s action, such as a higher level of goods and services, but the quality of the common life of the citizens, which in turn is dependent on the qualities of their souls. The most important “product” of a good polity is good citizens. Whatever government undertakes to do, therefore, should be done with a view to its impact on the development of its citizens as virtuous human beings.

But human virtue depends on free choice: virtue lies, not just in the performance of certain actions, but in the disposition of the will to perform good actions. Thus, government should consider not just that “something good ought to be done” for people, but that it be done, to whatever extent possible, by the person or persons for whom it is a good. In that way, the community attains not only the particular good aimed at, but also the additional good of the development of the citizens themselves, the different talents and capacities and faculties that citizens bring into play by their own efforts to secure the particular good.

A corollary of this reasoning is that, even when higher communities must play a role in achieving some good, they ought to do so, to the extent possible, by fostering and seconding the initiative and efforts of lower communities, rather than by simply substituting for those efforts. The principle of subsidiarity governs not only whether higher communities should intervene, but also the ways in which they should intervene.

This is the reason why Catholic social thought—despite what some American conservatives have feared and some American liberals have hoped—is profoundly “antistatist.” For example, while the Church acknowledges that the state has greater responsibilities under modern economic circumstances than it had in the past, there is a permanent disposition to prevent the state from drawing too much activity into its vortex. This explains the Church’s criticism of even moderate socialism (i.e., socialism shorn of its exclusive materialism and the doctrine of class struggle).

So far I have emphasized the way in which subsidiarity fosters the talents and abilities of the citizens. Let me add another ground for subsidiarity that may be of peculiar concern in modern pluralist societies. There is a broad realm of legitimate differences of political opinion, as the Church has specifically recognized in Gaudium et Spes. Within that area of the legitimate autonomy of temporal affairs, where there is no moral principle that demands that things be accomplished in this or that specific way, it would seem desirable to minimize the occasions when people must live under rules with which they disagree. It would seem worthwhile to maximize a people’s subjective satisfaction in this area of moral freedom—both for its own sake and for the stability this satisfaction contributes to political arrangements.

In general this can be done most effectively by contracting the sphere of decision making, that is, by decentralization. An oversimplified example makes the point. Assume that Americans are divided roughly equally on the question of whether seat belts or air bags are the better means of preventing traffic fatalities with a minimum of inconvenience and expense. If there is a single national decision on the question, about half of Americans will be unhappy being governed by that result. If, however, opinion is not spread around the country in a perfectly even way—that is, if there are greater pockets of pro-seat belt opinion here and of pro-air bag opinion there—then it is likely that decentralized decision making will yield different rules in different states, with fewer citizens having to live under the rule they dislike.

Moreover, this line of reasoning suggests another traditional advantage of decentralization: in conditions of uncertainty, the possibility of different rules being made by different political subunits provides an opportunity for experimentation and comparison of results. The lower the unit of decision making—the greater the dispersal of authority—the more variety, and the more experimentation and information can be obtained. Other things being equal, that would be desirable. (“Other things being equal” involves at least two factors. First, we are talking here about matters where there is no unambiguous moral imperative, a moral principle that holds always. Second, we are assuming that the function at issue can be performed adequately by lower levels of community.)

Two Examples of Subsidiarity

This discussion can be developed by looking at two different examples of subsidiarity—one historical, the other practical. First, I want to point out how subsidiarity is strongly reflected in the thought of one of the most famous commentators on America: Alexis de Tocqueville. Second, I will point out how it is part of our daily experience in that most fundamental of human institutions, the family.

Tocqueville

In his discussion of the advantages of democracy in America, Tocqueville contends especially that democracy’s greatest advantage is the stimulus it gives to every kind of societal activity. This ceaseless agitation that democratic government has introduced into the political world influences all social intercourse. I am not sure that, upon the whole, this is not the greatest advantage of democracy; and I am less inclined to applaud it for what it does, than for what it causes to be done.
It is incontestable that the people frequently conduct public business very ill; but it is impossible that the lower orders should take a part in public business without extending the circle of their ideas, and quitting the ordinary routine of their thoughts. ... When the opponents of democracy assert that a single man performs what he undertakes better than the government of all, it appears to me that they are right. ... Democratic liberty is far from accomplishing all its projects with the skill of an adroit despotism. It frequently abandons them before they have borne their fruits, or risks them when the consequences may be dangerous; but in the end, it produces more than any absolute government; if it does fewer things well, it does a greater number of things. Under its sway, the grandeur is not in what the public administration does, but in what is done without it or outside of it. Democracy does not give the people the most skilful government, but it produces what the ablest governments are frequently unable to create; namely, an all-pervading and restless activity, a superabundant force, and an energy which is inseparable from it, and which may, however unfavorable circumstances may be, produce wonders. These are the true advantages of democracy.

Democratic life, says Tocqueville, is an example of the benefits derived from resisting the temptation to centralize power. By leaving so much freedom to individuals to conduct their own affairs, democracy gives the incentives and means for self-development.

Tocqueville returns to the same theme in the conclusion of the second volume of *Democracy in America*, where he warns against democratic tendencies toward the concentration of government power:

It would seem that the rulers of our time sought only to use men in order to make things great; I wish that they would try a little more to make great men; that they would set less value on the work and more upon the worker; that they would never forget that a nation cannot long remain strong when every man belonging to it is individually weak; and that no form or combination of social polity has yet been devised to make an energetic people out of a community of pusillanimous and enfeebled citizens.

Tocqueville's sensitivity to the importance of individual citizens developing their capacities is one factor in his great emphasis on decentralization (especially decentralized administration), and it is also reflected in his discussion of the importance of political and civic associations in America as well.

Tocqueville represents an older tradition of political science that understood the close connection between the form of the regime and the character of its citizens. He is a healthy antidote to tendencies in America to think that only ancient forms of government shaped the character of their citizens. Modern forms of government tend not to do so as self-consciously (they seek to pro-

\[\text{Subsidiary}\]

\[\text{The Family}\]

The most immediate and practical arena in which we can see the operation of subsidiarity as a principle of community life is the experience we have in the family. Family life is an area where men and women naturally learn to be sensitive to the indirect effects of the exercise of authority.

If the first and only principle of family life were that all work is to be done as perfectly as it can be done, then all the work would end up being done by parents, who are, after all, capable of doing jobs better than their children. But good parents understand—not without some trepidation—that this would be disastrous for the true ends of the family.

I say "not without some trepidation," because there are few words that can strike greater terror into the heart of a young father as he heads out to paint the back of the house than "Daddy, can I help?" The "help" of young children, of course, results in a longer and more difficult job. They must be prepared (dressed properly in dirty clothes), set up with their own paintbrushes, and assigned an area to work. Their unending questions must be answered, their spills cleaned up, and their work (with all its gaps and splatters) typically needs to be redone.

And yet a father who, in light of these facts, generally insisted on doing all the work himself would be a worse father for that. (I make the necessary allowances that some jobs he must always do himself and others he may sometimes need to do alone.) By focusing exclusively on the ease and quality of the paint job, he would fail to accomplish his primary task of raising his children and fostering the development of their character and abilities. The educative impact on the children in doing such chores, in the long run, is likely to be of much greater importance than the task itself narrowly considered. One is tempted to say that the father ought to consider this if only out of self-interest, given that someday he can hand the older child a paintbrush and go take a nap. Unfortunately, it seems sometimes that the abilities developed in the child by his working around the house before age thirteen suddenly disappear or become inoperative at that age, for a period of approximately five years called
“adolescence”! (Actually, they are just finding new arenas outside the family in which to employ those and other abilities!) The more important ground for involving the children in activities is not self-interest, but the long-term goal of developing the children’s talents and good habits.

Conclusion

Subsidiarity, then, may not be as alien to Americans as some might be tempted to think. We have reason to see it in the indirect benefits of our own political system and in our daily family lives. But irrespective of how easily Americans can understand it, it is essential that they do so. Subsidiarity is a much safer and richer ground for limited government than the better known grounds Americans may think of more instinctively.

Subsidiarity is not rooted in a political theory that assumes that human beings are asocial by nature and that government is an artificial construct, a phenomenon made necessary by the defects of man—somewhat regrettable, but necessary. It does not portray limited government as necessary simply because of the “bad” side of man. It sees man as a naturally political being, who achieves his good through natural communities (political as well as familial) and not just voluntary contractual arrangements. Subsidiarity is thus capable of combining a high regard for freedom with a more positive and generous conception of the role of government. This reflects the fact that subsidiarity is not “just” a principle of liberty. It is a more comprehensive criterion rooted in the common good. It acknowledges both the essential contributions that government makes to the common good and the desirability of limiting government as far as circumstances permit. Subsidiarity also enables us to avoid certain evils of individualism. Because of its context in a theory of the common good, it supports a view of human life that harmonizes the individual and communal aspects of life more easily. Among other things, this view encourages citizens to be active members of the community (or rather various communities). It resists a certain democratic tendency noted by Tocqueville for the individual to withdraw into a small circle of family and friends, neglecting participation in the life of the political community, and thus making it easier for government to fall into unfit hands.

Individualism is also problematic because it is a kind of myth, in the pejorative sense of that term. The individualist thinks of himself simply as a free agent who makes decisions independently, and ironically that may lessen his capacity to do so. While it is true, of course, that human beings do ultimately have the power of free will, it is also true that they are profoundly affected by what goes on around them, by the ideas and ideals that are dominant in their families, among their friends and acquaintances, and in society at large. There is a danger that genuine freedom may be curtailed if we are not sensitive to the ways in which this happens. (Nothing is more ironic than the adolescent absolutely determined to be his own person, the sturdy individualist who seeks to free himself from the domination of parents, only to join his peers in lockstep in any fashion that happens along.)

If we understand the principle of subsidiarity, and especially the primary grounds for it—that it helps us to develop our own abilities and talents rather than to rely on others to do things for us—it makes us sensitive to the relationship between our form of government and our own character. That is an extremely important lesson for citizens of a liberal democracy to learn, if they truly want to control their own destiny. In our own day, for example, it will help them to see that modern legal philosophies based on a pursuit of radical autonomy are illusions, since they too create and foster a particular way of life, shape a certain character—a character that may often leave people enslaved to various human passions.

Subsidiarity thus goes beyond negative and individualistic justifications of liberty, and gives a better account of how limited government is rooted not merely in the defects of people (especially government officials) and their disagreements (the fact of pluralism), but in the positive goals they ought to strive for in community life as well.

Notes

6. Murray (above, note 4) rightly notes the medieval roots of some aspects of the American political order, although I believe he considerably overstates them. Alexis de Tocqueville points out the extremely important influence of Christianity, especially its moral precepts, in Democracy in America (New York: Alfred A. Knopf, 1945).

9. For a good presentation of the more limited understandings of free speech found in the thought of those on whom the founders relied, see Francis Canavan, Freedom of Speech: Purpose as Limit (Durham, NC: Carolina Academic Press, 1984).


11. For example, see David A. J. Richards, Tolerance and the Constitution (New York: Oxford University Press, 1986).

12. Perhaps the classic proponent of this view in American legal thought is Oliver Wendell Holmes. He wrote in his dissent in Lochner v. N.Y. that "a Constitution is . . . made for people of fundamentally differing views," and he refers there (echoing some extrajudicial writings on natural law) to "the accident of our finding certain opinions natural and familiar, or novel" (198 U.S. 75–76 [1905]). His deeply ingrained relativism is also reflected in free speech cases, e.g., his dissent in Abrams v. N.Y. (250 U.S. 624–31 [1919]) and Gitlow v. N.Y. (268 U.S. 672–73 [1925]).


14. The origin of the modern privacy right in American constitutional law is in Griswold v. Conn. (381 U.S. 479 [1965]) and its best-known exemplar is Roe v. Wade (410 U.S. 113 [1973]), which prohibited attempts to limit abortions in the interest of fetal life until the last trimester, and even then protected abortion rights in cases of threats to maternal life or health (including mental health).

15. The Supreme Court refused to accept that argument regarding abortion in Maher v. Roe (432 U.S. 464 [1977]), subjecting itself to harsh criticism from commentators (e.g., Laurence Tribe, Constitutional Choices [Cambridge: Harvard University Press, 1985], 243–45). The art example obviously refers to the recent debate regarding National Endowment for the Arts funding of controversial projects (antireligious and homophobic art in particular).

16. The "Memorial and Remonstrance" may be found in The Mind of the Founder, ed. Marvin Meyers (New York: Bobbs-Merrill Co., 1973), 8–15:

17. Everson v. Board of Education (330 U.S. 1 [1947]).

18. For example, the Court had restricted public aid to religiously affiliated schools substantially (Lemon v. Kurtzman 403 U.S. 602 [1971]), although no one on any side of the issue would contend that it has acted consistently in this regard.


20. One thinks, for example, of the plurality opinion in Planned Parenthood v. Casey, which reaffirmed what it calls the central holding of Roe v. Wade. Justices Sandra Day O'Connor, David Souter, and Anthony Kennedy hardly seem to be wild-eyed radicals, but they could author the following sentence: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life." But if individuals really are free to define the mystery of human life, then Dred Scott can be resurrected and no one can argue with Nazi definitions of Jews and Slavs. When "moderate" justices uncritically invoke the vocabulary of radical autonomy, the situation looks bleak.

21. Some have gone so far as to argue that the founders intended to create a "mixed regime," e.g., Paul Eidelberg, The Political Philosophy of the American Constitution (New York: Free Press, 1968), while others have argued that they meant to create a "democratic republic," e.g., Martin Diamond, The Founding of the Democratic Republic (Itasca, IL: F.E. Peacock Press, 1981). I believe that both views (especially the former) are overstated, and that the best description is found in a phrase from Justice Joseph Story's Commentaries on the Constitution of the United States: the United States is a "balanced republic," i.e., a republic or representative democracy with an admixture of certain nondemocratic features (Boston: Little, Brown, and Co., 1873), vol. II, 419.


25. See, for example, Justice Harry Blackman's dissent in Bowers v. Hardwick (92 L.Ed.2d 140, 159 [1986]).


30. Besides the very paragraph in which the principle of subsidiarity was articulated by Pius XI (above, note 26), see John XXIII, Mater et Magistra, nos. 54, 59–67 (Boston: St. Paul Editions, 1961), 18–22.

31. See, for example, Pius XI, Quadragesimo Anno, nos. 113–26 (McLaughlin, 258–63) and Paul VI, Octogesima Adveniens, nos. 31–34 (Washington, DC: United States Catholic Conference, 1971), 16–18. To keep things in perspective, note that the Catholic Church has treated "liberalism" (a term that includes many American conservatives) in a parallel way: it has been critical of liberal ideology and also of milder forms of liberalism. On these issues, see my "The Vatican as Nobody's Ally," This World no. 4 (Winter 1983): 63.
33. The most famous quote in American constitutional law on this point occurs in Justice Brandeis’s concurrence in *New State Ice Co. v. Liebmann*: “It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country” (285 U.S. 311 [1932]).
34. Tocqueville, 251–52.
35. Ibid., 329
36. For Tocqueville on decentralization, see vol. 1, chap. 5 (especially 85–97) and chap. 16 (especially 271–72); on voluntary associations, see vol. 2, book 1, chaps. 5 and 7, and book 4, chap. 7 (especially pp. 323–24).
37. One of the finest discussions of the effects of modern government on character can be found in Martin Diamond’s “Ethics and Politics: The American Way,” in *The Moral Foundations of the American Republic*, ed. Robert H. Horwitz (Charlottesville, VA: University Press of Virginia, 1977). I think Diamond may be optimistic, however, to the extent that he believed that even these limited virtues (e.g., somewhat lower and commercial forms of honesty, frugality, liberality, industriousness, and justice, rooted in acquisitiveness rather than avarice) will flourish without the support of religion.
39. Some proponents of a broad modern form of autonomy (one divorced from an understanding of the end or goal of human life) do try to justify it as a way of fostering self-actualization. (In this they are faithful disciples of John Stuart Mill, who does the same thing in *On Liberty*, chap. 3, “Of Individuality, as One of the Elements of Well-Being.”) Without a view of human ends, however, they cannot provide a persuasive ground on which to assert that any human action contributes to self-actualization more than any other, except by falling back on purely conventional arguments.

6

Catholic Social Thought, the City, and Liberal America

Jean Bethke Elshtain

The horizon for this essay is framed by the notion of subsidiarity, drawn from Catholic social thought; the history of “the city” as a site of public rather than exclusively individual freedom; and the current state of a particular liberal society—our own. I begin with this third concern, which translates into a focus on the fate of civil society, by which I mean “the many forms of community and association that are not political in form: families, neighborhoods, voluntary associations of innumerable kinds, labor unions, small businesses, giant corporations, and religious communities.” When we think of civil society, we think of networks of voluntary associations and the obligations they involve. Some may cavil at the notion that such associations are not “political,” but theorists of civil society would insist, in response, that this network and the many ways we are nested within it, lie outside the formal structure of state power.

It is by now a familiar lament that all is not well with us; that something has gone terribly awry with the North American version of market-modernity. The man and woman in the street speak of a loss of neighborliness; of growing fear and suspicions; of the enhanced pressures, sexual, commercial, contractual, upon the young. Things used to be better, and easier, they say. Now there is not enough time to be a parent and a citizen and a worker. All the evidence is consistent on the score. Explanations for our discontents vary, as do prescriptions for a cure. But analysts from left and right alike speak of an erosion in a
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The free market has always occupied an uneasy place in conservative thinking. Conservatives have generally proven better at identifying the economic systems they oppose rather than any one economic theory they can wholeheartedly support. While most conservatives identify themselves as supporters of free market institutions, others harbor considerable reservations. Some have advocated corporatist economies. Others, such as some European Christian Democrats, have searched for a "third way." Indeed, beyond a commitment to private property rights and opposition to statism, it is often difficult to find common ground among conservatives on economic matters, either at the level of principle or of policy.

At the root of this uneasiness is not primarily a concern about inequalities of wealth. The drive to radically equalize economic outcomes is largely opposed by conservatives as wrong in itself. Nor since Communism's collapse have many self-identified conservatives questioned the market's capacity to produce material wealth more effectively than any other economic system. Instead, the concerns of many conservatives about the market reflect a deeper, more fundamental unease with certain basic aspects of modernity.

During the Cold War, conservatives could avoid dwelling on these matters. Many were willing to form strategic alliances with classical liberals and libertarians on the grounds that the political priority in such circumstances had to be the rallying of those forces opposed to the patent evil of Marxism-Leninism. Now, however, with the exception of a handful of maverick states, Marxist-Leninist and centrally planned economic systems have been rejected across the globe. And many on the center-left acknowledge the market's superior wealth-creating capacities. This being the case, conservatives now find themselves freer to debate the virtues of the market among themselves, as well as with classical liberals and libertarians, and to assess where the market fits into conservative thought about the moral culture and civil society of free political orders.

The Ascendancy of Planning

Standing at the beginning of the twenty-first century, it is difficult to imagine the omnipresent hostility towards the market which prevailed in left-wing, modern-liberal, and even some conservative circles at the end of World War II. The commitment to Keynesian economic planning went
largely unchallenged, save by figures such as Friedrich von Hayek and other intellectual pariahs. Though the British Conservatives did oppose the Labour Party’s socialist program during the 1945 general election, that party’s shattering electoral defeat contributed to the eventual dominance of “One Nation” Tories within the Conservative Party.

One exception to this trend was the market-liberalization program pursued in post-war West Germany by Ludwig Erhard and the Ordo liberal school of economics associated with figures such as Wilhelm Röpke, Alfred Müller-Armack and Walter Eucken. These reforms were undertaken largely against the wishes of the Allied Military Occupation authorities (advised by John Kenneth Galbraith among others) and were realized via administrative fiat before the first post-war elections. Erhard was later to remark that had his proposals been subject to the approval of political parties, their implementation (and West Germany’s “economic miracle”) would never have happened.

The secret of the Ordo liberal program’s success may be found in its distinction between competitive market processes and the institutional framework within which free economic activity occurs. While insisting that the state should help to shape the social and economic order, Ordo liberals believed that price-determination and economic exchanges should be generally left to competing individuals. On the one hand, they stressed that market economies are premised upon widespread acceptance of certain rules and institutions, such as the law of contract and private property. These in turn presuppose the existence of public order guaranteed by state authority. At the same time, the Ordo liberals underlined a reality about markets that many, including a number of conservatives, often failed to appreciate. Too often “the market” is spoken of as if it is an anonymous amoral conglomerate that exerts its own will. Markets, however, actually consist of literally millions of people making free choices in the buying and selling of goods and services. To subvert this process through centralized planning, the Ordo liberals stressed, was bound to distort prices and eventually the process of supply and demand itself.

From the standpoint of the history of ideas, one should note that the post-war intellectual opposition of many conservatives to economic planning and burgeoning welfare states was never solely based upon arguments about efficiency. Many who favored market economic orders stressed the connection between the suppression of economic liberty and a resulting diminishment of political and civil freedom. It was not coincidental that the determination with which Communist regimes sought to suppress liberty in the commercial realm was only exceeded by the intensity with which they attempted to crush religious freedom. Marx, Lenin, and other luminaries of Communist thought had always stressed that institutions such as private property, processes such as free exchange, private entrepreneurship, and the subsequent growth of a commercially based middle class, were among the prime obstacles to the implementation of their vision of the future.

The conservative insistence upon the link between economic and political liberty was not new. It was pivotal to Edmund Burke’s criticisms of the British government’s policies toward its American colonies. But it was also, and remains, an argument about the moral imperative of allowing the free human choices and free human acts of free human persons to be expressed in economic life. In short, the conservative argument about the proper structuring of economic life is less concerned with efficiency than it is about the market as a moral requirement.
of a society that takes the idea of freedom seriously. This point lies at the heart of Wilhelm Röpke’s insistence that only a market order is able to give individuals the necessary scope for free choice in the material realm. As Röpke explained in 1953, “my opposition on technical grounds is that socialism, in its enthusiasm for organization, centralization, and efficiency, is committed to means that simply are not compatible with freedom.”2 “My fundamental opposition to socialism,” Röpke continued, “is to an ideology that, in spite of all its ‘liberal’ phraseology, gives too little to man, his freedom, and his personality; and too much to society.”3

**Market Revivals and Conservative Doubts**

Given the immediate post-war ascendency of socialist and Keynesian economics in the academy and in government, it remains surprising just how suddenly these became discredited by the end of the twentieth century. Communism’s collapse, of course, removed command economies as an alternative to the freemarket. But perhaps more startling was the pace at which a growing number of governments beginning in the late 1970s—a decade before the fall of the Berlin Wall—adopted measures with the intention of making their economies freer, more open, and less regulated. In many instances, this development transcended traditional “left-right” categories. For example, some of the more radical and far-reaching market-oriented reforms were pioneered by Labour governments in New Zealand and Australia in the 1980s.

Admittedly, the picture is a muddled one. In even the most market-directed countries, the state continues to control large proportions of national GDP. Taxation levels in some of the same countries have barely altered over the past twenty years. There also remains a long list of countries in which only limited shifts in economic policy have occurred. Sweden, for instance, remains largely frozen in a post-war Social Democrat time-warp. In those countries that have sought to embrace market economic policies, the process has usually occurred erratically and has experienced restrictions and reversals. Nonetheless, on balance, the past thirty years has seen national economies becoming more market-oriented, and international transactions less subject to restrictions.

For many people, the material and technological advances facilitated by this expansion of the market and private enterprise are enough; they are conclusive evidence for the incontestable superiority of free market economics. There are, however, others who—while acknowledging the material progress flowing from this expansion of economic liberty—have not regarded the spread of markets with unmitigated joy. For those who aspire to be reasonable, no set of economic arrangements makes sense unless it is grounded in a theory that identifies the purposes that the economy is supposed to serve. It is the posing of this question that has resulted in considerable conservative anxiety about the market.

One conservative concern has been the association of free markets with modernity. From the standpoint of most conservatives, modernity has proven a deeply mixed blessing. The mixture of modernity’s deliberate abstention from reflection upon the proper ends of human action with the tremendous scope for choice offered by the market is bound to alarm those conservatives who hold certain high views of ethical life and cultural life. In this connection, conservatives have noted that the dominant philosophical justifications currently offered for free market arrangements, be they evolutionist (Hayekian), positivist
(Friedmanite), or utilitarian (Misesian), are all rationalizations. The essential unreasonableness of these explanations, they suggest, leaves the market economy presently bereft of all but the weakest of moral justifications.

Other conservatives have expressed unease at the current application of free market thinking to a range of areas from which it has traditionally stood aloof. The reason for this concern was, ironically enough, perhaps best outlined by a committed libertarian, Murray Rothbard:

In recent years, economists have invaded other intellectual disciplines and, in the dubious name of science, have employed staggeringly oversimplified assumptions in order to make sweeping and provocative conclusions about fields they know little about. This is a modern form of “economic imperialism” in the realm of the intellect. Almost always, the bias of this economic imperialism has been quantitative and implicitly Benthamite, in which poetry and pushpin are reduced to a single level, and which amply justifies the gibe of Oscar Wilde about cynics, that they (economists) know the price of everything and the value of nothing. The results of this economic imperialism have been particularly ludicrous in the fields of sex, the family, and education.4

Conservatives familiar with the ideas promoted by some adherents of the Law and Economics School (most notably, Richard Posner) will immediately recognize that Rothbard’s concern was not misplaced. Insofar as conservatives believe that utilitarian arguments have only a minor role to play in explaining why freedom ought to prevail, they are bound to take issue with the application of market logic to those spheres of human existence that do not lend themselves to utility calculations, such as the good of beauty or the value of human life.

A twentieth-century economist and social philosopher who anticipated such difficulties was Wilhelm Röpke. One suspects that Röpke would probably have resisted the label “conservative.” Yet the extent to which his ideas have been embraced by many conservatives indicates, at a minimum, that they regard Röpke as a fellow traveler. Röpke is especially instructive precisely because of the development in his own thought about the place of markets in free societies. Prior to being exiled from Nazi Germany, Röpke was very critical of pre-Enlightenment European thought. His philosophical defense of the market at this early point in his career remained very much rooted in the late-Enlightenment emphasis on utility.

The factors which caused Röpke to repudiate the instrumental-rationalist defenses of the market that remained central to the thought of some of his colleagues (most notably, Ludwig von Mises) were several. First, Röpke’s experience of liberal democracy’s collapse throughout continental Europe when confronted by the profoundly anti-Christian movements of Nazism, Fascism, and Communism awakened him to the indispensability of Christianity’s contribution to Western civilization. Another factor was his acceptance of many insights of Old Whigs such as Edmund Burke (like Röpke, a deeply religious man who had a youthful flirtation with rationalism) concerning the importance of tradition in preventing tyranny.

Another important influence in the development of Röpke’s integration of the market economy into “conservative” thought was his experience of living in Switzerland from the 1930s until his death in 1966. Many have been critical of Röpke’s somewhat romantic vision of rural life and small villages. Whatever the validity of such criticism, there is no question that in Switzerland Röpke discovered a multi-ethnic society in which economic liberty flourished, but did so embedded in a culture emphasizing personal responsibility and
within an institutional framework that encouraged the growth of genuinely free associations. From this, he drew the conclusion that market economies had to be embedded in a flourishing range of intermediate associations, bounded by a limited state, and grounded in a culture that emphasized an objective hierarchy of values.

Röpke is perhaps even more important today insofar as, unlike some market-orientated economists, he did not dismiss moral-cultural matters as something too ephemeral or insubstantial to be taken seriously. Röpke was increasingly perturbed in his later years by what he described as Western society’s “proletarianisation”: a mounting uniformity and monotony of social life. But he did not identify commerce or the market as being primarily responsible for these developments. Nor did he maintain any romantic illusions about the conditions of material existence that prevailed in the pre-modern world until the spread of economic freedom began to liberate man from poverty. Nonetheless, as a Christian humanist, Röpke sought to remind his audiences of the insight of Judeo-Christian revelation, which is confirmed by right reason: that man is much more than homo economicus. “Above all,” Röpke wrote, “man is Homo religiousus.” Thus, Röpke stressed the futility of modern man’s attempt to get along without God, and he maintained that atheistic and agnostic anthropologies of man were inadequate foundations for free societies—including even the economic component of free societies. At the core of man’s identity, Röpke stressed, is a spiritual and moral essence. This, by definition, means that man is destined for greater things than being a mere pleasure-machine.

Commerce and Human Flourishing

This brings us to the nub of conservative worries about the market’s place in society. To the extent that conservatism embodies a sense of awe before the transcendent or adherence to the principle that the moral and the spiritual necessarily enjoy primacy over the material, then conservatives are bound to be uneasy about the market’s potential (shared by all other economic systems, insofar as they in fact “deliver the goods” of material life) to facilitate an inversion of this priority.

If conservatives regard the purpose of human existence as human flourishing (in the sense that figures such as Aristotle and Aquinas understood this expression), then they are likely to be alert to any sign that a commercial order might contribute to the diminishing of those conditions that facilitate human flourishing. One obvious danger in market systems is that their very success in wealth-creation may encourage some to view this as an end in itself. This is a problem, or an error, since wealth is only instrumental to the fulfillment of persons. Wealth in itself does not represent the actualization of any intrinsic moral goods. Another difficulty is that everyone in the marketplace is exposed to calculations of utility. There is always a risk that this will encourage people to objectify or instrumentalize other persons.

There is, however, another way for con-
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servatives to look at this matter, and that is to consider how markets might actually facilitate conditions that favor human flourishing. Admittedly, this is an area in which much reflection is still required. Conservatives may, however, be uniquely positioned to think through the possible connections between human flourishing and the market in a way that many classical liberal and libertarian thinkers are not. For conservatives generally purport that their philosophical commitments compel them to be morally concerned about the ends that people choose to pursue with their freedom, whereas most classical liberals and libertarians (if they are consistent with the premises of their philosophies) cannot.

Of course, the nature of market competition is such that it cannot be expected to replicate the life of a religious order. (Any conservative who imagines it should is forever doomed to regard markets with profound distaste.) It is true that commercial relations tend not to embrace the degree of self-giving that occurs, for example, in family life. Different forms of communities do, however, have naturally different purposes. A commercial business has different immediate ends to that of a marriage. The purpose of marriage is the participation of a man and a woman in the same good of an exclusive and life-long self-giving to each other, consummated through sexual acts of the reproductive type. The same cannot be said of a business relationship in which two or more people may cooperate in order to attain monetary resources that enable them to pursue somewhat dissimilar ends.

Nonetheless, conservatives should not underestimate the capacity of market economies to promote the realization of non-material goods. Commercial life demands, for instance, that people take prudent risks, trust others, and be diligent, industrious, and reliable. In other words, living within a market economy encourages certain forms of virtuous behavior. Careful reflection upon the nature of contracts underlines this point. When people make a contract, they are engaging in a commercial convention and a recognized legal practice. Such an activity presupposes a basic exercise in promise-making in which we make a reasoned choice to commit ourselves to performing certain actions. Contracts are in fact null and void without such prior commitments. They thus enlist our willingness to be truthful and act upon the reasonable promises we make. In this sense, they require us to act in a practically reasonable manner. To this extent, the very act of entering into a contract can directly facilitate human flourishing.

Then there is the calming, almost civilizing potential of commercial activity. The market brings people from very different backgrounds into contact with one another, while simultaneously reducing the possibility for conflict. Echoing Montesquieu’s earlier reflections on the effects of commercial life, Alexis de Tocqueville wrote,

Trade is the natural enemy of all violent passions. Trade loves moderation, delights in compromise, and is most careful to avoid anger. It is impatient, supple, and insinuating, only resorting to extreme means in cases of absolute necessity. Trade makes men independent of one another...it leads them to want to manage their own affairs and teaches them how to succeed therein. Hence it makes them inclined to liberty but disinclined to revolution.6

What Type of “Civil Society”?

For all the conservative’s potential appreciation of the market’s ability to create conditions that encourage human flourishing, some vital questions concerning the market’s place within the wider social order remained unresolved. These concern the effects of commercial life on a society’s intermediate associations, often referred
to as "civil society." Educational, religious, cultural, and charitable associations have the capacity to assist people to look towards those higher ends of truth, beauty, and the good that many conservatives believe reflect the Divine within man. Drawing people out of their immediate family without subsuming them into the state, these “little platoons” have long been defended and promoted by conservatives.

Here, we should recall that the modern use of the phrase “civil society” owes much to the tradition of reflection on social questions that began only with the growth of commercial societies in some eighteenth-century European countries. Prior to this period, the term “civil society” was usually employed to distinguish the secular realm from that of the ecclesiastical, or else as a synonym for the political community. Aquinas spoke, for example, of communitas civilis sive politica. The coterminous use of the expressions “political society” and “civil society” forms part of a European tradition traceable back through medieval thinkers to Cicero’s idea of societas civilis.

The concept began to undergo significant change in the eighteenth century. The Physiocrats used the term société naturelle, meaning economic relations, to distinguish their area of interest from société politique. Likewise, the Scottish Enlightenment scholar Adam Ferguson noted that by promoting a multiplication of wants and a more complex division of labor, the spread of commercial relations facilitated the growth of a range of non-caste-based intermediate groups whose impact upon society could not be ignored.

Moreover, such was the power of this commercial dimension of what the post-Enlightenment era calls “civil society” that even among the earliest observers of the spread of commerce we can discern concerns about its implications for a society’s moral culture. Ferguson himself expressed distinct anxieties about the effects of commerce upon what he called “civic virtue.” He drew attention to commerce’s potential to narrow man’s horizons, coarsen his moral habits, and diminish his taste for the sublime.

The phenomenon of consumerism is, of course, not new. Nor is it something limited to market economic orders. The profound shortage of material goods that prevailed in Communist countries, for example, contributed to making them among the most materialistic societies known to history. The ongoing dilemma for the conservative is that while he usually respects the importance of free will, he also holds that what is good for each and every person is not a matter of arbitrary taste. Markets celebrate and seek to enhance choice. They are, however, rather less good at providing moral guidance as to what people ought to choose.

Some might argue that as long as the moral culture is in sound condition, people are more likely to make economic choices that will reinforce rather than damage that culture. The fact remains, however, that throughout much of the West, the moral culture is not in good shape. In many Western nations, access to pornography is regarded as a right of free speech, abortion is justified on the strange basis that choice in itself “outweighs” the value of human life, and autonomy and tolerance are widely regarded as the only legitimate moral reference points. Throughout these societies, the cultural influences that might encourage consumers to buy Thomas More’s Utopia instead of the latest offering from Playboy are weak. In the wake of the biotechnological revolution, moreover, the stakes have become even higher: businesses anxious to pursue the potential profits to be made from practices such as embryonic stem-cell research (which involves the intentional destruction of embryonic human beings) increasingly appeal to consumer
choice to justify experimental practices that both reflect and contribute to what some have aptly described as a culture of death, understood as an array of outlooks and practices indicating a willingness to intend the death of others for the sake of individual expediency, utility, or self-satisfaction.

Conservatives therefore find themselves in a bind. While Western moral culture remains immersed in the quick-sands of utilitarianism, a willingness to detach liberty from truth, and a mindset of what Plato described as “practical atheism” (when people live and act as if God does not exist), then the market is likely to reflect the choices of many for a culture that does not aspire to be authentically human, and in which many intermediate associations cannot even begin to understand why “having” ought to serve “being.” Conservatives, one hopes, will regard themselves as compelled to resist this. But can they do so in ways that do not emasculate the market, the material prosperity it generates, and its potential to help people to acquire particular virtues?

One way for conservatives to grapple with this matter is to examine whether it is possible to ground key market institutions, such as contracts and the rule of law, in a human anthropology that does not take its inspiration from emotivists such as David Hume or utilitarians such as Jeremy Bentham. To put it another way: is it possible to base purportedly “liberal” market-economic arrangements upon “non-liberal” understandings of man? At this point in history, the answer is not yet clear.

Conservatives nevertheless need not be daunted by such intellectual challenges. After all, the moral validity of private property was firmly established by some of the finest minds produced by Western civilization centuries before John Locke penned his thoughts on the matter. Likewise, the practices of commerce, free trade, and markets were not foreign to the world of the High Middle Ages. Neither, one imagines, were materialism or mindsets that we would describe today as consumerist. Yet conservatives, one suspects, are likely to recognize the pre-Enlightenment reasoning underpinning these arrangements as more true to the nature of man as homo religiosus, homo creator, homo dignus, homo rationalis, and homo peccatus than the emoting pleasure-maximizer that Bentham and other moderns would have us believe humans to be. Retrieving and renewing these older traditions and introducing them to contemporary reflection about the market economy is surely an appropriate endeavor for conservatives, and a genuine contribution to civilizational renewal.

The phrase “mediating structures” was in recent decades popularized by Peter Berger and Richard John Neuhaus, but the concept has been fundamental to conservative thought since Edmund Burke. The term refers to the social groups and associations that lie between the individual and the state—the family, parish, guild, village, voluntary associations, and all other such local and parochial communities. At times, such groups are also referred to as “intermediate” or “secondary” groups, as in the writings of Alexis de Tocqueville. Whatever the precise language employed, the defense of mediating structures has been essential to modern conservatism, and, while certain liberals (such as J. S. Mill) and radicals (especially P. J. Proudhon and P. Kropotkin) have mounted at least tepid defenses of mediating structures, conservatism has been both more consistent and more vigorous than either liberalism or radicalism in efforts to preserve the corporate rights of social groups.

Burke first stated the conservative case for mediating structures in his *Reflections on the Revolution in France* (1790). Burke observed that the French revolutionaries subscribed to a version of modern natural law that refused to recognize the salutary influence of any traditional social institution. The Jacobins believed that rights reside within individuals and that there are no legitimate interests beyond the particular interests of individuals and the national interest. Accordingly, the revolutionaries abolished the guilds, attacked the monasteries, institutionalized divorce, bound the clergy to the Revolution by oaths, and eliminated primogeniture and other laws protecting family property. As Burke discussed in the *Reflections*, the revolutionaries also redrew districts according to population size and geometric symmetry in order that “the people would no longer be Gascons, Picards, Bretons, Normans but Frenchmen.” Burke says, however, that instead of being Frenchmen with one country and one heart, the people “will have no country. No man ever was attached by a sense of pride, partiality or real affection to a description of square measurement. We begin our public affections in our families . . . [,] we pass on to our neighborhoods, and our habitual connections. . . . The love of the whole is not extinguished by this subordinate partiality.” Indeed, Burke asserted that “to love the little platoon we belong to in society is the first principle (the germ as it were) of public affections.”

To disband the little platoons is to foster individual “weakness, disconnection and confusion,” according to Burke. Mediating structures provide the individual guidance through custom, tradition, and habitual practices—“the coat of prejudice.” In a word, Burke believed that mediating structures militate against what Tocqueville in the next century called “individualism.”

Tocqueville was preoccupied with the dangers of the loss of mediating structures, especially civil associations. In *Democracy in America* (1835), he describes “individualism” and the centralization of state power as rising in tandem, both rooted in the passion for equality. According to Tocqueville, the individual and the state are not opposed to one another. Rather, they are reinforcing poles, each opposed to the social groups and associations lying between them. The state secures individual rights and, without mediating structures to buffer the individual, the individual looks to the state to secure his needs—“the need for community. Tocqueville maintained that individualism fosters “democratic despotism” and that the centralized state vanquishes mediating structures, isolating individuals. Conversely, and more optimistically, Tocqueville argued that mediating structures simultaneously combat the chief evils of democratic egalitarianism—individualism and the overweening, tutelary state.

Much of modern thought has been hostile to mediating structures. For example, Hobbes, Rousseau, and Bentham each envisioned an ideal condition in which the state guards the rights and fulfills the needs of unencumbered, desocialized individuals. Nonetheless, recently in America the rhetoric of “community” has become commonplace, even fashionable. At times this rhetoric has certainly been abused, as in the widely noticed *Habits of the Heart* (1985),
a book by Robert Bellah and several others that used the language of community to justify an egalitarian state dedicated to the redistribution of property. But such rhetoric is clearly not always disingenuous, and the recent concern with “community,” “civil society,” and “mediating structures” bespeaks a genuine and profound presence of conservatism in America today. Indeed, the strength of concern for mediating structures in any modern society is an excellent barometer for measuring the vigor of that society’s conservative philosophy.

Further Reading