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Johann N. Neem. *Creating a Nation of Joiners: Democracy and Civil Society in Early National Massachusetts.* Cambridge: Harvard University Press, 2008. 259 pp. $49.95 (cloth), ISBN 978-0-674-03079-4.

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Potent Engines of Change

It is difficult to imagine a significant level of opposition to teacher training, medical certification, and law schools (well, maybe the last is conceivable). Yet in the early nineteenth century many Americans perceived each of these as elitist and anti-democratic, while others saw them as dangerous threats to orthodoxy. For instance, Horace Mann's Massachusetts school reforms came under strenuous attack in the 1840s from one direction for ignoring original sin in the preparation of teachers, and from another for setting up a selective standard for instruction beyond local control. The efforts to establish some form of control over the licensing of teachers, doctors, and lawyers became a battle over association, a right that not all Americans were willing to grant. The right of citizens to associate, to come together in groups of like-minded people for the furtherance of their interests, is now widely accepted as the cornerstone of a functioning civil society, fostering the ability of individuals to think and act for themselves. Today "Americans consider an independent civil society essential to a functioning democracy," and we know that societies lacking such are brain-dead and probably doomed to eventual collapse (p. 172). But, as Johann Neem's insightful and fascinating book evidences, it has not always been this way.[1]

Alex de Tocqueville saw the United States as the land of voluntary associations. Traveling through the country in 1831 and 1832, he saw associations everywhere, with average citizens participating enthusiastically in groups with aims local and national, parochial and universal. Tocqueville's vision of associations as the glue of American democracy influenced historians and political scientists into our century, with most seeing freedom of association serving "as a bulwark against expanding state authority," while allowing "Americans to carry out their civic lives independent of the state" (p. 3).[2]

But in this bold and brilliantly argued book, Neem maintains that Tocqueville observed only the end-product of a half-century-long debate, one pitting competing images of civic life against one another in the political, legal, and intellectual arena. "Americans were uneasy about becoming a nation of joiners and accepted it only when other options had failed" (p. 3). Many, and perhaps most, of the nation's founders rejected the idea that people should come together in groups to contend for their interests or beliefs. In Federalist No. 10 James Madison warned against factions, the primary source of which is the "unequal distribution of property," and which are "united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community."[3] In his Farewell Address, George Washington warned of the dangers of "all combinations and associations" which served the interests of "a small but artful and enterprising minority" acting contrary to the communal good and striving "to direct, control, counteract, or awe the regular deliberation and action of the constituted authorities." While Washington acknowledged that "combinations or associations … may now and then answer popular ends, they are likely in the course of time … to become potent engines by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people."[4]

Thomas Jefferson as much as John Adams feared the consequences for a nation that allowed voluntary associations, certain that even the most benign grouping would

soon become the voice of special interests, destroying the nation's essential unity. Though Jefferson attained political victory in large part thanks to the Democratic Republican Societies of the 1790s, he did not want others following his example. When the people elected him, they had spoken loud and clear, and that should be an end to the matter. We might all be Republicans and all Federalists, but that did not mean that there should be a political party of either; any sort of independent combination of people was an effort to bypass or overturn the will of the people. Just as there should be no labor unions, since each worker enjoyed the individual freedom to contract, so there should be no political organizations since each voter acted independently in casting his ballot. Just as the greatest danger to capitalism came from workers organizing to force their employers to act contrary to their self-interest, so the greatest danger to republican government would come from people joining with others to act according to their special interests without regard for the general good. Before long the country would lose its unity and fragment into hostile and competing parts.

Neem focuses his attention on early national Massachusetts, the leadership of which insisted that all associations be subject to state supervision. "Forming an association or a corporation was not a right but a legal privilege granted to particular institutions that serve the public interest." Only the legislature had the power to determine which associations were legitimate. As Neem observes, Massachusetts is "distinctive, and thus particularly worthy of study" because of its persistent communitarian heritage, "illustrated by the longevity of the Federalist party." The people of Massachusetts turned to voluntary associations in an effort to maintain community, but doing so required that they "reinterpret the Revolution's legacy to justify a role for private groups in public life" (p. 6).

A careful and highly informative consideration of the impact of both statute law and judicial decisions, *Creating a Nation of Joiners* offers a valuable examination of the cultural impact of law. The generations immediately after the American Revolution addressed one of the most fundamental political issues for any democracy: to what degree do the people continue to participate in government after they have elected representatives? Voluntary organizations extend civic participation beyond the ballot, but their acceptance was far from an automatic result of the Revolution. For that reason, Neem maintains, "Understanding the rise of civil society is therefore as important to making sense of the development of American democracy as studying constitutional theory and electoral politics" (p. 9).

With so many potential sources of disunion–religious, economic, ethnic, and social–it is understandable that the Federalists would want a structure that promoted unity. Retaining national cohesion necessitated that the power of interest groups be minimized. America's political leaders struggled to maintain harmony, fearful that local assemblies and associations would all end up like Shays's and the Whiskey Rebellions, tearing the new nation apart. Maintaining unity occasionally required silencing critics, as with the Sedition Act, but such decisions were appropriately left to the people's representatives. Federalists believed that only the federal government spoke for all Americans, while only the state government could speak for the people of Massachusetts. As a consequence, it is the state government that creates and manages civil society "in the service of the people" (p. 11).

The Revolution had taught the people of Massachusetts that they held common interests, and confirmed the leadership in their self-perception as the representatives of a unified commonwealth. Republican government privileged the community above individual rights or interests. As the General Court proclaimed in recommending the state's Constitution of 1780, "the interest of the Society is common to all its members" (p. 13). "Government," article 7 of the Declaration of Rights stated, "is instituted for the common good; … and not for the profit, honor, or private interest of any one man, family, or class of men," and therefore should not be disrupted by particular interests (p. 16). With the whole taking primacy over the parts, association was a privilege, not a right. Article 6 of the Declaration clarified the limited access to association, establishing that "no man, nor corporation or association of men, have any other title to obtain advantages … distinct from those of the community, than what arises from the consideration of services rendered to the public" (p. 18). Even Adam Smith had perceived the dangers of corporations in that they created wealthy and powerful interests capable of corrupting government. Associations of all kind divided society into competing interests, undermining the ability of the republic to act in the public good. The people had a right to assemble, but efforts to influence government through collective action could be justified only by the criminal or oppressive conduct of the state; and to the leadership of Massachusetts, a tyrannical republic was an oxymoron. As Samuel Adams said in dismissing the legitimacy of the Shaysite rebels, "the man who dares to rebel against the laws of a republic ought to die."[5]

The Massachusetts Constitution may have limited associations to those entities that truly served the public good, but that qualification presented a massive loophole, for the definition of "public good" was certainly up for grabs. Over the four decades following the ratification of the Constitution of 1780 the legislature led the nation in chartering hundreds of groups claiming to act in the public interest. Granting charters ranging from schools to turnpikes, from religious societies to banks, the legislature found the public good an expansive concept that sometimes benefited only a small number of people. However, people only had the right to come together under state sanction; to do otherwise was an act of rebellion, an unjustified claim of sovereignty. Only elected representatives and lawful authorities spoke for the people and therefore only the government could determine which associations served the public good. A contrary vision emerged in the early part of the nineteenth century which insisted that the people had a right to associate in order to monitor their government and to promote their views on the public good.

In the years 1810 to 1814 the issue came to a head, as both parties realized that if the state controlled associations, then successive legislatures could alter corporations and charters at will. Each political party had interests to protect when they were out of power; the Federalists took a proprietary interest in Harvard, the Republicans were closely linked to banking. By 1814 both parties realized that the only solution was a commitment to respect charters, even though doing so meant protecting vested rights from the people's representatives. But the Republicans went even further, insisting that the time had come to open up the public sphere to far more associations. If one College of Physicians was good, would not two be even better? If the state benefited from Harvard, then would it not accrue even greater advantage from supporting Williams and Amherst? It was not just a case that it was unfair for a single college or literary society or church to hold a monopoly, it was more the case that a monopoly led to corruption, stasis, and decay. Governor Elbridge Gerry justified this new perspective in 1812, providing the logic that would drive the expansion of association: "The multiplication of such institutions has a tendency, not only to prevent this *evil*" of corruption and exclusivity, "but to produce a competition, and to promote in the highest degree the utility of such establishments" (p. 62). Creating more associations creates competition, which leads to the healthy improvement of all and the furthering of the public good.[6]

The struggle over association in Massachusetts led to the organization of political parties, shattering the illusion "that the Commonwealth was composed of a single harmonious people" (p. 44). As the political battle intensified, Republicans came to argue that the people had to organize to protect their rights, promoting "the idea of a public sphere composed of diverse groups, each representing partial interests" (p. 48). The Federalists of Massachusetts fell on the losing side of the association debate. For instance, Federalists saw churches as essential to the security and good order of the state, and should therefore be supported by taxes and subject to legislative oversight. But the nation as a whole was moving in the opposite direction, as when the Supreme Court ruled in *Terrett v. Taylor* (1815) that churches were private corporations and not subject to legislative supervision. Try as they did, the Federalists could not maintain the idea that a state should have only a single religion, there were just far too many different denominations to allow any one to maintain its monopoly even in a single town, and attempting to prop up one church fed dissent and undermined religion as a unifying social force. In the late 1820s Lyman Beecher came to see the wisdom of James Madison's observation that when church and politics mixed, religion suffered the most from the ensuing corruption. Beecher observed that if a town had only a single state-supported church, then the voters rather than the church members controlled the parish, to the detriment of faith. Beecher reluctantly admitted that if the orthodox had the right to associate, then so did those who belonged to other denominations. There was no way around the fact that Massachusetts, like the rest of the United States, was a pluralist society, and as such had to allow room for groups of people to organize themselves for shared purposes.

In *Dartmouth College v. Woodward* (1819), Chief Justice John Marshall recognized the state's power to grant incorporation, but insisted that the state could not alter the corporation's status. Marshall saw a corporation as "an artificial being," and insisted on their identification as private civic institutions separate from the state (p. 73). Marshall held that a public purpose does not make the corporation public. The *Dartmouth College* decision, Neem writes, "legally separated public and private realms of activity, or the state from civil society" (p. 74). Shortly thereafter, Massachusetts ceased funding churches and colleges, leaving both to the vagaries of the market place. But it took the legislature much longer to abandon specific for general incorporation laws, as the state continued a weakened oversight of civil society for another fifteen years to protect the rights of those already

granted charters and to prevent a concentration of power in the hands of an elite. This reasoning led Governor Levi Lincoln, Jr., to veto the legislature's incorporation of a new bridge over the Charles River in 1827, beginning the long appeal process that would lead to the most important economic ruling by the Supreme Court in the early nineteenth century. *Charles River Bridge v. Warren Bridge* (1837) led to the triumph of general incorporation laws that would, as Neem writes, "ensure civic equality by granting all citizens the same opportunity to form a corporation and would stimulate the competition necessary to reduce the dangers of monopoly" (p. 148).

The Supreme Court only validated what was occurring at the grassroots level, as evangelical voluntary associations sprang up in profusion throughout the United States in the 1820s and 1830s. Unlike the emerging Democratic and Republican parties, the evangelical movements had a far greater impact on the nature of American democracy as they recruited women as well as men. Voluntary associations brought women into civic society, exploiting their energies and commitment, but also granting them a role in the previously all-male public sphere. The civic participation of women did not go uncontested, especially as women promoted their own rights in the process; but once included, women engaged on their own terms and worked for decades to expand their role in public life. The Revolutionary generation believed an active citizenry requisite for a free society, but they had been unable to imagine the mechanism of that involvement beyond local politics and voting. Evangelical ministers, Neem argues, deserve the credit for persuading Americans that democracy required more of its citizens, and that the best way to exercise that obligation was to become part of an association that aimed to improve the moral character of the nation. Americans learned to join through these evangelical organizations, creating an extensive "new voluntary culture" (p. 98).

A fair indication of the differing visions of civil incorporation came in 1830 when the American Temperance Society broke off from the Massachusetts Society for the Suppression of Intemperance. The National Republicans argued that granting the former a charter would divide the people rather than foster social unity, which they saw as the purpose of association. Proponents of the new temperance society insisted that citizens had equal rights to associate. The legislature defied the Dartmouth College decision in 1831 by passing a law restating their right to alter or repeal charters as they saw fit. To resolve this confused situation required some creative new thinking, which Neem identifies with reform movements that merged Federalist goals with Jeffersonian methods. Evangelicals launched a series of "voluntary associations just as political leaders were breaking up the legal basis for a state-controlled civil society" (p. 81). These social reformers redefined the role of the citizen beyond voting to one of active participation. In a brilliant observation, Neems finds associating "a new form of technology" (p. 82). In bringing like-minded people together, voluntary associations were the social networking systems of the early nineteenth century.

In the era from 1810 through the 1830s the idea of association gained coherence and converts. It was not just that people assembled, they associated toward specific goals with national organizations linking local groups to one another. While these groups were grassroots, their development tended to begin at the top, with national structures calling forth local auxiliaries, which they then "taught civic skills" (p. 95). The rapid impact of these organizations is apparent in the growth of the American Temperance Society, which barely came into existence in 1830 and had one million members in five thousand chapters by 1835.[7] "Voluntary associations," Neem writes, "transformed how ordinary citizens conceptualized their civic roles and obligations" (p. 101). In the years following the Revolution, charities were local and perceived as elite organizations, headed by rich men fulfilling their communal obligations; the voluntary associations of the 1830s brought together ordinary Americans, usually under middle-class leadership, into national organizations, and redefined citizenship as a more activist role open to a greater number of people, including African Americans, the young, and women. "By the late 1820s, the voluntary association had become the primary tool citizens used to make their voices heard in the public sphere" (p. 108).

Proponents of limited incorporation and those who supported general incorporation all felt that they acted in the name of the public good. A well regulated and limited number of corporations served the commonweal through efficiency and order; alternatively, an open process of incorporation produced the general good through competition. Both sides perceived the other as pandering to special interests or pressure from uninformed and passionate grassroots movements; both claimed to best understand the public good. Lyman Beecher argued that the ill effects of alcohol required the state to control liquor production and consumption, while Democrats insisted that a free market in liquor sales as in all things promoted the general good. No major political party acted on behalf of labor in the early republic, for the dominant ideology demanded that each worker act individually un-

der their freedom of contract, which unions attempted to hinder. Yet did not workers have as much right to organize as lawyers? In *Commonwealth v. Hunt* (1842), Justice Lemuel Shaw answered this question in the affirmative. Workers committed no crime just by coming together, and thus could not be prevented from forming a union. Yet if they actually had the temerity to strike or bargain for wages collectively, that would be another matter worthy of the court's attention. Workers had the same right to associate as anyone else, but not to act. Neem frames *Commonwealth v. Hunt* as the decisive decision in the half-century-long contest over corporation in Massachusetts. In deciding that even workers had a right to associate without the permission of the state, Shaw turned his back on the Constitution of 1780.

Neem does not forget the flip side of associations perceived by Tocqueville: the tyranny of the majority. The sabbatarian movement of the late 1820s and 1830s reminded many Americans of how one person's moral crusade was another's repressive denial of rights. In 1829 the Unitarian minister William Ellery Channing warned that mass movements are "at war with the spirit of our institutions," substituting "the consciences of others for our own." The dissenter is quickly identified as immoral and cast out of the community as freedom of speech and separation of church and state fall by the wayside. Anticipating Tocqueville, Channing feared that reformers manipulated citizens, prostituted religion to politics, promoted conformity, and in crafting a majority "create tyrants as effectively as standing armies" (p. 115). But Channing could offer no alternative; once the people realized their own power of association, there was no turning back.

Evangelical ministers had unleashed an uncontrollable democratic force. The early evangelical movements had sought to impose greater order on society through temperance, sabbatarianism, and conversion; but by 1840 thousands of citizens had entered civil society precisely to disrupt the nation's order through the abolitionist movement. Lyman Beecher tried to prevent his students at the Lane Theological Seminary from moving in this more radical direction, only to see them leave for Oberlin. "Beecher had taught all citizens how to turn their individual moral commitments into a social movement and now he could not halt the consequences" (p. 165). Beecher promoted an associational free market until it threatened his authority, but he was not alone in regretting the voluntary spirit he had helped to create, as Democrats spent much of the antebellum period attempting to silence critics of slavery through gag rules and censorship of the U.S. postal service. Even Whig governor Edward Everett tried to outlaw abolitionist meetings in Massachusetts as a threat to the public peace, without success. Tocqueville had understood that the powerlessness of individuals would lead people to come together, and that once released, it would be impossible to put the associational genie back in its bottle. By joining together "they cease to be isolated individuals and become a power to be reckoned with, whose actions serve as an example; a power that speaks, and to which people listen" (p. 174). Associations create social ties beyond the local and create an appreciation for the national good beyond individual interests. During the Revolutionary era, petitions came from communities, by the 1830s they originated with national voluntary associations.

Creating a Nation of Joiners is a valuable reminder of what Americans tend to forget, that our country has not always been the way it is now. Federalists and Republicans agreed that corporations are the creation of the state and exist to promote the general good–on this point at least Jefferson, Washington, Madison, and Hamilton concurred. It is a long way from there to the recent decision of the Supreme Court, *Citizens United v. the Federal Election Commission* (2010), which denied that government has the authority to restrict the political speech of corporations. It would be interesting to hear how that champion of original intent, Antonin Scalia, would respond to Neem's book. In the 1820s and 1830s those who sought to remove corporations from state control honestly admitted that they wanted to maintain an "elite public sphere" free from "the changing whims of the electorate" (p. 123); today those who seek to expand corporate power wrap themselves in the First Amendment.

My only criticism of this well-written, logically structured, clearly argued, solidly evidenced book is its lack of clarity on the distinction between corporations and associations. There are differences between a church, Harvard, a Masonic lodge, the Democratic Party, and a railroad company. The only point upon which Neem is obscure is whether this failure to distinguish between business, social, religious, political, and educational associations was a scholarly choice, or the nature of the contemporary debate. There are of course many ways to define association, but it appears in *Creating a Nation of Joiners* that those fervently arguing the point in the early nineteenth century avoided making such distinctions. I believe there is persuasive evidence to the contrary.

However, that is a minor disagreement with a truly outstanding work of scholarship that offers a profound resonance with current political and intellectual debates.

There is certainly reason to remain skeptical of the associational approach to civil society, especially as it is difficult sometimes to know when a professed desire for social good becomes a special interest. Ethanol has been widely acclaimed as an environment-friendly response to our national addiction to gasoline, which has clearly benefited the corn growers promoting its use. But often skepticism is fueled by political position; the civil rights movement and evangelical Right both enjoyed success and aroused angry denunciation as dangerous threats to social stability and the separation of church and state. The Web increases the doubts of many as it fosters "Astroturf" organizations–supposed grassroots movements heavily funded by corporate interests–or, depending on your politics, the shallow five-second response time required for a MoveOn petition. But since we have little choice, the best response would seem to be either joining up, or creating your own association.

Notes

[1]. The scholarship on the nature and functioning of civil society is rich and lively. Among the most significant works see anything by Theda Skocpol, for instance, *Diminished Democracy: From Membership to Management in American Civic Life* (Norman: University of Oklahoma Press, 2003); Krishan Kumar, "Civil Society: An Inquiry into the Usefulness of an Historical Term," *British Journal of Sociology* 44 (1993): 375-95; John Keane, ed., *Civil Society and the State: New European Perspectives* (London: Verso, 1988); Bronislaw Geremek, et al., *The Idea of a Civil Society* (Research Triangle Park, NC: National Humanities Center, 1992). For a compelling examination of the consequences of a failed civil society, see Stephen Kotkin, *Uncivil Society: 1989 and the Implosion of the Communist Establishment* (New York: Modern Library, 2009).

[2]. See Bob Edwards, et al., eds., *Beyond Tocqueville: Civil Society and the Social Capital Debate in Comparative Perspective* (Hanover, NH: Northeastern University Press, 2001).

[3]. Alexander Hamilton, James Madison, and John Jay, *The Federalist, or, the New Constitution* (Norwalk, CT: Eaton Press, 1979), 55, 57.

[4]. James D. Richardson, *A Compilation of the Messages and Papers of the Presidents* (Washington, DC: Government Printing Office, 1896), 1: 213-24.

[5]. Christopher Waldrep and Michael Bellesiles, eds., *Documenting American Violence* (New York: Oxford University Press, 2006), 107.

[6]. On this point, see also Theda Skocpol, Marshall Ganz, and Ziad Munson, "A Nation of Organizers: The Institutional Origins of Civic Voluntarism in the United States," *American Political Science Review* 94 (2000): 527-46.

[7]. See Robert H. Abzug, *Cosmos Crumbling: American Reform and the Religious Imagination* (New York: Oxford University Press, 1994).

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