

THE SOCIAL CAPITAL ARGUMENT FOR FEDERALISM

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ABSTRACT

In debating the continued usefulness of a federal system of government, courts and commentators have identified the economic and public policy rationales for federalism, the possible democratic benefits of a dual system of government, and the role of federalism in protecting individual rights. But one important aspect of federalism has so far been overlooked in these debates. This Article argues that federalism also promotes the kinds of social relationships that allow citizens to overcome collective action barriers and to get things done. That is, federalism has value because it promotes social capital: “features of social organization such as trust, norms, and networks that can improve the efficiency of society by facilitating coordinated action.”¹ Federalism promotes social capital because dividing power between the national government and the states provides greater opportunities for citizen groups to influence politics and for individual citizens to participate in public life. Ongoing struggles between the federal government and the states over the appropriate division of political power enhance these social capital benefits of federalism. Accordingly, this Article challenges the view that the benefits of federalism are merely the benefits of decentralized government, and also challenges modern skepticism about the continued relevance of the states. This Article calls for further empirical research on the relationships between federalism and social capital in order to inform debates about the continued usefulness of a federalist system of government.

I. INTRODUCTION

What is the value of a federal system of government?² Courts and commentators have articulated and debated a number of justifications for federalism. Some arguments focus on the economic and public policy benefits of a system of government in which decisions are made by multiple political units. Among these arguments are that better policy outcomes result through the interplay of the national government and the

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¹ ROBERT D. PUTNAM, *MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY* 167 (1994).

² By federalism (or a federal system of government), I simply mean government in which power is divided among sovereigns. Thus, the United States is a federal system of government because power is divided between the national government and the states.

states;³ that competition among the states coupled with the movement of labor and capital produces efficiency;⁴ and that experimentation at the state level produces innovative policies and programs.⁵ Other arguments for federalism emphasize that democracy is enhanced when decisionmaking occurs at a more local level because elected representatives become more responsive to the needs of individuals⁶ and citizens are able to participate more meaningfully in self-governance.⁷ Moreover, other arguments in favor of federalism suggest that the states may be better than the national government at protecting individual liberties either because state laws may provide greater protection for rights than federal law,⁸ or because the states may have greater resources or otherwise be more effective than the national government in enforcing federal rights.⁹

On the other side of the debate, commentators in favor of a strong national government take issue with all of these claims. These commentators argue that, whatever its historical advantages, a political system with strong states no longer makes sense from an economic and public policy perspective.¹⁰ On this view, the optimal provision of many goods requires not competition among states, but regulation at the national level,¹¹ and relying on the mobility of labor and capital is unlikely to produce optimal outcomes.¹² These commentators also claim that a strong national government is crucial for securing individual rights particularly because rights need protection from the states.¹³ Furthermore, federalism is no guarantee of increased citizen participation in government or of

³ See, e.g., DANIEL ELAZAR, *AMERICAN FEDERALISM: A VIEW FROM THE STATES* (3d ed. 1984).

⁴ See, e.g., THOMAS R. DYE, *AMERICAN FEDERALISM: COMPETITION AMONG GOVERNMENTS* (1990); Richard A. Epstein, *Exit Rights Under Federalism*, 55 *LAW & CONTEMP. PROBS.* 149 (1992).

⁵ Justice Brandeis is often associated with this view of federalism. See, e.g., *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting). “There must be power in the states and the nation to remold, through experimentation, our economic practices and institutions to meet changing social and economic needs.” *Id.* See also Charles Fried, *Federalism—Why Should We Care?*, 6 *HARV. J.L. & PUB. POL’Y* 1 (1982); Lewis B. Kaden, *Politics, Money, and State Sovereignty: The Judicial Role*, 79 *COLUM. L. REV.* 847, 853–55 (1979).

⁶ See, e.g., D. Bruce La Pierre, *Political Accountability in the National Political Process—The Alternative to Judicial Review of Federalism Issues*, 80 *NW. U. L. REV.* 577 (1985); Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 *COLUM. L. REV.* 1, 9–10 (1988). The Supreme Court has at times endorsed this rationale for federalism. See, e.g., *Gregory v. Ashcroft*, 501 U.S. 452, 458 (1991) (noting that federalism “makes government more responsive by putting the States in competition for a mobile citizenry”).

⁷ See, e.g., Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 *YALE L.J.* 1425 (1987); Andrzej Rapaczynski, *From Sovereignty to Process: The Jurisprudence of Federalism After Garcia*, 1985 *SUP. CT. REV.* 341 (Philip B. Kurland et al. eds., 1986).

⁸ See, e.g., William J. Brennan, Jr., *The Bill of Rights and the States: The Revival of State Constitutions As Guardians of Individual Rights*, 61 *N.Y.U. L. REV.* 535 (1986); William J. Brennan, Jr., *State Constitutions and the Protection of Individual Rights*, 90 *HARV. L. REV.* 489 (1977); Randall K.L. Collins, *Foreword: The Once “New Judicial Federalism” and Its Critics*, 64 *WASH. L. REV.* 5 (1989).

⁹ See Amar, *supra* note 7, at 1512–17.

¹⁰ See generally DAVID L. SHAPIRO, *FEDERALISM: A DIALOGUE* 14–57 (1995).

¹¹ See, e.g., Richard B. Stewart, *Pyramids of Sacrifice? Problems of Federalism in Mandating State Implementation of National Environmental Policy*, 86 *YALE L.J.* 1196, 1212 (1977).

¹² See, e.g., Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 *UCLA L. REV.* 903, 917–20 (1994).

¹³ See, e.g., Robert C. Post & Reva B. Siegel, *Equal Protection by Law: Federal Antidiscrimination Legislation After Morrison and Kimel*, 110 *YALE L.J.* 441 (2000).

government responsiveness because the states have become large political units disconnected from their citizens.¹⁴

My purpose in this Article is not to take issue with any of these arguments in favor of or against a federal system of government. Rather, my goal is to articulate an important aspect of federalism that has so far been overlooked. Federalism, I argue, has important *social* benefits because it promotes the kinds of social relationships that allow citizens to overcome collective action barriers and to get things done. In the language of this Article, federalism has value because it promotes *social capital*: “features of social organization, such as trust, norms, and networks, that can improve the efficiency of society by facilitating coordinated action.”¹⁵

Much of my argument remains necessarily speculative at this time. Even if federalism is good for social capital, that would hardly be the end of the matter. Whatever the social capital implications of federalism, we must still keep in mind other possible arguments in favor of or against a federal system of government and to weigh social capital against competing values and concerns. Nonetheless, in light of a growing body of research demonstrating the substantial benefits of high levels of social capital, it remains significant that federalism may promote it. At the very least, therefore, in debating the continued relevance of a federal system of government, we should take into account the social capital implications of a more nationalized government.¹⁶

Part II provides a brief overview of social capital and its importance. Part III sets out my argument as to why federalism should tend to promote social capital more readily than a nationalist form of government. My central claim is that federalism promotes social capital because dividing power between the national government and the states provides greater *opportunities* for citizen groups to influence politics and for individual citizens to participate in public life. Federalism, therefore, provides a healthy political environment for social capital. I argue that these social capital benefits of federalism are enhanced by ongoing struggles between the national government and the states as to the appropriate division of political power. Accordingly, the social capital benefits of federalism are benefits not merely of decentralized government (i.e., government in which authority but not power is delegated), but rather of government in which there is a division of actual power. My account also suggests that the states continue to play an important role today because they are likely the only political entities that can engage in the kind of power struggles with the national government that produce social capital benefits. In addition, my account cautions against shifting governmental power away from the states to the local level of cities, towns, and neighborhoods (as some

¹⁴ See, e.g., Rubin & Feeley, *supra* note 12, at 915–17.

¹⁵ PUTNAM, *supra* note 1, at 167.

¹⁶ In this Article, I contrast federalism with “nationalist” or “nationalized” government. By those terms, I simply mean a system of government in which power rests ultimately in a single sovereign (even though power may also be delegated). France, for instance, is a more nationalist system of government than the United States because in France much greater power is located at the national level.

commentators advocate) because these entities are likely too weak to compete with the national government over the appropriate division of power. Part IV explores some implications of the social capital argument for federalism and identifies directions for further research. Part V is my conclusion.

II. SOCIAL CAPITAL

A. OVERVIEW

Social ties matter. We are fundamentally social creatures; we live beside and among other people in families, neighborhoods, and towns. We work with colleagues and we socialize with friends. Our formative years are spent in schools and in other social activities. In our leisure time we join clubs, play sports, go to bars, museums, and the beach, and we talk on the phone. Even in our most individual pursuits—like reading a book or sleeping—we are never very far from other people.

Moreover, a vast range of human activity *depends* on social ties; there is very little we are able to accomplish entirely alone. While obvious to modern city dwellers that meeting basic needs—like obtaining food, water, and shelter—requires the assistance of other people, this has long been true of our species. “We are . . . unable to live without each other. Even on a practical level, it is probably a million years since any human being was entirely and convincingly self-sufficient: able to survive without trading his skills for those of his fellow humans.”¹⁷ More sophisticated pursuits—like traveling to work, sending e-mail, or firing a pistol—are deeply dependent on the contributions of others and we would be unable to do any of these things if we lived in isolation. The social nature of our existence is a striking characteristic of our species and far exceeds that of any other primate.¹⁸ With virtually *all* of our activities embedded in social relationships, we are, according to one zoologist, “more like ants or termites.”¹⁹ In particular, as a large body of work in economic sociology demonstrates, economic activity is highly dependent on social networks. The structure of social relationships among economic actors, including shared understandings and trust, plays a crucial role in economic outcomes.²⁰ *Homo economicus* is also very much a social creature.

The *quality* of our social ties, therefore, powerfully affects our lives. In the first place, social ties are crucial for the well-being of individuals.

¹⁷ MATT RIDLEY, *THE ORIGINS OF VIRTUE: HUMAN INSTINCTS AND THE EVOLUTION OF COOPERATION* 6 (1996).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See, e.g., RONALD S. BURT, *STRUCTURAL HOLES: THE SOCIAL STRUCTURE OF COMPETITION* (1992); CHARLES SMITH, *AUCTIONS: THE SOCIAL CONSTRUCTION OF VALUE* (1989); SHARON ZUKIN & PAUL DiMAGGIO, *THE STRUCTURES OF CAPITAL: THE SOCIAL ORGANIZATION OF THE ECONOMY* (1990); Neil Fligstein, *A Political-Cultural Approach to Market Institutions*, 61 AM. SOC. REV. 656 (1996); Mark Granovetter, *Economic Action and Social Structure: The Problem of Embeddedness*, 91 AM. J. SOC. 481 (1985); Alejandro Portes & Julia Sensenbrenner, *Embeddedness and Immigration: Notes on the Social Determinants of Economic Action*, 98 AM. J. SOC. 1320 (1993).

Strong social networks confer important economic advantages on their members. A large body of evidence documents the benefits of social ties for obtaining employment, receiving higher compensation, getting promoted, and finding a new job after being laid off.²¹ Children also do much better—as measured by their risk of abuse, their behavioral and emotional problems, their performance in school, and their prospects for the future—when they grow up in families and neighborhoods characterized by strong social connections.²² In addition, a striking body of empirical evidence demonstrates that social ties have important health consequences. People embedded in strong social networks are less prone to a variety of physical and mental ailments including heart attacks, strokes, cancer, and depression.²³ Moreover, socially connected people recover faster when they do become ill.²⁴ Empirical evidence aside, we all know that it is through our social connections with others that we define who we are, we develop and share our beliefs and hopes, and we experience many of the deepest of emotions. Social ties are also intrinsically valuable. For these and related reasons, social connections are so significant to human flourishing that a vast body of work in evolutionary psychology and allied fields maintains that dispositions to engage in cooperative interactions with others are fitness enhancing and that much evolved human behavior may therefore be understood in these terms.²⁵

Social ties also often benefit bystanders. When people around me are socially connected, they all do better. But the quality of *my own* life may also improve as a result of connections among a group of people of which I am not myself a part. Communities characterized by strong social ties among their residents experience less crime, poverty, unemployment, welfare dependency, drug use, teenage pregnancy, and juvenile delinquency. These same communities have more productive workers,

²¹ See, e.g., MARK S. GRANOVETTER, GETTING A JOB (1974); ROBERT D. PUTNAM, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY 319–25 (2000); Nan Lin, *Social Networks and Status Attainment*, 25 ANN. REV. SOC. 467 (1999).

²² See PUTNAM, *supra* note 21, at 296–306; James S. Coleman, *The Creation and Destruction of Social Capital: Implications for the Law*, 3 NOTRE DAME J.L. ETHICS & PUB. POL'Y 375, 384 (1988); Jason Mazzone, *Towards a Social Capital Theory of Law: Lessons from Collaborative Reproduction*, 39 SANTA CLARA L. REV. 1, 8–10 (1998); Toby L. Parcel & Elizabeth G. Menaghan, *Family Social Capital and Children's Behavior Problems*, 56 SOC. PSYCHOL. Q. 120 (1993).

²³ See PUTNAM, *supra* note 21, at 326–35; Lisa F. Berkman, *The Role of Social Relations in Health Promotion*, 57 PSYCHOSOMATIC MED. 245 (1995); Teresa S. Seeman, *Social Ties and Health: The Benefits of Social Integration*, 6 ANNALS EPIDEMIOLOGY 442 (1996).

²⁴ *Id.*

²⁵ See, e.g., ROBERT AXELROD, THE EVOLUTION OF COOPERATION (1984); FRANS DE WAAL, GOOD NATURED: THE ORIGIN OF RIGHT AND WRONG IN HUMANS AND OTHER ANIMALS (1996); LEE DUGATIN, CHEATING MONKEYS AND CITIZEN BEES: THE NATURE OF COOPERATION IN ANIMALS (1999); HERBERT GINTIS, GAME THEORY EVOLVING: A PROBLEM-CENTERED INTRODUCTION TO MODELING STRATEGIC BEHAVIOR (2000); MATT RIDLEY, THE ORIGINS OF VIRTUE: HUMAN INSTINCTS AND THE EVOLUTION OF COOPERATION (1996); ELLIOTT SOBER & DAVID SLOAN WILSON, UNTO OTHERS: THE EVOLUTION AND PSYCHOLOGY OF UNSELFISH BEHAVIOR (1998); ROBERT WRIGHT, THE MORAL ANIMAL (1994); Leda Cosmides & John Tooby, *Cognitive Adaptations for Social Exchange*, in THE ADAPTED MIND 163 (Jerome Barkow et al. eds., 1992); Werner Güth & Menachem Yaari, *Explaining Reciprocal Behavior in Simple Strategic Games: An Evolutionary Approach*, in EXPLAINING PROCESS AND CHANGE: APPROACH TO EVOLUTIONARY ECONOMICS 23 (Ulrich Witt ed., 1992); Elizabeth Hoffman, Kevin A. McCabe, & Vernon L. Smith, *Behavioral Foundations of Reciprocity: Experimental Economics and Evolutionary Psychology*, 36 ECON. INQUIRY 335, 339 (1998); Robert Trivers, *The Evolution of Reciprocal Altruism*, 46 Q. REV. BIOLOGY 35 (1971).

more effective government, and they enjoy greater economic prosperity than communities with weaker social networks.²⁶ All of these things benefit the individuals whose social connections produce these effects. At the same time, there are positive externalities: some of the benefits flow to the people who are less connected or hardly connected at all. It is useful to be socially connected. But a person who has few social ties is better off living among people who are socially connected than among other loners.²⁷

In seeking to understand these effects, social scientists point to the importance of social capital.

By analogy with notions of physical capital and human capital—tools and training that enhance individual productivity—the core idea of social capital theory is that social networks have value. Just as a screwdriver (physical capital) or a college education (human capital) can increase productivity (both individual and collective), so too social contacts affect the productivity of individuals and groups.²⁸

According to the social capital theory, transactions between and among individuals occur more readily when the individuals are embedded in strong social networks and can draw upon the norms and trust that result from social ties. It is, for instance, cheaper for me to lend money to somebody I know and trust than to a complete stranger whose background I have to investigate. It is easier if I can find a job through a friend than if I have to use an employment agency. It is more efficient for both of us if we can agree to carpool than if we each drive alone. These are simple examples of the basic point: getting things accomplished takes less time and energy when we know and can depend on the people with whom we interact.

B. DILEMMAS OF COLLECTIVE ACTION

Of particular importance, social networks and other forms of social capital can often solve prisoner's dilemmas and similar collective action problems that impede cooperation for mutual advantage. It is well known that there are a variety of contexts in which cooperation between and among individuals would make everyone better off. *Not* cooperating, however, is the dominant strategy pursued by self-interested actors. In the classic formulation of this problem, the eighteenth-century philosopher David Hume explained the dilemma confronting two farmers who would each benefit by jointly harvesting each other's crop:

Your corn is ripe today; mine will be so to-morrow. 'Tis profitable for us both, that I shou'd labour with you to-day, and that you shou'd aid me to-morrow. I have no kindness for you, and know you have as little for me. I will not, therefore, take any pains upon your account; and should I labour with you upon my own account, in expectation of a return, I know I shou'd be disappointed, and that I shou'd in vain depend upon your gratitude. Here then I leave you to labour alone. You treat me in the same

²⁶ See generally PUTNAM, *supra* note 21, at 307–25, 336–49.

²⁷ See *id.* at 20.

²⁸ *Id.* at 18–19.

manner. The seasons change; and both of us lose our harvests for want of mutual confidence and security.²⁹

Dilemmas of collective action mean that no individual will cooperate unless there can be a reasonable expectation that others will follow in step. Thus, you and I will both benefit if we get together to harvest our crops (or to paint our apartments). However, unless I can rely on you to come to my place after I have helped you, I will refuse to cooperate. And you will not cooperate first because you understand that I can then refuse to help you later. Each of us will end up harvesting (or painting) alone with less efficiency.

Game theorists have several labels for this kind of failure in cooperating for mutual benefit. In the *prisoner's dilemma*, two prisoners would be better off if they both refused to confess to a crime, but because each is individually better off confessing no matter what the other does, and unable to coordinate their actions, they fail to achieve the optimal outcome.³⁰ In the *tragedy of the commons*, each individual has an incentive to maximize his or her own use of a common resource (e.g., grazing land), but the end result is that the resource disappears to the detriment of everybody.³¹ *Public goods* (e.g., clean air) are goods that can be used by any individual regardless of whether that individual contributes to the provision of the good; as a result, nobody has an incentive to contribute and everybody loses the benefit of the good.³² In the *logic of collective action*, individuals do not contribute to collective ends (e.g., labor strikes) because each individual receives only some of the benefit of his or her contribution and can free ride on the contributions of others.³³ In all of these settings, without some guarantee that if I cooperate, you will reciprocate, and with the knowledge that once I cooperate you will have an incentive to defect, neither of us will cooperate—even though cooperation would produce a more desirable outcome for both of us. In each instance, self-interest works as an impediment to mutually beneficial outcomes.

One solution to these kinds of dilemmas, offered by Thomas Hobbes in *Leviathan*, is enforcement by a third party such as the state.³⁴ Under this approach a powerful sovereign prevents cheating and, therefore, harmonizes civil life. Thus, we can agree to help each other to harvest (or to paint our respective apartments) by first entering into a duly executed contract. If you fail to live up to the bargain, I can sue you for breach. I will therefore help you because I know you do not want to be sued, and you

²⁹ PUTNAM, *supra* note 1, at 163 (quoting DAVID HUME, A TREATISE OF HUMAN NATURE, bk. 3, pt. 2, sec. 5 (1740)).

³⁰ See AXELROD, *supra* note 25, at 3–24.

³¹ See ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION 2–3 (1990).

³² See John Ledyard, *Public Goods: A Survey of Experimental Research*, in THE HANDBOOK OF EXPERIMENTAL ECONOMICS 111 (John Kagel & Alvin Roth eds., 1995).

³³ See MANCUR OLSON, THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS (2d ed. 1971).

³⁴ See THOMAS HOBBS, LEVIATHAN 223–34 (C.B. Macpherson ed., Penguin Classics 1986) (1651).

will reciprocate for the same reason. The threat of sanction imposed by the state works to ensure we both live up to the bargain.

Third-party mechanisms, however, are costly. The expense involved in negotiating the contract and going to court to have it enforced could easily outweigh the benefit of cooperation. In addition, reliance on a third party itself presents a collective action problem: third parties are likely to pursue their *own* interests once we grant them power. Moreover, because third parties lack familiarity with the specific circumstances of collective action settings, they may not be very good at regulating for optimal results. In this regard, Elinor Ostrom provides striking evidence of the failure of governmental policies to overcome dilemmas of collective action where the government lacks sufficient monitoring capacities and the skills for tailoring policies to the specific circumstances of a particular setting.³⁵

Social capital, in the form of social networks and norms, is a resource that can solve collective action problems, often more effectively than any other mechanism. “Success in overcoming dilemmas of collective action and the self-defeating opportunism that they spawn depends on the broader social context within which any particular game is played. Voluntary cooperation is easier in a community that has inherited a substantial stock of social capital”³⁶ Social capital facilitates cooperative interactions to overcome collective action dilemmas by providing information about participants and helping to ensure the enforcement of their commitments. While I may be too suspicious to cooperate with a stranger (because I suspect he may not return the favor), I will cooperate with my friend. Having known each other for a long time, I know she is an honest and reliable person, and we have done things for each other in the past; therefore, it seems unlikely that she will sacrifice our friendship (or embarrass herself in front of our mutual acquaintances) by cheating. Social capital facilitates the exchange.

These same mechanisms can extend beyond tight personal connections to produce cooperation in broad social settings. It is not simply having lots of close friends that counts. Indeed, personal ties might be too time consuming to allow for very broad cooperative endeavors. Rather, social capital can exist in the form of more general interlocking networks that provide information about individuals and incentives for compliance, and monitor and punish defection. Thus, I will be more inclined to cooperate with a stranger who turns out to be a member of my gardening club, or my neighbor’s friend, or whose reputation for which others can vouch. My fear that he will defect decreases because of the social context in which the transaction occurs.

We may summarize the ways in which social networks produce cooperation and overcome collective action dilemmas in the following manner. First, social networks increase the costs of defection.³⁷ An

³⁵ See OSTROM, *supra* note 31.

³⁶ See PUTNAM, *supra* note 1, at 167.

³⁷ See *id.* at 173.

individual who is embedded in a dense network of social relationships has more to lose from defection because defecting individuals risk all other transactions in which they are engaged as well as the benefits from future transactions.³⁸ Second, social networks can foster norms of reciprocity.³⁹ Frequent interactions among individuals produce standards governing acceptable behavior. These norms can greatly improve the efficiency of transactions because everyone can reasonably anticipate how others will behave and, in particular, they can be confident that nobody is going to cheat. Generalized reciprocity, which refers to a *general* propensity to engage in cooperative behavior on the condition that others reciprocate but without any *specific* guarantee of return from any particular individual, is an especially important form of social capital.⁴⁰ Third, social networks provide information and allow for monitoring. Cooperators (as well as cheaters) will develop reputations that are relayed to others who can figure them into future transactions.⁴¹ Fourth, social networks provide a template for future cooperation; having collaborated in the past, it will be easier for us to do so again.⁴²

There are of course different kinds of social networks: family members, members of a club or political party, participants in a parade, people who go to the same church, residents of the same neighborhood, circles of friends, and many others. While all of these networks may represent social capital, not all of them are equally useful or equally effective in all settings. For example, I may be able to borrow money from a family member or friend, but not from somebody marching in the same parade. Size itself, however, may not necessarily determine the usefulness of a social network. Broad ties may be more useful in pursuing certain goals than more intimate networks. If, for instance, our goal is to reduce crime through greater monitoring and reporting of suspicious activities, the occasional involvement of a large number of people may be better than the devoted efforts of just a few. On the other hand, very close connections will be vital in some settings. For example, I am unlikely to share child-minding duties with someone I hardly know.

Just like other tools, social capital can also be used for malevolent purposes. Social capital may, for instance, be used to identify and weed out government opponents. It may allow certain groups to pursue antidemocratic goals such as the oppression of minorities, violence, or terrorism. Gangs, the Ku Klux Klan, and exclusionary neighborhoods all put social capital to bad uses. Just as we should always ask whether knowledge (human capital), corporate profits (financial capital), and other tools are being put to desirable ends, there is always an issue as to the particular purposes social capital serves.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *infra* discussion I.I.E.

⁴¹ PUTNAM, *supra* note 1, at 174.

⁴² *Id.*

Nonetheless, the general point remains: social networks serve as a kind of capital that can solve collective action dilemmas by furnishing sufficient guarantees of trust and by tempering self-interested behavior. Groups that are able to draw upon strong social ties and other forms of social capital can therefore reap the benefits of cooperation in collective action settings and enjoy increased productivity more readily than groups in which social relationships are too weak to overcome suspicion and self-dealing.

C. LEVELS OF SOCIAL CAPITAL

The level of social capital available as a resource for individual and group activities is not constant. Some communities embody strong social networks and other rich sources of social capital that facilitate individual and collective endeavors. Other communities are poor in social capital and their members are less able to draw on it as a resource.

People who invest in social capital, such as by creating and maintaining social ties with others, can often later use it themselves for their own purposes. Networking, for instance, as evidenced by a fat Rolodex, is a critical tool for success in business. Social reformers can also increase the amount of social capital present in a wider community. Progressive Era reformers, for example, sought to increase social capital (although they did not use that term) in the United States by creating networks of voluntary associations.⁴³ Governmental structures, including the nature and arrangement of political and legal institutions, can also significantly affect the level of social capital, both by enhancing or undermining existing stocks of social capital and by facilitating or undermining efforts to create social capital. As Richard Pildes demonstrates, our legal structures frequently affect the level of social capital, often in unexpected ways.⁴⁴

This is also a good place to point out that while social capital is a “resource,” its supply increases with use.⁴⁵ When someone lives up to their end of the bargain, others will be more willing to cooperate with that person in the future. Similarly, cheating diminishes social capital; cooperation is less likely when commitments have been breached in the past. For this reason, “we should expect the creation and destruction of social capital to be marked by virtuous and vicious circles.”⁴⁶

Before turning to discuss the relationship between federalism and social capital, it is useful to examine two specific sources (or forms) of social capital that are especially relevant to the discussion: civic networks and norms of generalized reciprocity.

⁴³ See PUTNAM, *supra* note 21, at 367–401.

⁴⁴ See Richard H. Pildes, *The Destruction of Social Capital Through Law*, 144 U. PA. L. REV. 2055 (1996).

⁴⁵ See PUTNAM, *supra* note 1, at 169.

⁴⁶ *Id.* at 170.

D. CIVIC NETWORKS

Civic networks are various types of social groups in which individuals are brought together, usually with some shared purpose or interest. Neighborhood associations, choral societies, sports clubs, religious organizations, and interest groups are examples of civic networks.⁴⁷ Civic networks typically link citizens horizontally. They bring together people of similar status and power (as distinguished from *vertical* networks which are hierarchical links of dependency).⁴⁸ Thus, while cat clubs, Rotary, and PTAs represent civic networks, most workplaces, hierarchically arranged, do not.

Civic networks in the United States have a long history. Visiting the United States in the 1830s, Alexis de Tocqueville remarked on the propensity of Americans to join associations. He wrote:

Americans of all ages, all stations in life, and all types of dispositions are forever forming associations. There are not only commercial and industrial associations in which all take part, but others of a thousand different types—religious, moral, serious, futile, very general and very limited, immensely large and very minute.

. . . .

Nothing, in my view, deserves more attention than the intellectual and moral associations in America.⁴⁹

Commentators frequently invoke these words because de Tocqueville's observation that associations are a central feature of American life remains pertinent today. The United States is a nation of "joiners."⁵⁰ Summarizing cross-national data, Sidney Verba and his colleagues report "associational life in America is probably unparalleled in the number of organizations and the diversity of their concerns. . . . Americans are [also] more likely to be members of voluntary associations . . . than are citizens of other nations."⁵¹

Civic networks are especially important for solving dilemmas of collective action because they are more effective at transmitting information and imposing punishments against defectors than hierarchical networks. Hierarchies are characterized by relationships of *personal* dependency between inferiors and superiors as there are relatively few relationships of *mutual* dependency between and among similarly situated members. In hierarchies, information usually flows imperfectly because there are incentives for individuals to keep information away from those above and below them (e.g., managers do not tell employees everything and

⁴⁷ *Id.* at 173.

⁴⁸ *Id.*

⁴⁹ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 513, 517 (J.P. Mayer ed., George Lawrence trans., Perennial Library 1988) (1966).

⁵⁰ Arthur M. Schlesinger, *Biography of a Nation of Joiners*, 50 *AM. HISTORICAL REV.* 1 (1944).

⁵¹ SIDNEY VERBA, KAY LEHMAN SCHLOZMAN, & HENRY E. BRADY, *VOICE AND EQUALITY: CIVIC VOLUNTARISM IN AMERICAN POLITICS* 79 (1995). See also James E. Curtis, Edward G. Grabb, & Douglass E. Baer, *Voluntary Association Membership in Fifteen Countries: A Comparative Analysis*, 57 *AM. SOC. REV.* 139, 140 (1992) (reporting that Americans are the most likely to join associations if religious organizations are included; excluding religious organizations, Americans join at the same rate as citizens of other nations).

employees keep secrets from management). In addition, while hierarchies are often very effective at imposing sanctions, usually such sanctions are only imposed by superiors against inferiors.⁵² Civic networks, by contrast, exhibit mutual dependencies and more ready flows of information among equally situated members, as well as a common interest among all members to monitor and punish defection.⁵³

Moreover, civic networks are able to connect broad segments of society, thereby greatly expanding the scope of cooperative endeavors.⁵⁴ In this manner, these networks can provide the background conditions for a wide range of citizen activity. Important evidence of this effect is reported in political scientist Robert Putnam's study, *Making Democracy Work*.⁵⁵ In that study, Putnam sought to explain the substantial variations he observed in the performance of newly formed regional governments in Italy, particularly differences between the North and the South. Some of these new regional governments were inefficient and corrupt, others were highly successful in pursuing programs and creating local prosperity. After eliminating other explanatory factors, Putnam determined that regional differences could only be accounted for by regional variations in civicness—the density of voluntary associations and the degree of citizen participation in public affairs.⁵⁶ Northern regions of Italy were characterized by a long tradition of associational life, from twelfth-century guilds and religious organizations to nineteenth-century cooperatives and mutual aid societies, and dense modern networks of choral societies, hiking clubs, and the like.⁵⁷ The South, by contrast, was characterized by a tradition of small separate family units and passive membership in the Catholic Church.⁵⁸ During the several decades of Putnam's study, the North prospered and local government was effective, while the South was marred by corruption, suspicion, and poverty.⁵⁹ Putnam argues that civic culture made all the difference in the North, where networks of associational ties and the norms and trust they sustained overcame collective action problems by making individuals and groups more productive and government more effective.⁶⁰ “[O]bjective measures of effectiveness and subjective measures of citizen satisfaction concur,” Putnam concludes, “in ranking some regional governments consistently more successful than others. Virtually without exception, the more civic the context, the better the government.”⁶¹ It is worth quoting at length Putnam's explanation of these important findings:

Some regions of Italy . . . have many active community organizations. Citizens in these regions are engaged by public issues, not by patronage.

⁵² See PUTNAM, *supra* note 1, at 174.

⁵³ See *id.* at 174–75.

⁵⁴ See *id.* at 175.

⁵⁵ PUTNAM, *supra* note 1.

⁵⁶ *Id.* at 83–120.

⁵⁷ *Id.* at 162.

⁵⁸ *Id.* at 143–48.

⁵⁹ *Id.* at 115.

⁶⁰ *Id.* at 182.

⁶¹ *Id.*

They trust one another to act fairly and obey the law. Leaders in these communities are relatively honest and committed to equality. Social and political networks are organized horizontally, not hierarchically. These “civic communities” value solidarity, civic participation, and integrity. And here democracy works.

At the other pole are “uncivic” regions . . . aptly characterized by the French term *incivisme*. The very concept of citizenship is stunted there. Engagement in social and cultural associations is meager. From the point of view of the inhabitants, public affairs is somebody else’s business—that of *i notabili*, “the bosses,” “the politicians”—but not theirs. Laws, almost everyone agrees, are made to be broken, but fearing others’ lawlessness, everyone demands sterner discipline. Trapped in these interlocking vicious circles, nearly everyone feels powerless, exploited, and unhappy. It is hardly surprising that representative government here is less effective than in more civic communities.

. . . .

Civic engagement matters on both the demand side and the supply side of government. On the demand side, citizens in civic communities expect better government, and (in part through their own efforts) they get it. . . . [I]f the decision makers expect citizens to hold them politically accountable, they are more inclined to temper their worst impulses rather than face public protests. On the supply side, the performance of representative government is facilitated by the social infrastructure of civic communities and by the democratic values of both officials and citizens. . . . Where people know one another, interact with one another each week at choir practice or sports matches, and trust one another to behave honorably, they have a model and a moral foundation upon which to base further cooperative enterprises. Light-touch government works more efficiently in the presence of social capital.⁶²

On this account, social capital embodied in civic networks greatly facilitates the pursuit of a variety of goals: people are able to get things done much more easily and effectively when their activities are immersed in a context of strong civic networks.

Of particular significance, civic networks are not necessarily (or even usually) formed for the purpose of reaping the benefits of social capital. People join choral societies because they enjoy music, not because they want to reduce crime and unemployment. People bowl in leagues because they enjoy the game and the company of others (and they like pizza), not to make government more effective or to help the economy grow faster. Thus, benefits of civic networks often are the unintended by-products of membership and participation.

E. GENERALIZED RECIPROCITY

Reciprocity refers to the disposition of individuals engaging in cooperation with other citizens. Two types of reciprocity may be distinguished: specific reciprocity and generalized reciprocity. Specific

⁶² PUTNAM, *supra* note 21, at 345–46.

reciprocity (sometimes called “particularized reciprocity”) refers to cooperation between two (or perhaps more) *identifiable* individuals. It occurs when one person does a favor for another—who, either immediately or at some future date, returns the favor to that *same* person. “I’ll scratch your back if you’ll scratch mine,” is an instance of specific reciprocity. By its very nature, specific reciprocity requires trusting that the person to whom the favor is granted will return the favor in the future. Individuals who fail to reciprocate, either quickly enough or generously enough, as a result may be shut out of cooperation in the future.

Specific reciprocity often confers significant benefits on individuals. Individuals who are able to exchange favors with others may hear about job opportunities, have somebody available to mind their children or watch their house, borrow money more easily, or get a ride to work. But these benefits are mostly limited to the individuals granting and receiving favors, with few benefits to the general population. Indeed, this is true by definition: favors are not valuable if they confer substantial benefits on *other* people because then the benefits are widely available and there would be no need for reciprocity.

Generalized reciprocity exists where a favor granted by one person does not depend on any expectation that the recipient will repay it to that person. Instead, people grant favors because they are part of a community in which it is understood that people do favors for each other. The favor will be “returned” only in the sense that the person giving it will in turn benefit, somewhere down the road, from favors from other members of the community. Accordingly, generalized reciprocity exists where individuals trust each other generally and exhibit cooperative behavior with each other even though there is no specific guarantee in any particular instance of a reciprocal exchange.⁶³

A growing body of evidence suggests that reciprocity of this nature is an important feature of social life. Research in evolutionary psychology suggests that humans are evolutionarily predisposed to engage in cooperative behavior.⁶⁴ “Propensities well coordinated with the propensities of others . . . [are] fitness-enhancing, and so we may view a vast array of human propensities as coordinating devices.”⁶⁵ Individuals are not the purely self-interested agents that traditional economics imagines them to be; rather, in many instances, people are inclined to engage in cooperative endeavors with others even in the absence of immediate material benefits to themselves.⁶⁶

⁶³ See Ernst Fehr & Simon Gächter, *Fairness and Retaliation: The Economics of Reciprocity*, 14 J. ECON. PERSP. 159 (2000); Armin Falk & Urs Fischbacher, *A Theory of Reciprocity* (Feb. 1999) (unpublished manuscript, on file with author).

⁶⁴ See *supra* note 25.

⁶⁵ ALLAN GIBBARD, WISE CHOICES, APT FEELINGS: A THEORY OF NORMATIVE JUDGMENT 67 (1990).

⁶⁶ See BRUNO S. FREY, NOT JUST FOR THE MONEY: AN ECONOMIC THEORY OF PERSONAL MOTIVATION (1997). See also Joyce Berg, John Dickhaut, & Kevin McCabe, *Trust, Reciprocity, and Social History*, 10 GAMES & ECON. BEHAV. 122 (1995); Fehr & Gächter, *supra* note 63, at 161–62; Ernst Fehr & Simon Gächter, *Reciprocity and Economics: The Economic Implications of Homo Reciprocans*, 48 EUROPEAN ECON. REV. 845–59 (1998); Alvin W. Gouldner, *The Norm of Reciprocity*:

Reciprocal propensities in everyday life—what Blanche DuBois⁶⁷ called the kindness of strangers—abound.⁶⁸ Thus, for instance, defying economic predictions, people leave tips in restaurants where they never expect to dine again. People contribute to public radio even though they can listen without paying. People vote knowing their vote is unlikely to make a difference in the outcome of an election. Individuals give away all kinds of things to total strangers, including blood, organs, and money to help people in distant lands. Some people risk their lives to save anonymous others, often with little, or no, compensation (e.g., police officers, firefighters), or with none at all. Drivers stop at accident scenes to provide assistance. People “lend” strangers quarters for phone calls and subway tokens. And the very existence of thousands of voluntary associations around the country depends on individuals willing to provide services without compensation. The propensity of individuals to engage in cooperative behavior has also been observed in experimental settings where subjects consistently fail to act in an entirely self-interested fashion.⁶⁹

Generalized reciprocity is an important source of social capital, conferring substantial benefits on groups or communities in which it exists. It is a *normative* feature of the social context. As is true with other norms, generalized reciprocity shapes behavior because failing to abide by the norm results in public disapproval and exclusion from social groups.⁷⁰ Moreover, practical considerations prevent individuals from breaching a code of reciprocity. Social ostracism means the disappearance of neighborly help (no gardening tools, no baby-sitters, no advice or warnings, no consultation). Where other individuals of a community *do* cooperate for efficiency gains, violating norms of reciprocity can mean deep and long-lasting personal costs. Hence, norms of generalized reciprocity can greatly reduce the risk of defection in collective action situations. I will harvest your crop (or paint your apartment) because I am expected to do so and because I can rely on somebody to help me later on; you will help me because you prefer not to be shunned by your neighbors and because you also need help from others in the future. As such, generalized reciprocity makes possible cooperation for mutual benefit.⁷¹ On a larger scale, reciprocity may overcome or reduce free-rider barriers to the provision of

A Preliminary Statement, 25 AM. SOC. REV. 161 (1960); Simon Gächter & Armin Falk, Reputation or Reciprocity (Sept. 1999) (unpublished manuscript, on file with author).

⁶⁷ Character from Tennessee Williams' play, "A Streetcar Named Desire."

⁶⁸ See generally Linnda R. Caporael, Robyn M. Dawes, John M. Orbell, & Alphons J.C. van de Kragt, *Selfishness Examined: Cooperation in the Absence of Egoistic Incentives*, 12 BEHAV. & BRAIN SCI. 683 (1989).

⁶⁹ See Fehr & Gächter, *supra* note 63, at 162. In the typical experiment, one subject (the "Proposer") receives an amount of money. The Proposer is free to keep the money or send it, or some portion of it, to a second subject (the "Responder"). The experimenter triples the amount sent. The Responder is then free to keep what is received or send it or some portion back to the Proposer. Many proposers send money and many responders send money back. *Id.* See also Gary Charness & Matthew Rabin, Social Preferences: Some Simple Tests and a New Model (Jan. 2000) (unpublished manuscript, on file with author).

⁷⁰ See JAMES S. COLEMAN, FOUNDATIONS OF SOCIAL THEORY 311 (1990).

⁷¹ See PUTNAM, *supra* note 1, at 172.

public goods. Individuals acting reciprocally contribute to public goods even without any specific guarantee that others will also contribute.⁷²

More generally, norms of reciprocity reduce a variety of transaction costs. When individuals do not need to constantly check whether they are being exploited, but instead may rely on shared cooperative norms, their goals become easier to achieve. For instance, it is cheaper and easier for me if somebody on the street will lend me a quarter to make a phone call than if I have to use a credit card or call collect. It is easier for me to leave my briefcase at my table when I go to order coffee than to drag it along because I worry it will be stolen. If I may be confident that a salesperson is not cheating me, it is easier for me to buy a car. If I do not need to rely on lengthy legal documents to borrow money, it is cheaper and easier to get a loan. In numerous ways such as these “[a] society that relies on generalized reciprocity is more efficient . . . for the same reason that money is more efficient than barter.”⁷³ Generalized reciprocity serves to “lubricate the inevitable frictions of social life.”⁷⁴

III. FEDERALISM AND SOCIAL CAPITAL

The previous Parts of this Article have described the nature and importance of social capital. This Part outlines the social capital argument for federalism, examining in detail why a federal system of government is more likely to promote social capital than a nationalist form of government.

This argument is summarized as follows: An important benefit of dividing authority between the national government and the states is that such division increases the points of political power over which citizens can exert influence in order to achieve their goals. Rather than facing a single governing entity, under a federal system of government, citizen groups can influence political outcomes by directing their resources toward local, state, and national levels. A political environment in which there are multiple sites for influence promotes social capital because such an environment is conducive to a large number of interest groups in which citizens actively participate. Thus, federalism provides opportunities for smaller groups of active citizens to organize and pursue their goals in a variety of settings rather than relegating vast numbers of citizens to passive roles in a large national advocacy group which pursues its members’ interests in Washington. In other words, when political power is divided, it is more difficult for any single interest group to dominate. Divided political power, therefore, increases opportunities for engagement in government by additional groups of citizens, thereby enhancing social capital.

In addition to providing an environment in which a greater number of citizen groups can exert influence in political processes, federalism enhances social capital by expanding opportunities for individuals to

⁷² See Fehr & Gächter, *supra* note 63, at 164; Robert Sugden, *Reciprocity: The Supply of Public Goods Through Voluntary Contributions*, 94 *ECON. J.* 772 (1984).

⁷³ PUTNAM, *supra* note 21, at 135.

⁷⁴ *Id.*

participate directly in politics through such activities as running for public office.

Significantly, the social capital benefits of federalism are not merely the benefits of a decentralized system of government in which power is delegated by a central authority that remains the ultimate decisionmaker. Rather, social capital depends on an actual division of power. Such a division, characteristic of federalism, gives citizen groups incentives to seek influence at multiple levels of politics. From a social capital perspective, competition between the national government and the states over the appropriate division of power is a healthy feature of federalism. The ongoing struggle over the division of power presents constant opportunities for citizen groups to pursue their agendas. The struggle promotes social capital as a result.

For the same reason, it is also significant that federalism entails a division of power between the national government and the states, because the states are the only political entities strong enough to engage in political struggles with the national government. Some commentators advocate locating greater political power at a more local level, finding that states have become too large and too distant from their citizens.⁷⁵ In contrast, the social capital argument for federalism suggests that, because of the growth in the size of the nation and in the functions of the national government, the states are more relevant today than ever. Social capital depends upon strong states to counteract a strong national authority.

A. GROUP INFLUENCE

Rather than locating power in a single authority, federalism diffuses power among multiple governments, thereby creating multiple sites of power. As a result, this design makes the domination of political life by any single group of citizens considerably more difficult. Accordingly, federalism creates opportunities for multiple groups of citizens to influence public policy.

From the perspective of a single group of citizens, a system of government in which power is centralized at the national level requires the group to target as forcefully as possible the responsible national decisionmaker.⁷⁶ As a result, any single group will be in competition with other like-minded groups, each seeking to exert influence at the same site of power.

Under a nationalist system of government, each group has an incentive both to expand and to deepen its resources at the national level, as a larger group will be able to exercise more political influence than a smaller one. Groups face strong pressures to grow in size by increasing the number of their members and combining with other groups. Groups will also

⁷⁵ See discussion *infra* Part III.E.

⁷⁶ JERRY L. MASHAW, GREED, CHAOS, AND GOVERNANCE: USING PUBLIC CHOICE TO IMPROVE PUBLIC LAW 13-21 (1997) (discussing the collective action impediments to legislation and interest group influences in politics).

strengthen their resources at the national level because resource concentration will increase their chances of influencing policy. In a nationalist system of government, larger groups are able to concentrate resources more effectively to exert greater power.⁷⁷ Smaller, less organized groups are less successful in using political influence to pursue their agendas.

A nationalist system of government, therefore, is likely to encourage large-scale citizen groups that concentrate their resources at the site of national government. Groups like the American Association of Retired Persons (“AARP”), Greenpeace, and the National Rifle Association (“NRA”) are likely to dominate in a nationalist system. While some smaller citizen groups also exist, they are less prevalent and exercise less political influence.

Additionally, the groups that exist in a nationalist system will be organized along single issues, such as abortion, gun control, or gay rights, that capture the support of large sections of the population. Alternatively, these groups will unite members of a well-defined segment of the population, such as retirees, gays and lesbians, or teachers, but with broader and more ambiguous political goals, such as protecting the interests of gays and lesbians or promoting the needs of retirees. Multi-issue groups and groups cutting across very diverse segments of the population without a coherent focus will be uncommon in a nationalist system because it is more difficult to organize large numbers of individuals into the membership ranks of such groups.

Under a federal system of government, however, expansion and concentration of resources at the national level of government will not necessarily be strategic for every group. Instead, each group must choose whether to pursue the group’s agenda by seeking to influence policy at the national level or at the state level or both. This choice will influence the form the group takes and the activities it pursues. Some groups will forego opportunities at one level of government and concentrate their resources on another. For example, a group might pursue its goals at the state government level while remaining inactive on the national political level.

⁷⁷ Michael Greve usefully describes why today interest groups prefer a more nationalist system of government:

Until the victory of the New Deal, corporate interests generally pursued an antinationalist strategy, both in Congress and in the courts. . . . From the beginning of the twentieth century and into the 1940s, business associations masterminded and bankrolled many of the lawsuits against federal legislation That posture stemmed from a straightforward calculation: so long as corporate America could hold the line against national intervention, federalism’s anti-regulatory, competitive dynamics worked to its advantage.

. . . [T]he collapse of the enumerated powers doctrine after 1937 dramatically changed the business community’s calculation. Once the dam had been broken, federalism quickly became a tactical concern. Individual firms, trade organizations, or industry sectors are for or against it, depending on the stakes. The drift is toward Washington, D.C., which offers the advantages of uniform regulation, lower transaction costs, and enhanced opportunities to appropriate a larger number of competitors on a grander scale.

MICHAEL S. GREVE, *REAL FEDERALISM: WHY IT MATTERS, HOW IT COULD HAPPEN* 107–08 (1999).

Alternatively, a group may concentrate its efforts in Washington and forego opportunities in the states. Some groups might seek influence in some states, but not others. Other groups may perceive too much risk in spending all of their resources in one area and will divide their resources between both federal and state levels. Groups may aim for some mixture of breadth and depth, perhaps structuring their organization like the federal government with chapters organized at the state level, but united under a national organizational body.

As a result of organizations choosing where to seek political influence, there will be additional opportunities for them to influence policy. Under a federal system, it is unlikely that any single group will be able to capture all or even most of the political power at both the state and the national level. All groups will need to make decisions about where to focus their resources. Thus, federalism provides opportunities for political influence to groups that would likely be very weak under a nationalist system.

By requiring even the most powerful groups to forego influence over some sites of political power, federalism provides opportunities for smaller, weaker organizations to compete for influence and pursue their agendas. In a federalist system, it is easier for smaller organizations to mount opposition to even powerful groups because their resources will be more diffused.

To illustrate this point, consider, for instance, that gun control is a divisive political issue. In a nationalist political system a group seeking to exert influence in favor of or in opposition to gun regulation will need to direct its resources towards the national government. Other groups seeking influence will do the same. Groups that are able to marshal greater numbers of supporters in favor of their position and draw on larger resources will be more successful in promoting their agendas. Small groups with fewer members and fewer resources will tend to have less impact.

In contrast, under a federal system of government, influencing national policy is only one of the routes available for a group to promote its agenda. Each group must decide whether to focus its efforts at the national government, at one or more state governments, or at both the national and state governments. If large, powerful groups decide to focus their efforts at the national government, then opportunities will arise at the state level for smaller groups to exert influence. If large, powerful groups decide to focus some efforts at the national level and some efforts at the state level, then smaller groups will still be able to compete at the national level. In either instance, there will be additional opportunities for other groups to enter the political arena.

The types of citizen groups that federalism promotes will be more likely to embody high levels of social capital than the groups that emerge in a nationalist system of government. This point is clarified by returning to the two forms of social capital we discussed earlier: civic networks and generalized reciprocity.

1. *Federalism and Civic Networks*

Smaller groups seeking to exert influence at multiple sites of governmental power are more likely to represent stronger civic networks than larger groups focusing their resources at the national level. A large number of smaller organizations embodies significantly more active citizen participation than a small number of centrally organized groups.

In smaller groups, citizens are more likely to be actively involved in a personal capacity in the group's functions by attending meetings, organizing activities, recruiting members, or holding office. On the other hand, where associational life is dominated by a small number of mass-membership organizations, citizen activity is likely to be more limited, often not extending beyond making a financial contribution. The operation of such organizations is usually guided by a cadre of professional managers.

The mass-membership organizations that exist in a nationalist system of government often rely heavily on their members for financial support. In turn, these groups may be highly effective in acting on their members' behalf. From a social capital perspective, however, the kinds of organizations encouraged by a nationalist government are less significant than the organizations with more active citizen involvement that flourish under federalism.⁷⁸

Small-scale associations with active participants represent strong civic networks and an important form of social capital because these associations broaden the sphere of interest of their members, bring members into contact with diverse people, and provide unique channels through which to act.⁷⁹ As de Tocqueville explained in his discussion of the small civic associations that prevailed in the United States in the 1830s, these associations draw individuals out of their world of private self-interest and teach them habits of cooperation, solidarity, and other civic skills.⁸⁰ Such associations check the tendency toward anonymity in egalitarian society.⁸¹

⁷⁸ See, e.g., MASHAW, *supra* note 76, at 19. "The American Automobile Association and the American Association of Retired Persons . . . are politically powerful organizations whose vast memberships may enroll primarily for the advantages of car towing, travel services, group discounts, and the like." *Id.* See also PUTNAM, *supra* note 21, at 58–64.

⁷⁹ See David Knoke, *Associations and Interest Groups*, 12 ANN. REV. SOC. 1 (1986).

⁸⁰ DE TOCQUEVILLE, *supra* note 49, at 515. "Feelings and ideas are renewed, the heart enlarged, and the understanding developed only by the reciprocal action of men one upon another." *Id.* Echoing these observations, John Stuart Mill writes that through association with others, a citizen is drawn out of the sphere of self-interest and learns to pursue collective ends:

He is called upon . . . to weigh interests not his own; to be guided, in case of conflicting claims, by another rule than his private partialities; to apply, at every turn, principles and maxims which have for their reason of existence the common good: and he usually finds associated with him in the same work minds more familiarized than his own with these ideas and operations, whose study it will be to supply reasons to his understanding, and stimulation to his feeling for the general interest.

JOHN STUART MILL, *Considerations on Representative Government*, in THREE ESSAYS: ON LIBERTY, REPRESENTATIVE GOVERNMENT, THE SUBJECTION OF WOMEN 145, 197–98 (Oxford U. Press 1975) (1861).

⁸¹ See DE TOCQUEVILLE, *supra* note 49, at 516.

Verba and his colleagues illustrate the variation in citizen activity among different kinds of organizations. They report the results of a national survey of citizen participation in a wide variety of associations.⁸² This survey asked respondents about the extent and nature of their involvement in the following categories of organizations: service clubs or fraternal organizations such as Lions or Kiwanis; veterans' organizations; religious groups such as the Knights of Columbus; ethnic groups such as the NAACP; senior citizens' groups; women's groups such as NOW; labor unions; business or professional organizations; issue-specific groups such as gun control or environmental groups; general civic organizations such as the League of Women voters; organizations supporting liberal or conservative causes such as the Conservative Caucus; candidate or party organizations; youth groups such as the Girl Scouts; literary, art or study groups; hobby, sport or leisure groups; neighborhood or homeowners' groups; charitable or service organizations such as the Salvation Army; educational organizations like the PTA; and cultural organizations such as a museum group.⁸³

According to the results of this survey, 79% of respondents were involved in one or more of these types of associations either as members or by making financial contributions; 41% of respondents had four or more such affiliations.⁸⁴ Among those reporting affiliation with at least one association, 65% reported that they had attended a meeting of the association within the past year; 42% reported active membership such as service on a committee; and 28% reported that they had served as a board member or officer.⁸⁵ Different types of associations, however, showed quite different degrees of participation. The largest portion of respondents (44%) indicated affiliation with a large charitable or social service organization.⁸⁶ Almost 80% of the members in these organizations, however, simply made a financial contribution and did not attend meetings.⁸⁷ Participation in large cultural organizations (13% of respondents), veterans' groups (16% of respondents), and liberal or conservative groups (one percent of respondents) was also mostly limited to giving money.⁸⁸ However, of the respondents involved in the smaller service or fraternal groups (18%), religious groups (12%), educational groups (25%), literary, art, or discussion groups (6%), hobby, sports, or leisure groups (21%), business or professional groups (23%), unions (12%), and neighborhood or

⁸² VERBA ET AL., *supra* note 51, at 49–91.

⁸³ *Id.* at 60–61. The study also included a category for “other” groups not covered by these categories.

⁸⁴ *Id.* at 62.

⁸⁵ *Id.* See also DAVID HORTON SMITH, GRASSROOTS ASSOCIATIONS 41, 49–51 (2000) (reporting that sixty-seven percent of adult Americans, or 124 million individuals belong to one or more grassroots organization, and that there are 7.5 million such associations); ROBERT WUTHNOW, SHARING THE JOURNEY: SUPPORT GROUPS AND AMERICA'S NEW QUEST FOR COMMUNITY 45 (1994) (reporting that 40% of the adult population, or seventy-five million Americans, are members of a “small group” that meets regularly and estimating that there are three million such groups in the United States); Frank R. Baumgartner & Jack A. Walker, *Survey Research and Membership in Voluntary Associations*, 34 AM. J. POL. SCI. 908, 920 (1988) (reporting that 77.7% of respondents are members of one or more groups).

⁸⁶ VERBA ET AL., *supra* note 51, at 63–64.

⁸⁷ *Id.*

⁸⁸ *Id.*

homeowners' groups (12%), at least half reported regular attendance at group meetings.⁸⁹

Externally, the small-scale associations likely to be promoted by federalism "allow individuals to express their interests and demands on government."⁹⁰ These associations aggregate political power by allowing individuals who would otherwise be politically weak to join together to express their views and advance their interests.⁹¹ Internally, these small-scale associations bring people together and teach them organizational skills, like how to develop programs, write letters, run meetings, recruit associates, and negotiate with others, that are useful in advancing political agendas.⁹²

Verba and his colleagues explain how these kinds of "civic skills" acquired in the setting of small-scale organizations are important resources for political activity:

Civic skills, the communications and organizational abilities that allow citizens to use time and money effectively in political life, constitute a . . . resource for politics. Citizens who can speak or write well or who are comfortable organizing and taking part in meetings are likely to be more effective when they get involved in politics. Those who possess civic skills should find political activity less daunting and costly and, therefore, should be more likely to take part. Furthermore, those capacities allow participants to use inputs of time and money more effectively, making them more productive when they are active.⁹³

These civic skills are often acquired early in life, during the educational process; hence, education is positively correlated with political activity.⁹⁴ In adult life, active participation in associations, including church and workplace activities, provides additional opportunities for acquiring and practicing these civic skills.⁹⁵

[T]hese non-political settings provide exposure to political stimuli. People engage in informal political discussions in these settings. In addition, the agenda of a meeting of even a non-political organization may include consideration of political issues. . . . Not only do these settings

⁸⁹ *Id.* See also Morris Axelrod, *Urban Structure and Social Participation*, 21 AM. SOC. REV. 13, 15 (1956) (reporting that only one-fifth of respondents were active in their associations); John C. Scott, *Membership and Participation in Voluntary Associations*, 22 AM. SOC. REV. 315, 318-19 (1957) (reporting that 16.1% of members hold positions as officers; 14.1% are on committees; and the average attendance at meetings is 2.65 times per month).

⁹⁰ PUTNAM, *supra* note 21, at 338. See also James Kerri, *Anthropological Studies of Voluntary Associations and Voluntary Action: A Review*, 3 J. VOLUNTARY ACTION RES. 10 (1974) (explaining that, externally, associations act as political pressure groups, perform deliberative functions, and act as points of articulation with officials).

⁹¹ Amy Gutmann, *Freedom of Association: An Introductory Essay*, in FREEDOM OF ASSOCIATION 3, 3 (Amy Gutmann ed., 1998) (claiming that "without access to an association that is willing and able to speak up for our views and values, we have a very limited ability to be heard by many other people or to influence the political process, unless we happen to be rich or famous"). See also Joshua Cohen, *Deliberation and Democratic Legitimacy*, in DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS 67 (James Bohman & William Rehg eds., 1999).

⁹² PUTNAM, *supra* note 21, at 338.

⁹³ VERBA ET AL., *supra* note 51, at 304.

⁹⁴ *Id.* at 305.

⁹⁵ *Id.* at 309.

provide exposure to political messages but . . . they are frequently the locus of political recruitment of citizen activists.

. . . .

These non-political institutions [also] offer many opportunities to acquire, or improve, organizational or communications skills in the context of activities that have nothing to do with politics. Managing the firm's move to new quarters, coordinating the volunteers for the Heart Fund drive, or arranging the details for a tour by the church children's choir . . . represent opportunities in non-political settings to learn, maintain, or refine civic skills. In short, those who develop skills in an environment removed from politics are likely to become politically competent.⁹⁶

For Black citizens, small-scale associations like church groups are particularly important sites for acquiring civic skills. In the workplace, educated White citizens disproportionately occupy the high-level positions that impart civic skills.⁹⁷ In small civic associations, by contrast, Black citizens have the same opportunities as White citizens to develop and practice civic skills.⁹⁸ In church groups, in particular, Black citizens and citizens of other minority groups are able to practice civic skills more frequently than White citizens.⁹⁹ Accordingly, “[c]hurches . . . are one of the few vital institutions left in which low-income, minority, and disadvantaged citizens of all races can learn politically relevant skills and be recruited into political action.”¹⁰⁰

To understand the role of federalism in providing additional opportunities for the members of small, social capital-intensive organizations to exert political influence, it is important to recognize that much collective activity occurs in and through organizations that are not identifiably political. As Verba and his colleagues report, “[t]he boundary between political and nonpolitical activity is by no means clear, an aspect of political and social life in America that complicates the analysis of political and nonpolitical participation.”¹⁰¹ According to these researchers, even associational activity that appears to lie outside the political domain intersects that domain in important ways. Associational participation, in many important respects, is a “politicizing experience.”¹⁰² Echoing de Tocqueville’s observations in the 1830s, Verba and his colleagues find that:

⁹⁶ *Id.* at 309–10 (citation omitted).

⁹⁷ *Id.* at 314–20.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ PUTNAM, *supra* note 21, at 339 (citing Frederick C. Harris, *Religious Institutions and African American Political Mobilization*, in CLASSIFYING BY RACE 299 (Paul Peterson ed., 1995)). For a discussion of the historic role of Black churches in political activity, see JOSEPH R. GUSFIELD, *SYMBOLIC CRUSADE: STATUS POLITICS AND THE AMERICAN TEMPERANCE MOVEMENT* (2d ed. 1963); ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT: BLACK COMMUNITIES ORGANIZING FOR CHANGE* (1984). For a discussion about the role of churches in modern interest group politics, see ALLEN D. HERTZKE, *REPRESENTING GOD IN WASHINGTON: THE ROLE OF RELIGIOUS LOBBIES IN THE AMERICAN POLITY* (1988).

¹⁰¹ VERBA ET AL., *supra* note 51, at 40.

¹⁰² *Id.*

[U]ndertaking activities that themselves have nothing to do with politics—for example, running the PTA fund drive or managing the church soup kitchen—can develop organizational and communications skills that are transferable to politics. In addition, these non-political institutions can act as the locus of attempts at political recruitment: church and organization members make social contacts and, thus, become part of networks through which requests for participation in politics are mediated. Moreover, those who take part in religious or organizational activity are exposed to political cues and messages—as when a minister gives a sermon on a political topic or when organization members chat informally about politics at a meeting.¹⁰³

An association need not exist for a specific political purpose in order to allow and encourage its members to engage in political activities and to exert political influence.

There are many historical instances of small-scale associations organized ostensibly for social or other nonpolitical reasons that encouraged their members to exert political influence.¹⁰⁴ This is particularly true for groups of citizens excluded from other political opportunities. In the 1860s, for instance, women in the United States, excluded from voting, holding office, or serving on juries, nonetheless, exercised political influence through religious organizations.¹⁰⁵ In the 1870s, the Woman's Christian Temperance Union immersed its members in prison reform, youth advocacy, and labor issues.¹⁰⁶ In the 1890s, women's reading groups turned their attention to advocating various kinds of political reforms, including legal protections for women and children.¹⁰⁷ Religious and civic associations have also played an important role in the political activities of African-Americans, who have been excluded from other opportunities.¹⁰⁸ Because these associations of otherwise excluded citizens represented a real political force, hostile governments have often sought to prohibit them.¹⁰⁹

To summarize, federalism encourages the activities of a wide variety of small-scale associations. These small-scale associations create strong civic networks because through them citizens come together, develop collective interests, define their agendas, and learn skills that enable them to pursue their goals. While mass-membership organizations may exercise considerable power on behalf of their members, such organizations do not represent strong civic networks because the members in these associations are likely to be relatively inactive.

¹⁰³ *Id.*

¹⁰⁴ See Theda Skocpol, *How Americans Became Civic*, in *CIVIC ENGAGEMENT IN AMERICAN DEMOCRACY* 27 (Theda Skocpol & Morris P. Fiorina eds., 1999) (tracing the proliferation of associations in the United States as a function of politics, religious freedom, and republican government).

¹⁰⁵ AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 239–41 (1998).

¹⁰⁶ PUTNAM, *supra* note 21, at 389–90.

¹⁰⁷ KAREN J. BLAIR, *THE CLUBWOMAN AS FEMINIST: TRUE WOMANHOOD REDEFINED* 93–112 (1980).

¹⁰⁸ AMAR, *supra* note 105, at 241; PUTNAM, *supra* note 21, at 392.

¹⁰⁹ AMAR, *supra* note 105, at 241.

2. Federalism and Norms of Reciprocity

The types of small-scale citizen groups that federalism promotes also embody strong norms of generalized reciprocity. Individuals who are actively involved in these small-scale associations are more trusting of others and more likely to engage in reciprocal behavior.¹¹⁰

There are several causes for this effect. The first is closely related to the ways in which federalism promotes civic networks. When citizens participate in activities that allow them to acquire civic skills, they also develop norms of reciprocity. Through participation in civic networks, individuals learn to listen carefully to the viewpoints of others, to reserve judgment until appropriate, and to provide feedback. Individuals not only learn the importance of negotiation and compromise, and of patience and control, but also the usefulness of obtaining a consensus. They learn to respect others despite differences of opinion, and they discover ways to maintain civility despite disagreement. Such habits often promote reciprocal behavior in other settings with other individuals. For example, a person who, because of her participation in civic networks, is accustomed to negotiation and compromise may be less demanding and less selfish in her daily transactions with others than someone who has never learned similar cooperative habits.

Second, participation in the small-scale associations of federalism is likely to promote reciprocity by allowing citizens to identify with each other and increase their sense of solidarity. Research demonstrates that interacting with other people creates the sense that individuals are part of a collectivity with shared interests.¹¹¹ Sense of membership in a common group significantly increases cooperative behavior.¹¹² The identification that results from group membership is not necessarily limited to the specific members of the group with whom one interacts. By virtue of participation with *some* citizens we may come to see our common links with *all* citizens.¹¹³

Some associations have deliberate mechanisms for increasing identification and solidarity among their members, including pledges, songs, initiation procedures, and uniforms. The reciprocity benefits of shared membership, however, may lie in the informal greetings and other rituals that participation in the group entails. Members of a common group engage in various kinds of verbal and nonverbal communication that signal

¹¹⁰ PUTNAM, *supra* note 21, at 254.

¹¹¹ See Bruno S. Frey & Iris Bohnet, *Identification in Democratic Society*, 26 J. SOCIO-ECON. 25 (1997).

¹¹² See Iris Bohnet & Bruno S. Frey, *The Sound of Silence in Prisoner's Dilemma and Dictator Games*, 36 J. ECON. BEHAV. & ORG. 43, 45–46, 53 (1999); John M. Orbell, Alphons J.C. van de Kragt, & Robyn M. Dawes, *Explaining Discussion-Induced Cooperation*, 54 J. PERSONALITY & SOC. PSYCH. 811, 812 (1988); Donnel Wallace & Paul Rothaus, *Communication, Group Loyalty, and Trust in the PD Game*, 13 CONFLICT RESOLUTION 370, 374–79 (1969); Nancy R. Buchan, Rachel T.A. Croson, & Robyn M. Dawes, *Who's with Me? Direct and Indirect Trust in China, Japan, Korea, and the United States* 6 (unpublished manuscript, on file with author).

¹¹³ On the other hand, some groups are highly insular, emphasizing how their members differ from others.

their shared ties and their willingness to engage in cooperative behavior. According to Iris Marion Young, these rituals promote solidarity because they bring parties to “recognize one another in their particularity.”¹¹⁴ Through greetings such as handshakes, hugs, or saying “Good evening” and “Welcome,” sharing refreshments, listening to other participants, and through forms of speech such as occasional flattery or deference that promote discussion, parties establish a level of trust and respect.¹¹⁵ Such rituals promote reciprocity by establishing and reinforcing the good faith of the parties involved and their commitment to a shared baseline of cooperative behavior and respect. The United States Senate, for example, relies famously on these kinds of rituals.

It is useful to note that social capital theorists distinguish between two overall varieties of social capital: “bonding” social capital, which is “inward looking and tend[s] to reinforce exclusive identities and homogeneous groups,” and “bridging” social capital, which is “outward looking and encompass[es] people across diverse social capital cleavages.”¹¹⁶ In other words, “[b]onding social capital constitutes a kind of sociological superglue, whereas bridging social capital provides a sociological WD-40.”¹¹⁷ Of particular importance to generalized reciprocity in a diverse society such as the United States, participation in small-scale associations may serve to bring individuals who would not otherwise interact into networks of solidarity. Thus, participation can perform a “bridging” function, creating cooperation among socially diverse individuals.¹¹⁸

Social distance, the extent to which individuals are demographically similar, has a profound effect on the extent to which they will cooperate with each other.¹¹⁹ Active participation in civic networks may reduce social distance by bringing together members of different social groups to pursue issues of common concern. Shared activities within these associations generate experience in dealing with diverse members of a community, thereby reducing the sense of difference. Such participation may also identify and clarify interests and needs that were previously unappreciated and personalize issues so that the full impact of behavior towards others is understood. Common membership in this way may reduce social separation and facilitate broad reciprocal norms.

¹¹⁴ Iris Marion Young, *Communication and the Other: Beyond Deliberative Democracy*, in *DEMOCRACY AND DIFFERENCE: CONTESTING THE BOUNDARIES OF THE POLITICAL* 120, 129 (Seyla Benhabib ed., 1996).

¹¹⁵ *Id.*

¹¹⁶ PUTNAM, *supra* note 21, at 22.

¹¹⁷ *Id.* at 23.

¹¹⁸ See Donna M. Desforges, Charles G. Lord, Shawna L. Ramsey, Julie A. Mason, Marilyn D. Van Leeuwen, & Sylvia C. West, *Effects of Structured Cooperative Contact on Changing Negative Attitudes Toward Stigmatized Social Groups*, 60 J. PERSONALITY & SOC. PSYCHOL. 531 (1991).

¹¹⁹ See Iris Bohnet & Bruno S. Frey, *The Sound of Silence in Prisoner's Dilemma and Dictator Games*, 36 J. ECON. BEHAVIOR & ORG. 43, 46, 53 (1999); Elizabeth Hoffman, Kevin McCabe, & Vernon L. Smith, *Social Distance and Other-Regarding Behavior in Dictator Games*, 86 AM. ECON. REV. 653 (1996); Nancy R. Buchan, Eric J. Johnson, & Rachel T.A. Croson, *Trust and Reciprocity: An International Experiment 5–6* (April 2000) (unpublished manuscript, on file with author).

A third reason that active participation in the small-scale associations of federalism promotes generalized reciprocity results from the important effects of face-to-face communication. A large body of research demonstrates that individuals who communicate with one another are more likely to trust each other and, therefore, more likely to engage in cooperative behavior.¹²⁰ Additionally, research shows that individuals who communicate are more trusting of other people with whom they themselves do not communicate.¹²¹

Researchers offer several reasons to explain why communication increases trust. Individuals who communicate with each other often become more trusting, because communication allows them to reach agreements for mutual benefit. In this sense, communication directly facilitates cooperation. It also allows for the discovery of benevolent characteristics and the production of empathy. If repeated, communication improves the chances of monitoring behavior and detecting cheating.¹²²

Communication increases trust towards other unknown individuals, because it enhances the sense of membership and the recognition that there are other people who may be affected by one's conduct.¹²³ It is reasonable to suppose that some of the effects of face-to-face communication may simply spill over to influence communications with others; the experience of communicating with someone may make us less distrustful of strangers in general.

Participation in the kinds of small-scale associations promoted by federalism frequently requires individuals to engage in public-regarding discourse and behavior. In the course of active membership in a small-scale citizen group, individuals must frame their views in terms that reflect the interests of the collective, rather than themselves.¹²⁴ As Jon Elster explains,

[T]here are certain arguments that simply cannot be stated publicly. In a political debate it is pragmatically impossible to argue that a given solution should be chosen just because it is good for oneself. By the very act of engaging in a public debate—by arguing rather than bargaining—one has ruled out the possibility of invoking such reasons.¹²⁵

¹²⁰ David Sally, *Conversation and Cooperation in Social Dilemmas*, 7 RATIONALITY & SOC'Y 58, 73–87 (1995) (reporting that the review of more than 100 game experiments demonstrates that communication has a significant positive impact on cooperation in both one-shot and repeated games). See, e.g., Sanford Braver & L.A. Wilson II, *Choices in Social Dilemmas: Effects of Communication Within Subgroups*, 30 J. CONFLICT RESOL. 51, 59 (1986) (reporting that in a public goods game, communication among participants increases cooperation by 27% and nearly doubles the provision of the public good).

¹²¹ Frey & Bohnet, *supra* note 111, at 25 (reporting the positive effect of communication on “other-regarding” behavior with respect to third parties).

¹²² Braver & Wilson II, *supra* note 120, at 59–61; Hoffman et al., *supra* note 25, at 339; Sally, *supra* note 120, at 68–70.

¹²³ Frey & Bohnet, *supra* note 111; Buchan et al., *supra* note 119, at 19–20.

¹²⁴ CASS R. SUNSTEIN, DEMOCRACY AND THE PROBLEM OF FREE SPEECH 243–44 (1993); Cohen, *supra* note 91; Iris Marion Young, *Difference As a Resource for Democratic Community*, in DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS, *supra* note 91, at 383.

¹²⁵ Jon Elster, *The Market and the Forum: Three Varieties of Political Theory*, in DELIBERATIVE DEMOCRACY: ESSAYS ON REASON AND POLITICS, *supra* note 91, at 3, 12 (citation omitted). See also Joshua Cohen, *Procedure and Substance in Deliberative Democracy*, in DELIBERATIVE DEMOCRACY:

Interaction with other members of a small group deters purely self-interested ideas and proposals. When communicated to others in a small group setting, private preferences must be presented as concerns with the interests of the group or of the broader social whole. The nature of conversation may be altered when it is characterized by appeals to the general welfare. A conversation is likely to be more civil when it attempts to persuade others than when it asserts private interests.¹²⁶ The “civilizing force of hypocrisy” may have the important reciprocity benefits of keeping tempers in check, reducing acrimony, and promoting respect.¹²⁷ Civil communication that avoids self-interested pronouncements may alter the ways in which individuals communicate and conduct themselves in other realms of social life.

Participation in the small-scale associations of federalism may even influence the private preferences of individuals. Group-based communication often weeds out purely private preferences that lack any plausible collective benefit.¹²⁸ Cass Sunstein argues that certain types of prejudice are “laundered” by collective discourse.¹²⁹ Frequent communication in a small group setting may encourage collective benefits as a matter of personal preference. Communication with others in the context of small-scale associations may even change an individual’s preferences, instilling a taste for reciprocal behavior. Individuals who speak in public-regarding terms as a result of group affiliation may adopt such preferences as their own over time.¹³⁰

The fourth reason that the associations promoted by federalism enhance norms of generalized reciprocity is that active participation by large numbers of citizens in these associations sends the important message that citizens can be trusted to influence politics and to pursue their own agendas. “Civic virtue is bolstered if the public laws convey the notion that citizens are trusted Such trust is reflected in extensive rights and participation possibilities.”¹³¹ For this reason, trust among citizens is generally much higher in democratic societies, where citizens are treated as responsible agents who participate in political processes, than in authoritarian regimes, where citizens are passive subjects ruled by a central authority.¹³² The involvement of a large number of citizens in activities with political significance enhances generalized reciprocity by promoting the understanding that citizens are trustworthy.

ESSAYS ON REASON AND POLITICS, *supra* note 91, at 407, 414. “One must . . . find reasons that are compelling to others, acknowledging those others as equals, aware that they have alternative reasonable commitments.” *Id.*

¹²⁶ See Amy Gutmann, *The Challenge of Multiculturalism in Political Ethics*, 22 PHIL. & PUB. AFF. 171, 197 (1993); John Rawls, *The Domain of the Political and Overlapping Consensus*, 64 N.Y.U. L. REV. 233, 238–39 (1989).

¹²⁷ SUNSTEIN, *supra* note 124, at 243 n.7 (citing Jon Elster, *Strategic Uses of Argument*, in BARRIERS TO CONFLICT RESOLUTION 236, 250–57 (Kenneth Arrow et al. eds., 1995)).

¹²⁸ SUNSTEIN, *supra* note 124, at 244.

¹²⁹ *Id.*

¹³⁰ Cohen, *supra* note 91, at 76–77; Elster, *supra* note 125, at 12.

¹³¹ FREY, *supra* note 66, at 45.

¹³² Eric Uslaner, *Democracy and Social Capital*, in DEMOCRACY AND TRUST 121, 141 & n.19 (Mark Warren ed., 1999).

B. DIRECT PARTICIPATION

In addition to promoting the activities of small-scale citizen groups, federalism increases the opportunities for direct forms of individual participation in public life. Citizens participate directly in public life in a variety of ways, including attending public meetings, making a speech, organizing a petition drive, running for public office, serving on a jury, voting, writing a member of Congress, and attending a rally. Just as participation in a civic network represents social capital, direct participation also has important social capital benefits. Participation joins people in common activities and facilitates the development of shared norms that enable cooperative endeavors. Regular meetings among the members of a group with a shared interest build social capital, but so do attending a town hall meeting, serving on a jury, and assisting in a petition drive. The mechanism in both situations is the same: people who come together with a shared interest or concern or to perform a shared activity develop social connections and common norms that allow them to pursue various goals.

Some forms of direct participation are more social capital intensive than others. Voting, for instance, is usually a relatively weak basis for producing social capital, because, aside perhaps from waiting in line at the polling station, it is a solitary and occasional act. We are unlikely to imagine ourselves to be deeply connected to other people simply because they voted beside us. Rallies, on the other hand, are intense forms of social capital, although their benefits might be quite short term. Running for public office can be an important basis for creating social capital with long-lasting effects, but the social capital might be of a spoke-and-wheel variety; the person seeking election will develop many connections, but the people with whom she connects are less likely to be connected to each other. Some forms of public participation involve bonding social capital. Rallies or marches focused on specific issues, for example, attract similarly situated individuals. Other forms of public participation involve bridging social capital. The Civil Rights movement, for instance, was an example of bridging social capital.¹³³

Historically, voting, participating in the militia, and serving on a jury represented significant forms of direct public participation.¹³⁴ In the early years of the Republic, voting was a very public affair. Voters, who often traveled together to the polling place, mingled throughout the day with other citizens and with party officials.¹³⁵ To election reformers at the end of the nineteenth century, this social capital signified corruption because personal contact allowed voters to be bullied, threatened, or bribed to vote a particular way.¹³⁶

¹³³ PUTNAM, *supra* note 21, at 22.

¹³⁴ AMAR, *supra* note 105, at 48–49, 55, 88–98.

¹³⁵ See MICHAEL SCHUDSON, *THE GOOD CITIZEN: A HISTORY OF AMERICAN CIVIC LIFE* 4–6 (1998).

¹³⁶ *See id.* at 6.

In the early Republic, the militia was “a local institution, bringing together representative citizens to preserve popular values of their society.”¹³⁷ Men served in the militia with other members of their community to reinforce shared values and interests, and to build and sustain a basis for collective action.¹³⁸

Juries are an especially interesting example of direct public participation. In a very real sense a jury is a form of collective activity. Jury service is one of the few times when citizens are required to come together with other members of their community to decide an issue of considerable public importance. Jurors must discuss and debate the issues before them in a civil manner, take into account the views of all of the members of their panel, determine how the evidence presented should be weighed, and reach a result that they believe is just. Jury service often performs an important bridging function by bringing together individuals from different backgrounds who would not ordinarily interact and promoting commonality among them. Few other situations provide an opportunity for citizens to learn these kinds of cooperative skills.

The social capital that juries embody is also politically important for two reasons. Alexander Hamilton identified both of these reasons in *Federalist No. 83*, describing the unanimous support at the Constitutional Convention¹³⁹ for preserving the right to jury trial:

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury; or if there is any difference between them it consists in this: the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government.¹⁴⁰

First, juries of local citizens in criminal trials safeguard liberty because they can refuse to convict defendants, thereby checking the power of the government. At the Founding, there were dramatic examples of colonial juries resisting British authority in trials such as the seditious libel trial of John Peter Zenger.¹⁴¹ Juries continue to play this checking role today, because their decisions to acquit criminal defendants are unreviewable.¹⁴² Second, juries represent an important form of political participation by citizens. By serving on juries, citizens learn and practice the art of government.¹⁴³ De Tocqueville emphasized this value of juries when he

¹³⁷ AMAR, *supra* note 105, at 56.

¹³⁸ *Id.* at 55.

¹³⁹ In addition to their importance in the Bill of Rights, jury trials in criminal cases were also protected in the 1787 Constitution. U.S. CONST. art. III, § 3.

¹⁴⁰ THE FEDERALIST NO. 83 (Alexander Hamilton).

¹⁴¹ AMAR, *supra* note 105, at 84–85. *See also* SHANNON C. STIMSON, THE AMERICAN REVOLUTION IN THE LAW: ANGLO-AMERICAN JURISPRUDENCE BEFORE JOHN MARSHALL 52–55 (1990).

¹⁴² *Harris v. Rivera*, 454 U.S. 339, 346 (1981) (per curiam) (describing the “unreviewable power of a jury to return a verdict of not guilty for impermissible reasons”). The Fully Informed Jury Association seeks to inform citizens of their right to nullification when they serve as jurors. Judges, of course, resist this idea. *See, e.g.*, *United States v. Thomas*, 116 F.3d 606, 616 (2d Cir. 1997). “[N]o juror has a right to engage in nullification—and, on the contrary, it is a violation of a juror’s sworn duty to follow the law as instructed by the court.” *Id.*

¹⁴³ AMAR, *supra* note 105, at 94–96.

observed that “[t]he jury is both the most effective way of establishing the people’s rule and the most efficient way of teaching them how to rule.”¹⁴⁴ According to de Tocqueville, “[j]uries . . . instill some of the habits of the judicial mind into every citizen, and just those habits are the very best way of preparing people to be free.”¹⁴⁵ In the early years of the Republic, jurors looked much more like judges than they do today. Instead of simply deciding well-defined issues of fact, early juries also interpreted and applied the law.¹⁴⁶

Just as it provides opportunities for citizens to influence politics through small-scale associations, federalism also increases the opportunities for citizens to participate directly in public life. Dividing power between governments expands the number of public offices for which individuals can run and increases the amount of legislation proposed, resulting in more opportunities to influence laws. It also increases the potential targets of rallying, campaigning, petitioning and letter writing. Thus, in a federal political system like the United States, people can run for office at the national or state level. We vote in national as well as in state elections. We serve on federal and state juries and as federal and state judges. We petition and write letters to our national representatives as well as to our state officials. We attend rallies in Washington as well as in Albany and Sacramento. Federalism promotes social capital by providing opportunities for more people to play direct roles in public life.

C. FEDERAL-STATE COMPETITION

Arguments in favor of federalism frequently focus on the policy benefits of competition among the states.¹⁴⁷ The social capital argument for federalism, on the other hand, points to the importance of competition between the national government and the states over the appropriate division of governmental power.

Ongoing power struggles between the national and state governments provide constant opportunities for citizen groups to exert influence. When the division of power is clearly defined, citizen groups pursuing their agendas are able to direct their resources at the appropriate target. An ambiguous division of power, however, creates uncertainty regarding which

¹⁴⁴ DE TOCQUEVILLE, *supra* note 49, at 276.

¹⁴⁵ *Id.* at 274.

¹⁴⁶ See AMAR, *supra* note 105, at 100–01; Albert W. Alschuler & Andrew G. Deiss, *A Brief History of the Criminal Jury in the United States*, 61 U. CHI. L. REV. 867, 903–21 (1994); Mark De Wolfe Howe, *Juries As Judges of Criminal Law*, 52 HARV. L. REV. 582 (1939); John D. Gordan III, *Juries As Judges of the Law: The American Experience*, 108 LAW Q. REV. 272 (1992); Douglas G. Smith, *The Historical and Constitutional Contexts of Jury Reform*, 25 HOFSTRA L. REV. 377, 446–54 (1996); Comment, *The Changing Role of the Jury in the Nineteenth Century*, 74 YALE L.J. 170 (1964). Even though juries no longer decide issues of law, nonlawyer judges continue to do so. Alschuler & Deiss, *supra*, at 915 n.248 (discussing the role of municipal judges, county judges, and justices of the peace). See generally DORIS MARIE PROVINE, *JUDGING CREDENTIALS: NONLAWYER JUDGES AND THE POLITICS OF PROFESSIONALISM* (1986).

¹⁴⁷ See, e.g., Jacques Leboeuf, *The Economics of Federalism and the Proper Scope of the Federal Commerce Power*, 31 SAN DIEGO L. REV. 556 (1994); Michael W. McConnell, *Federalism: Evaluating the Founders’ Design*, 54 U. CHI. L. REV. 1484, 1493–1507 (1987).

government, national or state, will eventually make the decisions on a particular matter. This ambiguity in turn casts doubt on the merits of pursuing one avenue of influence rather than another—an uncertainty that citizen groups otherwise excluded from political influence can exploit.

For example, if it is clear that the national government has absolute power to regulate all firearms, interest groups seeking to affect legislation on gun control issues will wisely direct their resources to decisionmakers at the national level. There will be little incentive for other groups to attempt to influence the states to enact favorable gun control legislation, because when the division of power is settled, such lobbying efforts will be meaningless. As a result, a small number of groups will succeed at the national level in influencing legislation applicable to the entire country.

On the other hand, if it is unclear whether the power to regulate firearms rests with the national government or with the states, concentrating efforts at the national level becomes much less strategic. Large, powerful groups must decide whether to concentrate their efforts at the national level or to spread their resources between the national government and the states. Even if these groups influence the national government, smaller groups can persuade the states to enact legislation, arguing, for example, that gun control is properly a matter of state law. If powerful interest groups spread their resources between the national government and the states, then smaller citizen groups will be able to compete with them because of the reduced resources directed at any one site of government.

What may appear to be ceaseless bickering between the state and national governments, produced by an imprecise constitutional division of legislative powers, may be quite healthy from a social capital perspective. When the national government and the states struggle over the appropriate division of governing authority, new opportunities for citizens continually emerge. Under the mechanisms I have explored, these opportunities are good for social capital.

D. THE LIMITS OF DECENTRALIZATION

Federalism differs from decentralization because the latter exists when authority is delegated. A nationalist system of government might be decentralized when it decides to delegate decisionmaking authority to local officials. In contrast, under federalism, actual power is located as a structural matter at a more local level and the national government cannot decide to remove that power. A nationalist system is not necessarily more centralized than a federal system of government, because in a federal system the states might not themselves delegate power locally and the nationalist government might delegate extensively.

Recognizing this distinction between federalism and decentralization, some commentators have characterized arguments favoring federalism as

actually arguments favoring decentralization.¹⁴⁸ According to this view, because there is no necessary correlation between federalism and decentralization, these arguments should focus on the appropriate degree to which authority should be delegated and not on whether power should be localized as a structural matter.¹⁴⁹

The social capital argument highlights an important advantage of federalism over mere decentralization. Social capital is enhanced when there are multiple sites of political power that promote the political activities of a large number of citizen groups and provide greater opportunities for direct forms of participation in public life. Decentralization increases the sites of political decisionmaking and may also increase opportunities for citizens to exert influence at multiple sites. In a decentralized system, however, power ultimately rests in the central authority, providing incentives for citizen groups to seek influence by strengthening their resources at the national level.

In a federal system, consolidating resources at the national level may have very little impact on politics at the state level, because power, not merely decisionmaking authority, is dispersed. Citizens cannot depend on the national government to intervene on their behalf in the states. Instead, influence over state policies requires citizens to direct resources towards state government because that is the ultimate decisionmaker.

E. THE LIMITS OF LOCALISM

Some commentators believe the states are too distant from their citizens and advocate increased governmental power at the more local level of cities, towns, and even neighborhoods.¹⁵⁰ There may be important benefits, including social capital benefits, from more localized political power. There are also important benefits, however, from a division of power between the national government and the states. Therefore, the continued existence of strong states remains important.

The ongoing struggle over governmental powers promotes social capital by providing new opportunities for citizens to influence politics. While the states may be so large today that their governments seem removed from the lives of their citizens, the states may also be the only entities large enough to engage in power struggles with the national government. Cities, towns, and neighborhoods often lack the resources or the political will to battle with the national government over the division of authority. Relocating power from the states to the local level would

¹⁴⁸ Rubin & Feeley, *supra* note 12, at 914–26 (claiming that arguments based on the benefits of local participation and responsiveness of local government as well as competition among states and experimentation at the local level are really arguments in favor of a decentralized system of government).

¹⁴⁹ *Id.* at 914–15, 951–52.

¹⁵⁰ See, e.g., Richard Briffault, *The Local Government Boundary Problem in Metropolitan Areas*, 48 STAN. L. REV. 1115 (1996); Gerald E. Frug, *The City As a Legal Concept*, 93 HARV. L. REV. 1059 (1980); Joan C. Williams, *The Constitutional Vulnerability of American Local Government: The Politics of City Status in American Law*, 1986 WIS. L. REV. 83 (1986).

diminish these power struggles, create more securely defined political divisions, and undermine an important condition for social capital. Whatever the advantages of localism, the social capital argument for federalism suggests that strong states may, nonetheless, have continued benefits.

IV. IMPLICATIONS AND FURTHER RESEARCH

According to the social capital argument for federalism, there are important social benefits to a political system in which power is divided between the national government and the states. In this Part I briefly explore some implications of the argument and identify some directions for further research.

A. MODERN FEDERALISM

The social capital argument cautions against abandoning or weakening our federal system of government. Despite the benefits from increased national power and decisionmaking at the national level, this argument suggests that modern federalism is important. Modern federalism creates a healthy environment for the growth of social capital and has important collective benefits. At the very least, this argument suggests that we should recognize the social capital benefits of modern federalism.

B. THE VALUES OF FEDERALISM

The purpose of this Article is to inform ongoing debates over the value of a federal system of government by identifying an aspect of federalism that has been overlooked. The social capital argument for federalism is not meant to be conclusive. It is designed to initiate and enhance dialogue rather than to foreclose it. In particular, even though social capital is an important value of federalism, it is surely not the only relevant consideration.

Social capital plays a substantial role in social and economic life, and it contributes to the health of communities and the well-being of citizens. Social capital enables people to overcome collective action problems that are resistant to other mechanisms. Other values, however, like equality, efficiency, and fairness, are important as well. Social capital may be compatible with some of these values, but inconsistent with others. When evaluating the social capital argument for federalism, we should always weigh the benefits of social capital against other values and considerations.

C. EVALUATING FEDERALISM

Social capital is an important value of federalism that has been overlooked thus far. There are reasons why, in debates over the usefulness of a federal design, the importance of social capital has been neglected. For instance, social capital is difficult to measure, its relationship to

federalism is complex and in many ways uncertain, and the benefits of social capital may often be long term and diffuse.

The social capital argument is a reminder that our knowledge about the ways in which political structures translate into measurable outcomes—how these structures work or fail, benefit us or undermine our well-being, facilitate our goals or thwart them—are likely difficult to identify. Evaluating federalism is, therefore, a complicated task that requires attention to discrete, modest issues investigated with careful research. Rather than speaking abstractly about such things as “competition,” “efficiency,” or “liberty,” we need a much more detailed definition of these qualities and to understand how the choice of a form of government may influence them. In short, evaluating the benefits of federalism, including the social capital benefits, requires a very considerable amount of further work.

D. THE VALUE OF UNCERTAINTY

The social capital argument for federalism also suggests that there is some value in uncertainty. An uncertain division of political power and ongoing struggles over the proper functions of different governing entities may in fact be a healthy aspect of our political system. Uncertainty creates opportunities for citizen engagement. Any search for a final, settled account of how to divide the functions of government among competing authorities may be unnecessary and perhaps, ultimately misguided.

E. DIRECTIONS FOR FURTHER RESEARCH

The social capital argument for federalism generates several theses with clear research implications. Empirical research is needed to determine whether and how federalism relates to observable levels of social capital. Studies could investigate whether, on a worldwide basis, federal political systems coexist with higher levels of social capital measured by the presence of a large number of small-scale citizen groups and greater direct involvement by citizens in public life. Conversely, studies are needed to determine the nature and extent of individual citizen activity when political power divisions are poorly defined rather than settled. Other studies could take a more longitudinal approach by investigating the issue of whether, within a single political community, periods of increased nationalization correspond with decreased levels of social capital.¹⁵¹

On a micro level, there are a variety of important research questions. Research is needed to determine whether and how the organizational form

¹⁵¹ In this respect, it is significant that empirical research demonstrates that during the past four or five decades—a period in which it seems reasonable to believe the nation has become more nationalized—levels of social capital have been declining. PUTNAM, *supra* note 21. We are increasingly “bowling alone,” according to the influential work of Professor Robert Putnam, whose solitary bowler is the symbol for decreased membership over the last generation in a host of voluntary associations, declining interactions with our family members, friends, and neighbors, declines in church going and participation in religious organizations and events, decreased political involvement, and the consequent loss of the value and benefits this social capital represents.

of citizen groups varies according to the political structures in place. How do groups take into account governing structures? Do groups mimic the organization of the polity? How quickly do groups adapt to changes in political structures? Research is needed also to determine how groups make decisions about where to allocate their resources in order to exert political influence, including the importance of a group's perception of the influence exerted by other groups with which it is in competition.

V. CONCLUSION

The social capital argument for federalism points to an overlooked benefit of a federal system of government. Federalism promotes social capital because dividing power between the national government and the states provides greater opportunities for citizen groups to influence politics and for individual citizens to participate in public life. Therefore, federalism provides a healthy political environment for social capital, leading to important individual and collective benefits.

These social capital benefits of federalism are enhanced by ongoing struggles between the national and the state governments regarding the appropriate division of political power. Thus, these are benefits not merely of decentralized government, but rather of a political system in which there is a division of actual power. The states remain considerably significant, because they are the only political entities that can engage in the power struggles with the national government that produce social capital returns. In addition, the social capital argument cautions against shifting governmental power away from the states to the local level of cities, towns, and neighborhoods because these entities are likely too weak to compete with the national government over the appropriate division of power. Such a shift may potentially deplete social capital.

The social capital argument for federalism remains speculative at this time. The ways in which federalism promotes social capital require greater theoretical exploration and, above all, empirical research. In describing the basic features of the argument and identifying directions for further work, my goal is to inform the ongoing debates about the value of a federalist design.