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THE MORAL EXCLUSIVITY OF THE NEW CIVIL SOCIETY

DOROTHY E. ROBERTS*

INTRODUCTION

When I was a little girl, I learned a folk tale about the fate of naughty children on Christmas morning. They receive gifts wrapped nicely in beautiful paper and tied with pretty ribbons, nestled under the family’s evergreen tree. But when they open up the lovely package, the children discover to their horror that it is filled with coals. I experienced the same sensation of initial enticement, followed by dismay, in reading recent appeals to revive civil society. They come in an attractive package bearing principles of equal citizenship and solidarity that opens to a largely exclusionary and regressive agenda. Many of the revivalists’ basic axioms for civic renewal are commendable. Their call to sustain our “commitment to freedom and justice for all,”2 their concern for the local institutions that foster citizenship, and their insistence on a public moral philosophy to animate civic engagement are important elements of a more democratic and egalitarian society.3 But the translation of these admirable principles into a concrete program centered on traditional morality and modes of association takes an unfortunate turn.

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1. See, e.g., COUNCIL ON CIVIL SOC’Y, A CALL TO CIVIL SOCIETY: WHY DEMOCRACY NEEDS MORAL TRUTHS (1998); NATIONAL COMM’N ON CIVIC RENEWAL, A NATION OF SPECTATORS: HOW CIVIC DISENGAGEMENT WEAKENS AMERICA AND WHAT WE CAN DO ABOUT IT (1998). I will call the contemporary group of scholars whose views are incorporated in these reports “civil society revivalists.”
2. COUNCIL ON CIVIL SOC’Y, supra note 1, at 3.
Beneath the appeals to equality and justice lies a conception of civil society more concerned with rescuing a disappearing way of life than with ending persistent economic and social disparities. 4

What results is a moral vision marred by exclusivity. 5 I mean this in two senses: civil society revivalists promote a narrow meaning of morality that excludes social justice from its heart; their plan for reform consequently privileges those who benefit most from societal inequality and penalizes those who are most injured by it. Most notably excluded is a serious recognition of past and present racism and its fatal impact on any effort to forge a common civic purpose among Americans. 6

This essay begins by locating the source of the revivalists' moral exclusivity in their flawed account of the relationship between social inequality and moral decline. First, the revivalists attribute both the widening gap between America's haves and have-nots and the erosion of a shared civic faith more to recent decay than to enduring systemic injustice. Second, they reinforce depreciation of social justice in their agenda by attributing the decline in morals in part to the success of movements aimed at reducing systemic inequalities and

4. Civil society revivalists also worry about a deception possibly created by their pretty package. See e.g., E.J. Dionne, Jr., Why Civil Society? Why Now?, in COMMUNITY WORKS: THE REVIVAL OF CIVIL SOCIETY IN AMERICA 1, 1 (E.J. Dionne, Jr., ed., 1998) (“‘Civil society’ sounds so nice that few people can believe something serious lies behind the debate the idea has provoked.”). I take very seriously the agenda behind the civil society revivalists' nice words.

5. Both A Call to Civil Society and A Nation of Spectators reflect this underlying morality. A Call to Civil Society emphasizes the need for public moral renewal, while A Nation of Spectators is more concerned with increasing civic engagement. See Don Eberly, Civic Renewal vs. Moral Renewal, POL'Y REV., Sept.-Oct. 1998, at 44. Despite these divergent priorities, however, both reports stress the importance of shared, public values to the civic health of the nation. Both consider from different vantages the relationship between citizens' civic and ethical life. I am interested here in the moral vision that animates civil society revivalists' understanding of this relationship.

6. This inattention to the impact that systemic racial exclusion has on civil society is contrary to the prior work of Cornel West, who signed A Call to Civil Society. See generally CORNEL WEST, RACE MATTERS (1993). West's message that race matters is muted by the revivalists' overriding project of attributing the erosion of a shared civic faith to moral decline. See Cornel West, Nihilism in Black America, DISSENT, Spring 1991, at 221 (attributing the erosion of Black civil society largely to a kind of moral decay, including "the profound sense of psychological depression, personal worthlessness, and social despair"). The participation of several African Americans in drafting A Call to Civil Society does not refute my criticism. See Jean Bethke Elshtain, Will the Real Civil Society Advocates Please Stand Up?, 75 CHI.-KENT L. REV. 583, 586 (2000) (responding to my criticism by noting that "the Council on Civil Society included in its ranks distinguished African American scholars and activists."). My critique concerns the substance of the revivalists' platform, not the credentials or race of its signatories. Black social theorists have long disagreed about the causes, extent, and nature of racial inequality, as well as the strategies for combating it. See generally AFRICAN INTELLECTUAL HERITAGE (Molefi Kete Asante & Abu S. Abarry eds., 1996). Perhaps many of the revivalists are deeply troubled by racial and other forms of systemic injustice, but their concern is muted by their overriding project of attributing the erosion of a shared civic faith to moral decline.
by denouncing some of the movements' most effective tools. In the revivalists' moral universe, the focus on weakening morals eclipses the ugly reality of entrenched economic and social disparities.

I then explain how the revivalists' association between equality and moral decline produces strategies that benefit and protect predominantly white middle-class families while devaluing the family ties of less privileged people. For one thing, these strategies rely excessively on ensuring that children are raised by parents who are married. By discounting the importance of social justice for creating civic faith, involvement, and solidarity, their proposals could do more to defend the social order than to renew civil society.7

I. THE EXCLUSIVE MEANING OF MORALITY

It is important to note at the outset that there is no ineluctable connection between the revivalists' exclusive understanding of morality and the role of civil society. The revivalists tend to conflate their peculiar definition of morality, and set of indicators of moral decline, with the meaning of civil society.8 But the moral standards animating civil society need not have anything to do with the condemnation of divorce and out-of-wedlock births. One can agree that democracy needs moral truths and that shared public values promote civic engagement, without subscribing to the particular moral truths espoused by the Institute for American Values.

A sociological perspective on civil society recognizes that the shape it takes in any nation at any moment in history is influenced by prevalent cultural and political forces.9 The Marxist perspective on

7. For somewhat different reasons, Jean L. Cohen expresses a similar worry about the revivalists' conceptualization of civil society: "Unless this model is corrected, the current revival of the discourse of civil society in the United States will play into the hands of social conservatives who aim to retraditionalize civic life and to substitute local ‘volunteerism’ for the public services and redistributive efforts of the welfare state, as if these are the only options we have." Jean L. Cohen, American Civil Rights Talk, in CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL 55-56 (Robert K. Fullinwider ed., 1999). Cohen argues that most revivalists incorrectly equate civil society with traditional forms of voluntary group associations, omitting the crucial category of the public sphere. See id. at 56, 67 (“[I]t is the link of the reductionist conception of civil society to the discourse of civic decline that makes this approach ambiguous, and so prone to ideological misuse.”).

8. Indeed, as Professor Elshtain's indignant response illustrates, revivalists seem offended by the suggestion of competing models of civil society by those with ideological perspectives different from their own. See Elshtain, supra note 6, at 597-99 (accusing me of “reading everything through a distorting ideological lens”). Of course ideological differences shape ideas about the culture and politics of civil society—A Call to Civil Society is hardly a neutral statement of moral values and policy choices!

civil society expressed by Antonio Gramsci reveals further the political relevance of divergent discourses of civil society. As political scientist Jean Cohen describes it, "competing conceptions of civil society are deployed in a continual struggle either to maintain cultural hegemony by dominant groups or to achieve counter-hegemony for subordinate collective actors." The very nature of civil society suggests that its ideals are never pre-determined or stagnant, but constantly refined through the process of citizen engagement. It is less the beat of ancient associational drums that determines democracy's rhythms than it is a thoroughly contemporary circle of organizations and values," notes anthropologist Robert Hefner.

In other words, there is nothing in the political function of civil society that necessitates the marriage-centered norms embraced by civil society's most vocal champions. We may reject their model of family structure, economic system, and social order, and still appreciate the benefits of civil society. My purpose in this essay is to point out the weakness of this moral ideology as a basis for civil society rather than to jettison the concept of civil society altogether.

The question remains, does the particular moral vision promoted by today's revivalists foster civil society better than others? The point of moral renewal in civil society is not to establish a fixed set of preferred values enforced by the state. To the contrary, civil society is the sphere of culture that avoids state domination where values can be freely "debated, contested, and changed." Civil society adherents should be interested in fostering a public morality that will protect this arena of ethical life and promote civic involvement by all citizens. I hope to show that by excluding social justice from the center of its concern, the revivalists' understanding of morality offends this basic

surprised to learn that Eastern European intellectuals were attracted to civil society's democratic pluralism. See Krishan Kumar, Civil Society: An Inquiry into the Usefulness of an Historical Term, 44 BJ 375, 375 (1993).


11. Cohen, supra note 7, at 57.

12. See Hefner, supra note 9, at 26 ("[T]he values of civil society are, by their very nature, ever-unfinished."); see also Cohen, supra note 7, at 57 ("[T]he cultural dimension of civil society is not given or natural; rather, it is a site of social contestation: its associations and networks are a terrain to be struggled over, and an arena in which collective identities, ethical values, and alliances are forged.").

13. See Hefner, supra note 9, at 26.

14. Kumar, supra note 9, at 383.
The revivalists do not ignore altogether America's social hierarchies and their attendant disparities of wealth and privilege. *A Call to Civil Society,* for example, emphasizes throughout the text that "we suffer from growing inequality." Rather, at the heart of their moral exclusivity is a flawed understanding of the relationship between inequality and moral decline. The revivalists make two claims about this relationship. First, they assert that moral decline fosters inequality: growing disparities in Americans' material well-being stem largely from growing moral weaknesses in families and norms of personal responsibility. Second, they associate equality with moral decline: dramatic advances by disenfranchised groups in the last forty years have contributed to the moral degeneration of families and other aspects of civic life. This conception of the relationship between equality and moral decline discounts both the immorality of social inequities themselves, and the way social inequities hinder civic engagement.

A. Moral Decline Causes Inequality

*A Call to Civil Society* begins by linking two deficiencies in contemporary U.S. society: "First, we suffer from growing inequality. And second, we suffer from moral depletion." Relying largely on public opinion polls, the report defines moral weakness as "behavior that threatens family cohesiveness ... behavior that is increasingly uncivil—that reflects a rejection of legitimate authority and a lack of respect for others ... [and] behavior that violates the norm of personal responsibility." The revivalists then try to establish a causal connection between inequality and moral decline. They blame moral degeneracy for the material manifestations of economic and social injustice. Thus, *A Call to Civil Society* attributes a long list of social ills from declining child and adolescent well being, to high

15. Although the civil society revivalists often position themselves against liberals, both have been guilty of setting aside social justice from their moral vision. I have elsewhere criticized dominant liberal ideology for this omission. See Dorothy E. Roberts, *Killing the Black Body* 294 (1997); see also Dorothy E. Roberts, *Social Justice, Procreative Liberty and the Limits of Liberal Theory: Robertson's Children of Choice,* 20 L. & Soc. INQUIRY 1005 (1995) (book review).
17. See id. at 5-6.
18. See infra notes 72-78 and accompanying text.
20. Id. at 5.
levels of violence and disorder, to worsening relations between races, economic classes, and generations to declining *morality*, rather than to *inequalities* of wealth and power.\(^{21}\)

Linking the ill effects of societal inequality to moral degeneracy shifts the focus from injustice to moral weakness and obscures inequality itself as one of U.S. society’s chief immoralities. This move from inequality to moral decline is reflected in the revivalists’ concrete strategies to restore civil society. The revivalists’ recommendations barely recognize the moral imperative to reduce poverty or eliminate systemic racism, proposing such paltry efforts as establishing mentoring programs for juvenile offenders.\(^{22}\) Instead, they are primarily concerned with shifting authority over existing anti-poverty services from the federal government to institutions of civil society, such as local religious organizations. Although *A Call to Civil Society* acknowledges that “our economic activities and institutions are not exempt from the need for moral renewal,” it does not make the transformation of economic relations a critical part of moral renewal.\(^{23}\) Under this view, moral restoration requires marriage, respect for authority, and personal responsibility, and these principles should help to govern the economic sphere.

Civil society revivalists claim, then, that the widening gap in U.S. wealth and privilege is driven largely by moral decline, while failing to highlight our tolerance of this gap as itself immoral. The new civil society could just as well grow from a public morality that is more disgusted by persistent social inequities and a moral truth that makes social justice a chief concern. We could begin with the revivalists’ fundamental principle that all persons possess equal dignity, their view of people as intrinsically social beings, and their aim to nurture a space for citizen engagement undominated by either the market or the state, yet prescribe a very different agenda. An alternative agenda might strengthen the institutions of civil society by aggressive efforts to relieve poverty and redress longstanding barriers to housing, jobs, and political participation. It might build solidarity around a commitment to engage in collective action for systemic change.

So far I have described the civil society revivalists’ focus on moral decline and suggested an alternative moral vision that places

\(^{21}\) *Id.* at 6.

\(^{22}\) See *id.* at 21.

\(^{23}\) *Id.* at 16.
social justice squarely at its center. But is there any reason for civil society to adopt this alternative definition of social morality? Social justice may be an important concern for any moral society, but it may be irrelevant or ancillary to the particular mission of civil society. There is strong evidence, however, that eliminating systemic inequality is an essential strategy for fostering civil society. As sociologist Caroline Hodges Persell puts it, "[c]ivil society and social justice are interdependent." Persell traces the decline in civil society in the last two decades to structural economic transformation in the United States that produced dramatic changes in income distribution. In the period from 1979 to 1989, for example, the richest 20% of households reaped 97% of economic gains while the bottom 20% saw a net decline in their share of earnings. More recent data show the gap between rich and poor is widening: "this year, the richest 2.7 million Americans, the top 1 percent, will have as many after-tax dollars to spend as the bottom 100 million." The richest one-fifth have a bigger share of the economic pie than they did in 1977, while the share of the one-fifth with the lowest incomes is smaller.

Persell argues that these economic inequalities are undermining civil society because "economic distress is negatively related to social capital." Citing the empirical work of sociologists William Julius Wilson and Elijah Anderson, she points out the importance of decent jobs and economic security for family and community stability. Huge disparities in income, moreover, reinforce class divisions and make it harder for citizens to perceive that they share a common moral purpose.

There is also evidence that poverty, social isolation, and inadequate education reduce levels of political participation. A survey of Blacks in Detroit from different income levels showed that

25. See id. at 154-56.
26. See id. at 154.
28. See id.
29. See Persell, supra note 24, at 158, 164.
30. See id.
31. See id. at 164.
32. See Frederick C. Harris, Will the Circle Be Unbroken? The Erosion and Transformation of African American Civic Life, in CIVIL SOCIETY, DEMOCRACY, AND CIVIC RENEWAL, supra note 7, at 317, 329-34.
those living in poor neighborhoods were less likely to engage in civic activities, belong to a church, attend community meetings, or contribute money to political candidates. In *Code of the Street*, Elijah Anderson reveals a violently enforced set of informal rules—the “code of the street”—that has replaced the rules of civil law in inner-city Philadelphia and competes with parents’ attempts to train their children to be good citizens. The code of the street flourishes not because the residents are not decent enough, but because of their community’s multiple deprivations: “a trying socioeconomic context in which family-sustaining jobs have become ever more scarce, public assistance has increasingly disappeared, racial discrimination is a fact of daily life, wider institutions have less legitimacy, legal codes are often ignored or not trusted, and frustration has been powerfully building for many residents.”

Civil society revivalists dismiss the key role systemic inequality plays in weakening the institutions of civil society by artificially excluding the issue of social justice from their project. David Blankenhorn, for example, considers three alternative strategies that rich countries might adopt to strengthen civil society: a welfare state strategy based on government programs, a laissez-faire strategy based on free market incentives, and a strategy based directly on restoring the institutions of civil society. Blankenhorn recognizes certain advantages of the welfare state model that uses government measures to increase economic security and reduce economic inequality. Despite its potential for state imperialism, the welfare state counters the deleterious influence of unconstrained market forces, which Blankenhorn suggests are partly responsible for the United States’ distinction as “the modern world’s weakest and most rapidly declining family system.”

Blankenhorn rejects the welfare state strategy, however, because it cannot perform the chief function of civil society: it cannot train

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35. *Id.* at 11.
37. *See id.* at 278.
38. *Id.* at 278-79.
children to be good citizens. Jean Bethke Elshtain similarly dismisses concern about social problems from the particular aims of civil society: “Civil society isn’t so much about problem solving as about citizen and neighbor creating. Then and only then will we work together on other desired ends.” Civil society’s job of forming good citizens becomes an excuse for setting aside systemic economic and social change from the revivalists’ concrete policy recommendations.

But why must we view the welfare state as a substitute for civil society? And why must we view solving social problems as disconnected from the task of creating good citizens and neighbors? There is no need to choose between state institutions aimed at ameliorating disastrous economic disparities and the institutions of civil society. These two sets of institutions can complement each other. Theda Skocpol’s study of the emergence of large voluntary groups in America, for example, demonstrates the historical importance of federal government programs in promoting civic activism. Skocpol observes, “[c]ontrary to the conservative view that federal social policies are harmful to voluntary groups, popularly rooted voluntary associations have often grown up in a mutually beneficial relationship with federal policies, including federal ‘tax-and-spend’ programs.” Local and federal efforts to achieve a more egalitarian society can facilitate a parallel mission to revitalize civil

39. See id. at 279.
41. As the preceding discussion should make apparent, the revivalists’ insistence “that civil society is not primarily problem-oriented (the cure-all idea) but citizenship creating” has not eluded me as Professor Elshtain charges. See Elshtain, supra note 6, at 586. Rather, I argue that this distinction between problem solving and citizenship creation is not only artificial, but one the revivalists do not consistently embrace. Thus, they use this dichotomy selectively to dismiss national programs to redistribute wealth and privilege, while inviting government intervention, such as tax policy and welfare regulation, to promote marriage. See COUNCIL ON CIVIL SO’Y, supra note 1, at 19, 20. A Call to Civil Society and A Nation of Spectators are certainly oriented toward solving the problems of divorce and single parenting. Our disagreement, then, is over which problems threaten civil society the most. Similarly, the revivalists are no more concerned about “actual conditions on the ground” than I am, although we may view these conditions differently. See id. My contention is that the revivalists’ attention to fixing “moral decline” as distinct from “social problems” in the name of citizenship creation is both theoretically and empirically indefensible and may ultimately do civil society more harm than good.
42. See Theda Skocpol, Don’t Blame Big Government: America’s Voluntary Groups Thrive in a National Network, in COMMUNITY WORKS: THE REVIVAL OF CIVIL SOCIETY IN AMERICA, supra note 40, at 37.
43. Id. at 39; see also Cohen, supra note 7, at 77 (“It is not necessary to choose between an institutionalist and an associationalist path to the creation of social trust. These can be mutually interdependent and reinforcing.”).
society. This mission, moreover, must include solving social problems to create citizens with the ability and motivation to work together.

Civil society revivalists overemphasize the significance of moral decline and underestimate the importance of social justice because of a profound misunderstanding of the depths and impact of social divisions in the United States. The revivalists blame moral decline for eroding our sense of common humanity. They assume that peeling away the layer of moral decay that accumulated over the past few decades will reveal a “common civic faith and shared moral philosophy.”

It is as if an acute dementia erased America’s racist history and its persistent effects from the revivalists’ memory.

Only the foggiest romanticism could fondly recall “our political and social egalitarianism, which allowed individuals of all stations to mingle and work together in common endeavors.” For most of American history, Blacks were barred by law from civic participation, including voting, holding public office, and serving on juries; a rule of racial purity helped to preserve white supremacy. The colonists originally established a clear demarcation between Black slaves and white masters by a violently implemented system of racial classifications and sexual taboos. A paramount objective of American law and social convention was keeping the white bloodline free from Black contamination and excluding Blacks from the privileges of whiteness. This racial caste system was upheld by law for three centuries, officially discredited only in recent decades by

44. COUNCIL ON CIVIL SOC’Y, supra note 1, at 26.
45. NATIONAL COMM’N ON CIVIC RENEWAL, supra note 1, at 39.
Supreme Court decrees such as *Brown v. Board of Education*\(^{49}\) (overturning the separate but equal doctrine in 1954) and *Loving v. Virginia*\(^{50}\) (invalidating anti-miscegenation laws in 1967).

Civil society revivalists forget that “the intellectual inheritance of our civilization” includes scientific racism, which justified this racial hierarchy, as much as the enlightenment principles of equality and freedom. Scientific racism understands racial variation as a biological distinction that determines social superiority and inferiority.\(^{51}\) It explains white domination of other races as the natural order of things. Only a theory rooted in nature could systematically account for the anomaly of slavery existing in a republic founded on a radical commitment to the ideals civil society revivalists admire.\(^{52}\)

These are not isolated events from a distant past that we can regret and then put aside as we move forward to restore civil society. This history created a culture, established institutions, and instilled expectations of privilege based on a racial hierarchy that negated the possibility of civic solidarity across racial lines. Institutional barriers continue to hinder minorities’ participation in the nation’s economic and political life and a sense of common humanity. Under racist ideology, moreover, whites perceive their interests in opposition to those of Blacks because Blacks’ social advancement diminishes white superiority. The jurisprudence of racial realism posits that white Americans have repeatedly sacrificed Black people’s interests to maintain their privileged position; legal measures that improve African-Americans’ status are implemented only if they also further the interests of the white majority.\(^{53}\) Some people consider it uncivil for minorities to make demands for equal citizenship that do not appeal to whites’ self-interest.\(^{54}\)

White Americans have therefore been unwilling to pay for subsidies and to engage in social reforms thought to benefit Blacks.\(^{55}\) White workers resisted labor reform during Reconstruction that

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50. 388 U.S. 1, 11-12 (1967).
54. At a recent meeting of the American Society of Political and Legal Philosophy, Lawrence Mead accused me of being “uncivil” because I made an argument based on racial justice that did not appeal to white people’s interests.
55. See Bell, supra note 53, at 8.
would have incorporated freed slaves into the labor market. Nearly a century later, a white backlash dismantled the 1960s War on Poverty programs when they began to improve the material status and increase the political power of the Black urban poor. This racial antipathy does not bode well for renewing a shared civic purpose:

For centuries in this country... blacks have served as the group whose experiences and private needs have been suppressed in order to promote “the common good” of whites. Indeed, the “shared values” in which the antifederalists laid faith included a historically constant and (for whites) a unifying belief in the inferior and subordinated position of black Americans.

The common good is an elusive ideal when one group defines its welfare in terms of the continued subordination of another.

These racial attitudes pervade every aspect of U.S. civil society. Just as strong as white Americans’ “proclivity to associate” is their proclivity to disassociate from Blacks. The most graphic reflection of this racial separation is persistent residential segregation. In *American Apartheid*, Douglas S. Massey and Nancy A. Denton demonstrate that the concentration of poor Blacks in urban centers resulted from systemic racial discrimination in the public and private housing markets. The geographic isolation of Blacks in inner-cities has profound civic consequences. As Margaret Weir explains, “it transforms the problems of living in cities into ‘black’ problems, making it easier for politicians to solve urban problems at the expense of poor black residents.”

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56. See *William Edward Burghardt Dubois, Black Reconstruction in America* 700 (1962).
59. Even progressive reformers have advocated race-neutral programs in hopes that they can garner more support from white Americans than the vilified welfare programs the public associates with Black people. See, e.g., Linda Gordon, *Pitted But Not Entitled: Single Mothers and the History of Welfare*, 1890-1935, at 304-05 (1994) (criticizing targeted welfare policies and noting that “a bigger welfare state is likely to be a more popular one”); William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* 120 (1987) (“The hidden agenda is to improve the life chances of groups such as the ghetto underclass by emphasizing programs in which the more advantaged groups of all races can positively relate.”). I critique these universalist appeals in Roberts, supra note 3, at 1388-92.
segregation to Blacks' extreme economic, social, and political isolation from mainstream society and to the resulting endurance of Black poverty. The authors' striking observation about the unparalleled degree of Blacks' exclusion from white civic life should send chills up any civil society revivalists' spine: "Ironically, within a large, diverse, and highly mobile post-industrial society such as the United States, blacks living in the heart of the ghetto are among the most isolated people on earth. No other group in the contemporary United States comes close to this level of isolation within urban society."  

This American apartheid was not a natural or inevitable consequence of benign racial preferences. These impoverished ghettos were consciously created by white real estate brokers and banks, supported by antiblack violence, federal housing policy, and legal rules such as restrictive covenants. To this day, racial discrimination in mortgage lending and real estate sales helps to maintain housing segregation.

Elshtain responds to "Accusations of Nostalgia," such as mine, by pointing out that she is well aware that "many bad things happened and are happening in America." The problem is not that civil society revivalists do not know the awful history of slavery, the annihilation of Native Americans, and women's second-class status, however. It is that they deliberately ignore this history in describing America's civic past and the potential for civic renewal. They rely on this amnesia to set aside the need for structural change in favor of reversing moral decline. Elshtain hurl the charge of nostalgia back at progressives who stubbornly refuse to relinquish their faith in federal government to solve social problems. They should also come to grips with the fact that "not all our problems are fixable," she admonishes. The degree of tolerance we have for gross disparities in wealth and privilege—the extent to which we believe these problems are fixable—is a matter of moral conviction. Civic revivalists advocate an exclusive morality that seeks to repair America's moral deficiencies such as divorce and personal irresponsibility while

62. Massey & Denton, supra note 60, at 77.
63. See id. at 17-59, 87.
66. Id. at 27.
67. Id.
lacking the conviction to challenge an unjust social order.

Another response to the problem that racism poses for civil society might emphasize the development of Black civic institutions and associations that do not rely on white people's assistance or approval. As Regina Austin wisely advocates:

Although blacks must resist white supremacy at every turn, blacks should also recognize the inadequacy of the concessions white supremacy is likely to accord them and proceed on the assumption that they must generate and sustain a black public sphere, that is, a space in which they can pursue the good life both in spite of white people and without regard to them.68

This model of separate civic arenas is more realistic, although it may not be what most revivalists had in mind. But the commitment to building independent Black institutions of civil society need not negate the pursuit of systemic economic and social change in America. Black communities currently lack the resources needed to raise the masses of Black people out of poverty. Without a radical objective, moreover, Black localism may simply accommodate the prevailing social order. At the inception of the War on Poverty, for example, whites found the concept of “community development” reassuring because “they understood it to mean that the assault would be on the ‘pathology of the ghetto,’ not on white stakes in neighborhoods, schools, jobs, or public services.”69 Strengthening Black civic life is important, but, just like the rest of civil society, this effort must seek to abolish America’s systemic injustices.

The history of institutionalized racial exclusion, reinforced by a white supremacist ideology, suggests that any effort to improve civic engagement and social connectedness must place at its center the eradication of racial and other social stratifications. The lesson to be learned from the Founders is that their “moral idea that all persons possess equal dignity” was strangled by their practice of holding human beings in bondage.70 Their hypocrisy, along with racism’s intransigence, should counsel against the naive faith in the moral power of these ideals alone to bring about a civil society. By


70. COUNCIL ON CIVIL SOCIETY, supra note 1, at 13.
constantly referring to a mythical shared civic past, the revivalists pretend that today's inequalities are caused by a recent decline in morals. Their writings read like a monumental effort to avoid having to confront the immorality of America's racist and unequal social order. The revivalists need to get a grip: There will be no common civic faith, no shared moral philosophy, no sense of common humanity in America unless it is forged in a struggle for social justice.

B. Equality Causes Moral Decline

The exclusion of social justice from the revivalists' moral center is bolstered by the habit of contrasting gains in social equality with civic virtue. Proponents of civil society accuse civil rights movements of contributing to the breakdown of civil society. In *Liberal Purposes*, William Galston suggests a correlation between civil rights and moral decay: "Although the civil rights movement is widely acknowledged to have righted ancient wrongs, epidemics of crime, drugs, and teenage pregnancy have exacted a fearful toll." The final report of the National Commission on Civic Renewal opens by contrasting increased economic opportunity with the country's troubling civic and moral condition. The report acknowledges briefly the link between economic misery and civic ills only to discount its importance. The authors' point is to distinguish between civic and economic health and to place virtue and civic action above economic well-being.

Civil society revivalists count declines in morality and social capital as a cost exacted by improvements in economic and social equality. They tend to balance advances made by women and minorities against the social harms caused by civic disengagement and moral disorder. Thus, James Q. Wilson weighs the abolition of slavery and segregation as well as increased gender equity "against ... the increased tolerance of drug experimentation, the social marginalization of religious believers, the heightened skepticism about institutional authority, and a certain confusion over sexual roles." Robert Putnam similarly offers a "rounded assessment of

72. National Commission on Civic Renewal, supra note 1, at 5.
73. See id. at 5-6.
74. See id. at 7.
75. James Q. Wilson, *Liberalism, Modernism, and the Good Life*, in *Seeds of
changes in American social capital over the last quarter-century" that "counts the costs as well as the benefits of community engagement." He claims that the substantial decline in intolerance and overt discrimination in recent decades "may be related in complex ways to the erosion of traditional social capital." 77

In addition, civil society revivalists devalue tools that disempowered people have used successfully to achieve greater inclusion in the social, economic, and political life of the nation. First, the revivalists rarely list social movements among the kinds of voluntary associations that constitute civil society. Some affirmatively disparage them. Yet these associations of citizens who struggled to make government more democratic were themselves marvelous examples of civil society. More than most voluntary groups, they were born from "the urge to which democratic civility responds": the yearning for participation and self-determination. Social movements served as classic seedbeds of political activism and civic engagement, providing "oppositional space" for citizens to join together to challenge state domination.

Paying more attention to voluntary groups that work outside the dominant political apparatus highlights the important role of civil society in struggles for self-determination and freedom. Because they were excluded from both state-sanctioned and market sources of social capital, Black Americans had to form their own intermediate associations to make ends meet, to confront racial injustice, and to agitate for inclusion. Political scientist Fredrick Harris describes the

VIRTUE: SOURCES OF COMPETENCE, CHARACTER, AND CITIZENSHIP IN AMERICAN SOCIETY, supra note 36, at 17, 29.
77. Id.
78. See Cohen, supra note 7, at 69 (criticizing civic society revivalists for "discount[ing] the new types of association, mobilization, and public engagement of the 1960s and 1970s, simply because they differ from traditional secondary associations"); Harris, supra note 32, at 321 ("An important omission in the civic renewal debate is the role social movements play in the nation's civic life."). See, e.g., COUNCIL FOR CIVIL SOCY, supra note 1, at 8-9 (listing "book clubs, Little League, the Future Farmers of America, the Kiwanis Club, the Girl Scouts, the Chamber of Commerce, the Advertising Council, and the National Association for the Advancement of Colored People" as current examples of voluntary civic organizations).
79. See, e.g., Elshtain, supra note 40, at 27-28 (criticizing movement politics as "inherently unstable, ephemeral, and geared toward publicity" and arguing that "decent" institutions are preferable for building civic ties).
80. Hefner, supra note 9, at 27.
dual function of Blacks' "oppositional civic culture": "[w]hile the culture and institutions of marginal citizens perform [a traditional] civic role, they also transmit values that counter the dominant society's ideology of subordination, and they employ these values to justify and legitimize oppositional movements."82 Black churches, social clubs, and grass-roots political organizations have cultivated norms that both support the dominant civic order and subvert its white supremacist features.

Blacks have emphasized the civic role of their families as well: while menial work outside the home was historically an aspect of racial subjugation, the family was a site of solace from white oppression.83 Sociologists have also noted the importance of Black families in preparing children to survive in a racist society by teaching them a positive cultural identity that defies the racist stereotypes so rampant in the dominant culture.84 The practice of informal adoption within the extended kinship network became a common mechanism for Black families to rear children under difficult circumstances without interference by the state.85 It is unfortunate that the revivalists' myopic focus on the marital family eclipses the many ways in which Black families, who are less likely than whites to fit this model, have served a classically civic function.

Black Americans' reason for participating in these civic projects have much more to do with mistrust of the government, mainstream social institutions, and institutionalized norms than the "civic trust" that the revivalists exalt. For Blacks, observes Harris, "distrust in


83. See ANGELA Y. DAVIS, WOMEN, RACE & CLASS 17 (1983); see also JACQUELINE JONES, LABOR OF LOVE, LABOR OF SORROW: BLACK WOMEN, WORK, AND THE FAMILY FROM SLAVERY TO THE PRESENT 12-13 (1985).


government has had a paradoxical link to civic engagement.”86 Research consistently shows that Blacks quite understandably have higher levels of mistrust toward government institutions than most Americans.87 But this skepticism about the government generated an intensity of Black political activism in the 1950s and 1960s that surpassed that of whites.88 Given the mediating function served by voluntary associations, mistrust is a perfectly legitimate motivation to draw citizens together for civic engagement.89

How, then, can the revivalists pit the civil rights and women’s movements in opposition to civil society? These struggles seem to be disqualified from the revivalists’ place of honor because they used disruptive tactics like boycotting businesses and joining protest marches rather than more “civil” tools like voting (from which Blacks and women were once officially barred) and forming recreational clubs. More important, these social movements sought to radically change the social order and achieved a modicum of success. The revivalists’ version of civil society, on the other hand, leaves the social order intact while concentrating on moral decay.

Moreover, civil society revivalists denounce both the assertion of rights and federal court decrees that provide long-term oversight of rights enforcement. They slight the effective use of rights by disenfranchised groups to rebel against social degradation and demand recognition as full members of society. As Patricia Williams explains: “For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a

86. Harris, supra note 32, at 20.
87. See id. For a discussion of differing racial attitudes about the criminal justice system, see generally KATHARYN K. RUSSELL, THE COLOR OF CRIME: RACIAL HOAXES, WHITE FEAR, BLACK PROTECTIONISM, POLICE HARASSMENT, AND OTHER MACROAGGRESSIONS (1998).
88. See Harris, supra note 32, at 20; see also Richard D. Shingles, Black Consciousness and Political Participation: The Missing Link, 75 AM. POL. SCI. REV. 76, 76 (1981). Black Americans, on the other hand, have shown an incredible faith in the constitutional principles of equality and freedom. On the paradox of Blacks’ fidelity to the Constitution, see Dorothy E. Roberts, The Meaning of Blacks’ Fidelity to the Constitution, in CONSTITUTIONAL TRAGEDIES, CONSTITUTIONAL STUPIDITIES 226 (William N. Eskridge, Jr. & Sanford Levinson eds., 1998) (“Blacks have no reason to have faith in the Constitution that was designed to exclude them; yet they have remained faithful to the Constitution in the struggle for citizenship by relentlessly demanding that its interpretation live up to its highest principles and follow its strictest requirements.”).
89. Even middle-class citizens may be motivated by mistrust. Katha Pollitt notes that she and her neighbors joined the Parent Teacher’s Association “to keep our kids from being shafted by the school system.” Katha Pollitt, For Whom the Ball Rolls, NATION, Apr. 15, 1996, at 9. Pollitt also astutely adds, however, that the elite have good reason to trust the system: “[F]or them, the system works. It’s made them rich and famous.” Id.
respect that places one in the referential range of self and others, that elevates one's status from human body to social being.\(^{90}\)

In addition, the revivalists' emphasis on localism minimizes the important role played by federal courts in dismantling official systems of racial discrimination. To be sure, federally-enforced integration strategies have failed to overturn structural impediments to change and have devalued independent Black institutions and culture.\(^{91}\) Federal court and legislative remedies are no substitute for community organizing. Indeed, it was grass roots agitation during the civil rights movement that spurred the federal government into action. But one wonders whether the upheavals of the 1960s could have taken place without social movements, rights assertion, and federal court intervention in local white supremacist governments. The revivalists' disdain for these tools deployed by subordinated groups in their liberation struggles only reinforces the sense that the new civil society cares little for the radical ends these groups sought to achieve. Linking moral decline and equality in these ways not only evades social cleavages; it may intensify them. This way of thinking mimics the age-old pattern of attributing the deprivation of disenfranchised groups to their own moral depravity, rather than to societal inequalities.\(^{92}\) Since the 1920s, sociologists have pointed to the degeneracy and disintegration of the Black family to explain Black poverty, crime, and unemployment.\(^{93}\) Daniel Patrick Moynihan notoriously popularized this thesis in 1965. He described Black culture as a "tangle of pathology" and declared, "[a]t the heart of the deterioration of the fabric of the Negro society is the deterioration of the Negro family."\(^{94}\) Putting moral decline in the spotlight obscures

90. PATRICIA J. WILLIAMS, THE ALCHEMY OF RACE AND RIGHTS 153 (1991). Other Black legal scholars have disagreed with white critical legal studies scholars over the significance of rights. See, e.g., Anthony E. Cook, Beyond Critical Legal Studies: The Reconstructive Theology of Dr. Martin Luther King, Jr., 103 HARV. L. REV. 985, 992 (1990); Kimberle W. Crenshaw, Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law, 101 HARV. L. REV. 1331, 1357 (1988) (arguing that liberal legal ideology "remains receptive to some aspirations that are central to Black demands, and may also perform an important function in combating the experience of being excluded and oppressed").


93. See generally JOHN DOLLARD, CASTE AND CLASS IN A SOUTHERN TOWN (1937).

the need for structural reform. It may build resentment against subordinated groups who are often painted as irresponsible and undeserving, and it may fortify privileged people in their resolve to maintain the status quo.

II. WINNERS AND LOSERS IN THE NEW CIVIL SOCIETY

The devaluation of social justice in the revivalists' moral vision creates another type of exclusion. The revivalists' strategies to implement their public values benefit privileged groups the most and disadvantage those at the bottom. As Robert Hefner learned from studying the modern European experience with civil society, the failure to attend to the "institutional nest that supports democratic civility" tends to produce segmentary freedoms that are enjoyed by only a portion of the populace.95 The revivalists' agenda reflects a stratified approach to state coercion in citizens' lives that parallels its exclusive moral vision.96 The revivalists' moral exclusivity affects the extent to which they see state interference in citizens' lives as an appropriate means of fostering civil society. Revivalists promote civil society's function of avoiding a state-dominated existence for citizens who conform to their moral ideology. On the other hand, they overlook or even advocate state regulation of non-conforming citizens.

This second form of exclusivity especially structures civil society revivalists' recommendations for the family. Revivalists highlight the degeneration of child-raising families as the most pernicious of civic ills.97 Under many conceptions of civil society, the family is "the most

95. See Hefner, supra note 9, at 17-26. Hefner attributes the lack of concern for sociological realism in the recent academic renewal of interest in civil society to its origins in political philosophy rather than sociology or anthropology.

96. Or maybe the revivalists have just jumped on the prevailing political bandwagon, recognizing that "any project that entails government acting in the broad national interest (rather than in the narrower interest of the suburban middle class) probably won't get done." Nicholas Lemann, The New American Consensus: Government of, by and for the Comfortable: The Smallness of Centrism, N.Y. TIMES MAG., Nov. 1, 1998, at 37, 41. The civil society agenda fits nicely into the new Democratic-Republican politics that appeals primarily to suburban families by supporting "mainly low-cost government initiatives that signal empathy with middle-class families who felt embattled, in the social rather than economic sense: the V-chip to screen out Internet pornography, extended family leave, school uniforms." Id. at 42. I am indebted to Dan Lewis for bringing to my attention the revivalists' affinity for this political consensus.

97. See, e.g., Mary Ann Glendon, Forgotten Questions, in SEEDBEDS OF VIRTUE: SOURCES OF COMPETENCE, CHARACTER, AND CITIZENSHIP IN AMERICAN SOCIETY, supra note 36, at 1, 3 ("[T]he simultaneous weakening of child-raising families and their surrounding and supporting institutions constitutes our culture's most serious long-term problem.").
fundamental form of social capital," and one of the principal associations that shield the individual from the power of the state. This is a fairly uncontroversial tenet of civil society philosophy. Forces that weaken families, then, threaten the health of civil society; addressing these forces should be an important goal for public policy in a civil society. Civil society revivalists take this proposition one controversial step further by identifying divorce and single parenting as the chief agents of family degeneration and by prescribing marriage as the cure. Underlying this diagnosis is the norm of the heterosexual nuclear family.

Civil society revivalists place marriage at the center of their agenda as the essence of family virtue and the ideal context for the moral education of children. A Call to Civil Society elevates the marriage bond to "the first and most important gift we give to our children." The Index of National Civic Health includes divorce and non-marital births as the only family components used to measure civic well-being. Even if we agree that marriage provides certain advantages to children (a highly disputed claim), can it really be the virtually singular means for a civil society to strengthen families? Certainly there are many other ways in which family ties are weakened besides divorce and unwed childbearing. By singling out the decline in marriage, civil society revivalists minimize sources of family insecurity that stem more directly from social inequalities, such

98. Putnam, supra note 76, at 73.
99. See Harris, supra note 32, at 321 ("An important omission in the civic renewal debate is the role social movements play in the nation's civic life."); see also COUNCIL ON CIVIL SOCY, supra note 1, at 18; NATIONAL COMM’N ON CIVIC RENEWAL, supra note 1, at 13.
100. See, e.g., David Blankenhorn, The Possibility of Civil Society, in SEEDBEDS OF VIRTUE: SOURCES OF COMPETENCE, CHARACTER, AND CITIZENSHIP IN AMERICAN SOCIETY, supra note 36, at 271, 280. ("The centerpiece goal of a civil society strategy should be to strengthen marriage as a social institution—to increase the proportion of children who grow up with two married parents and decrease the proportion who do not.").
101. COUNCIL ON CIVIL SOCY, supra note 1, at 19; see also Blankenhorn, supra note 100, at 280. ("The centerpiece goal of a civil society strategy should be to strengthen marriage as a social institution—to increase the proportion of children who grow up with two married parents and decrease the proportion who do not.").
102. See NATIONAL COMM’N ON CIVIC RENEWAL, supra note 1, at 24.
103. See generally LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA (Cynthia R. Daniels ed., 1998) (collecting divergent points of view about the impact of fatherlessness on children and social order). Judith Stacey, for example, asserts that “the claim that social scientists have achieved a consensus on the dangers of fatherlessness..., is categorically false.” Judith Stacey, Dada-ism in the 1990s: Getting Past Baby Talk About Fatherlessness, in LOST FATHERS THE POLITICS OF FATHERLESSNESS IN AMERICA, supra, at 64. No social science research has demonstrated “or even attempted to demonstrate” that children living in radically diverse “fatherless” family structures have a greater risk of being inadequately parented than children raised by heterosexual married couples. Id. at 66.
as family poverty, removal of children from their parents by the state, and domestic violence.

The revivalists also fail to sufficiently interrogate the relationship between marriage and economic inequality, and its implications for public policy. Social science research linking single motherhood to negative outcomes for children, such as poverty and delinquency, is subject to differing causal interpretations. The revivalists hold that these outcomes are caused by family structure rather than by difficulties experienced by female-headed households arising from gender, race, and economic inequities. Nor do civil society revivalists sufficiently attend to the economic reasons for the decline in marriage. Chronic poverty is not conducive to forming stable marital bonds. The stresses and dislocations of unemployment make sustained partnerships difficult; jobless men do not make attractive husbands. William Julius Wilson makes a convincing case that high rates of Black female-headed households are tied directly to Black male unemployment, which is more than double that of whites, along with changing norms concerning marriage.

Moreover, Black fathers’ inability to contribute financially to their families does not improve with marriage. Asserting that marriage is the most efficacious solution to Black child poverty only masks the shameful facts about Black Americans’ unequal economic status.

In reality, the correlation between race and poverty overshadows the correlation between fatherlessness and poverty. A Black child whose father is present is still likely to fare worse than a white child raised by a single mother. In other words, racial inequality, “not fatherlessness,” is the leading cause of Black children’s deprivation. Pretending that Black poverty is the fault of absent Black fathers provides a defense against addressing America’s institutionalized racism.

104. See generally LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA, supra note 103. For another refutation of negative claims about fatherlessness, see generally NANCY E. DOWD, IN DEFENSE OF SINGLE-PARENT FAMILIES (1997).


106. Dorothy Roberts, The Absent Black Father, in LOST FATHERS: THE POLITICS OF FATHERLESSNESS IN AMERICA, supra note 103, at 157 (relying on SARA MCLANAHAN & GARY SANDEFUR, GROWING UP WITH A SINGLE PARENT: WHAT HURTS, WHAT HELPS 85 (1994)). McLanahan and Sandefur observe: “It is important to remember that Black children in two-parent families have much higher poverty rates than white children in single-parent families. Hence, if there were no single-parent families, Black children would still have much higher poverty rates than white children.” MCLANAHAN & SANDEFUR, supra at 85.
Regulating families to make them conform to the marital norm is no substitute for a more equitable distribution of wealth and privilege. A civil society agenda, then, would more effectively strengthen families "including, but not limited to, marital ones" by including strategies that more directly remedy gender, economic and racial inequality.

By promoting a particular family type, moreover, the revivalists indirectly weaken families that do not fit their mold. Their policy recommendations that reward marriage, such as tax code reforms, penalize parents who are not married.\textsuperscript{107} Even if they do not intend it, praising marriage as the only virtuous environment for raising children stigmatizes female-headed families. It diverts resources away from the very households that need them most. As women's studies professor Judith Stacey argues, "[m]ost social science evidence, like common sense ... suggests that the chief handicaps unwed mothers face are deficits of time, money, and social support ... deficits for which there are much better social remedies than moral opprobrium."\textsuperscript{108} Civil society revivalists are banking on the reestablishment of marriage to cure these handicaps at some future date. In the meantime, their virtual abandonment of non-marital families overlooks the civic function these parents are currently struggling to perform.

As already suggested, the revivalists' exclusive family agenda has a distinct race and class bias. Its proposed mechanisms for rewarding parental care benefit primarily middle-class families who earn enough to take advantage of them. At the same time that the revivalists advocate tax perks for middle-class, stay-at-home moms, welfare reform discourse vilifies poor mothers who care for their children at home as new state laws push them into the workforce, often without adequate child care.\textsuperscript{109} Far from reaping government benefits for spending more time with their children, these mothers are severely sanctioned if they fail to meet a host of job-related requirements.\textsuperscript{110}

\textsuperscript{107} Council on Civil Soc'y, supra note 1, at 19.

\textsuperscript{108} Stacey, supra note 103, at 70.


\textsuperscript{110} Sheryl Cashin, Federalism, Welfare Reform, and the Minority Poor: Accounting for the Tyranny of State Majorities, 99 COLUM. L. REV. 552, 604-05 (1999) ("The vast majority of states now permit narrower exemptions from work requirements ... and they now impose stricter sanctions for non-compliance with the work requirement than were imposed under the old regime."); Barbara Vobejda & Judith Havemann, Sanctions: A Force Behind Falling Welfare Rolls; States Are Cutting Off Tens of Thousands Who Don't Seek Work or Follow Rules, WASH. POST, March 23, 1998, at A1.
Yet civil society revivalists make no mention of these welfare reform measures deliberately designed to disadvantage “at-home parental care of children.” The only recognition of welfare reform comes in the suggestion that governors and state legislatures use public assistance programs to promote marriage. This version of civil society not only devalues the parent-child relationship in poor, female-headed homes, but encourages state intrusion in these homes to promote official moral standards.

Finally, civil society revivalists advocate measures that will “enhance parental authority in the upbringing of children.” Whose parental authority? Dramatic changes in policies governing public assistance and child welfare are converging to increase state supervision of poor children, especially those who are Black. Yet the revivalists seem oblivious to these trends. In addition to rules promoting work, new welfare measures condition public aid on parents’ compliance with a variety of rules regarding children. These indigent parents are subject to a level of state interference in child raising that middle-class parents would never tolerate and that violates basic tenets of civil society.

Given the revivalists’ inattention to systemic inequality, it comes as no surprise that the only recommendation related to the child welfare system (a system that regulates poor families almost exclusively) is to strengthen and expand the institution of adoption, including trans-racial adoption. Adoption is an important institution in civil society, revivalists argue, because it insures more children will grow up with two married parents. By choosing to bolster adoption without mentioning programs that preserve the families of children in foster care, the revivalists favor the more privileged adoptive parents. Apparently, parents whose children have been removed by the state are less deserving of social support.

111. COUNCIL ON CIVIL SOC’Y, supra note 1, at 19.
112. See id. at 20.
113. Id. at 23.
114. See infra notes 121-34 and accompanying text; see also Gwendolyn Mink, Aren’t Poor Single Mothers Women?: Feminists, Welfare Reform, and Welfare Justice, in WHOSE WELFARE? 171, 172 (Gwendolyn Mink ed., 1999) (noting that welfare work requirements deny poor mothers parental choices about whether and how much outside employment is compatible with the needs of children).
116. See COUNCIL ON CIVIL SOC’Y, supra note 1, at 26; see also NATIONAL COMM’N ON CIVIC RENEWAL, supra note 1, at 13 (advocating “sweeping away impediments to adoption”).
117. See COUNCIL ON CIVIL SOC’Y, supra note 1, at 26.
because they are less likely to be married. But adoption should be a last resort for addressing child neglect and deprivation in a civil society. Of course the state has a duty to protect children from harm within families, and should usually facilitate the adoption of children whose family ties have been irremediably fractured. But states promote children's welfare best by supporting impoverished families. At the very least, scholars interested in protecting families from state domination should acknowledge that foster care constitutes a form of state supervision of poor and minority children, and that adoption typically involves government disruption of their relationship with their parents. 118

The revivalists' claim that adoption has been “significantly weakened in recent years” is simply wrong. 119 What has been weakened by recent state and federal legislation is the national commitment to preserve ties between poor parents and their children. In November 1997, President Clinton signed the Adoption and Safe Families Act (“ASFA”) 120 aimed at doubling the number of children adopted annually by 2002. 121 The Act represents a striking shift in federal child welfare philosophy from an emphasis on the reunification of children in foster care with their biological families toward the adoption of these children into new families. 122 The Act’s preference for adoption is implemented through swifter timetables for terminating the rights of biological parents to “free” children for adoption and the provision of technical assistance to states to facilitate adoptions. 123 The Act also gives states financial incentives to move more children into adoptive homes. 124 Although ASFA retains

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118. See generally Marsha Garrison, Why Terminate Parental Rights?, 35 STAN. L. REV. 423 (1983) (arguing that states unjustifiably terminate parent’s rights to maintain contact with children in foster care to free these children for adoption).

119. See COUNCIL ON CIVIL SOC’Y, supra note 1, at 26.


124. Under ASFA, the federal government pays states $4000 multiplied by the amount by which the number of foster child adoptions in the state during the fiscal year exceeds a base number of foster child adoptions. Id. § 673b(d)(1)(A). The government pays $2000 for each
the requirement that states make reasonable efforts to reunify children with their families, it encourages concurrent efforts to place these children with adoptive parents.\textsuperscript{125}

The passage of AFSA corresponded with the growing disparagement of mothers receiving public assistance and welfare reform’s retraction of the federal safety net for poor children.\textsuperscript{126} The rejection of public aid to poor families in favor of private solutions to poverty, such as marriage and child support enforcement, is mirrored in the appeal to adoption to reduce the burgeoning foster care population. The intersection of these federal welfare and adoption reform laws marks the first time in this nation’s history that “states have a federal mandate to protect children from abuse and neglect, but no corresponding mandate to provide basic economic support to poor families.”\textsuperscript{127} The act was also tied to the growing interest in removing barriers to white middle-class couples’ ability to adopt, especially race-matching adoption policies.\textsuperscript{128} Thus, the civil society revivalists’ policy recommendations merely endorse the existing consensus to reject any national effort to address the systemic causes of children’s deprivation, and to pursue instead the private remedies of marriage and adoption.

Like Congress, the revivalists have misidentified the problem with the U.S. child welfare system. The injustice of foster care does not stem from the small number of children being adopted; it stems from the large number of children removed from their homes. Virtually all of these children are poor and a startling percentage are Black.\textsuperscript{129} In 1996, Black children made up forty-five percent of the foster care population although they were only fifteen percent of the

\textsuperscript{125} States may concurrently “identify, recruit, process, and approve a qualified family” to adopt the child. Id. § 675(5)(e).

\textsuperscript{126} See MINK, supra note 109, at 123-24.


\textsuperscript{128} See Multiethnic Placement Act of 1994, 42 U.S.C. § 5115(a) (repealed 1996) (prohibiting agencies receiving federal funding from placing children according to race); see also Civil Rights Act, 42 U.S.C. § 1996(b) (prohibiting agencies receiving federal funding from denying anyone the opportunity to become an adoptive or foster parent from delaying or denying the placement of a child on the basis of race).

general population under age eighteen.\textsuperscript{130} In the nation’s urban centers, the racial disparity is even worse. Chicago’s foster care population, for example, is almost ninety percent Black.\textsuperscript{131} Of 42,000 children in foster care in New York City, less than 2000 are white.\textsuperscript{132} Once Black children enter foster care, they remain there longer, are moved more often, and receive less desirable placements than white children.\textsuperscript{133} Even if all of the thousands of Black children in foster care were adopted tomorrow, there would still be a problem.

The focus on adoption as the solution to the foster care crisis directs attention away from the excessive state removal of poor Black children from their homes. A civil society should be wary of state solutions to social problems that rely on terminating parents’ rights, rather than on reducing poverty or building stronger supports for families. These efforts should include both national policies capable of ensuring children’s material welfare and community-based programs designed to preserve families. The revivalists’ turn to adoption as the only strategy for improving the child welfare system is further illustration of their moral exclusivity.

CONCLUSION

A recent reminder of the challenge racism poses for civil society is the scene of white housewives stationed along South Boston streets shouting “niggers, go home” at buses of Black children arriving under a 1974 federal school desegregation plan.\textsuperscript{134} Brent Staples notes that these housewives had their defenders: “At the time, community leaders like Louise Day Hicks and State Representative William Bulgar portrayed Southie as a ‘family-oriented community’ where people weren’t really racist, just concerned about controlling their schools and the lives of their children.”\textsuperscript{135} According to these

\begin{itemize}
  \item \textsuperscript{131} See \textsc{Patrick Murphy}, \textit{Wasted} 96 (1997).
  \item \textsuperscript{132} Martin Guggenheim, \textit{The Foster Care Dilemma and What to Do About It: Is the Problem that Too Many Children Are Entering Foster Care?}, 2 U. PA. J. CONST. L. 141, 144 (1999).
  \item \textsuperscript{134} See Brent Staples, \textit{A Prayer for the Dead}, \textsc{N.Y. Times Book Rev.}, Oct. 3, 1999, at 3 (reviewing \textit{Michael Patrick MacDonald, All Souls: A Family Story from Southie} (1999)).
  \item \textsuperscript{135} Id.
politicians, their neighbors were simply guarding civil society.

Today's civil society advocates would certainly condemn the housewives' bigotry as well as the vulgar methods they employed to preserve their civic circle. Yet the revivalists' conception of civil society would embrace the father-headed homes in which these women raised their children as well as the mothers' objective to shield parental authority from federal intrusion. Their model does little on the other hand, to reverse the forces that made the children and housewives enemies. It upholds a community cohesiveness centered around marital families and a mythical shared civic faith while glossing over the deep-seated hatreds and injustices that really corrode the ideal of equal human dignity. A different strategy is needed to ensure that the Southie view of civil society does not prevail. Only by recognizing America's obscene social inequities as our chief moral problem and a critical threat to the institutions of civil society will the revivalists make "the commitment to freedom and justice for all" something more than nice-sounding words.