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Civil Society Theory, Enlightenment and Critique

ROBERT FINE

This essay examines the current state of civil society theory and its debt to Enlightenment concepts of civil society. The central argument is that contemporary civil society theory loses touch both with the critical aspect of enlightenment thought itself and with the critique of enlightenment thought that we find most developed in Hegel and Marx. After charting the development of the Enlightenment perspectives on civil society, and the critique that Hegel and Marx make of civil society, two related points are made: first, that it is one-sided and menacing to grant primacy to civil society, just as it is to grant primacy to the state or to the market; second, that further research in the area should develop a 'third way': one that recognizes the validity of the concept of civil society without romanticizing it, without idealizing it, and without abstracting it from its social and historical ground. In conclusion, it is argued that the identification of civil society with ethical life not only avoids confrontation with the uncivil nature of civil society, but opens the gates to the hunt for scapegoats and other villains deemed responsible for its 'deformations'.

Introduction

The question, 'what is civil society?', has produced many answers. To the sceptic, this may be reason enough to dismiss the concept as a mere abstraction without substance or as a repository for a motley collection of differing political aspirations. To the faithful, this may indicate the multifaceted richness of the idea of civil society as well as the need for further research. The contemporary world of social theory is largely divided between sceptics and the faithful: those who reject the concept of 'civil society' as a fraud, illusion or as analytically too imprecise to be useful; and those who privilege it as the normative ideal and theoretical pivot of contemporary political philosophy.[1]

Neither side seems to me satisfactory. The sceptic finds it difficult to comprehend the political force of the idea of civil society except as false consciousness; the faithful find it difficult to come to terms with the violence of civil society except by blaming some scapegoat deemed responsible for its deformations. In this account I look for a third way: one that recognizes

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the validity of the concept of civil society without romanticizing it and without abstracting it from its social or historical ground.

To know what civil society is, I maintain that it is insufficient to point to this or that feature of the empirical world – be it commerce, free associations, social movements, non-governmental organizations, or less tangibly public spaces, public life, the life-world, and so on. No such ostensive definition is adequate, for the meaning of civil society cannot be dissociated from the *uses* to which the concept is put in the language of social theory. Indeed, its significance in one theoretical setting may be quite distinct from its significance in another, even when precisely the same terms are employed and distinctions between their usages are not recognized by the parties themselves. For example, it is now well established that the use of the concept of 'civil society' in *traditional natural law theory* was significantly different from its use in *modern natural law theory*.[2] In the former, civil society was equated with 'political society' and contrasted with the 'state of nature'; in the latter, civil society was reformulated as a *middle ground between private property and the state* and therefore detached from political society and the state. During the intellectual battles between traditionalism and enlightenment, this distinction between old and new conceptions of 'civil society' was usually not self-consciously formulated by those who employed the term. It was only clarified in hindsight, most notably by Hegel.[3]

Today, most contemporary theorists who employ the term 'civil society' see themselves as inheriting and amplifying the original Enlightenment concept. The common sense of such theorizing is that, condensed in the concept of 'civil society', the ideas and ideals of Enlightenment have at last come of age. We are enjoined, accordingly, to bring down from the top shelves of our libraries the seminal texts of enlightenment and post-enlightenment thought: Montesquieu and Rousseau, Smith and Ferguson, Paine and Jefferson, Constant and De Tocqueville, Kant and even Hegel. This is what John Keane calls 'remembering the dead', by which he refers to that tradition of political thought which traversed Europe and America between 1750 and 1850 and whose common purpose was to grant to civil society its independence, its space and the recognition that was its due.[4] When we look more closely, however, we find that the use of the concept of 'civil society' in enlightenment thought was significantly different from its use in contemporary civil society theorizing – even though the latter speaks in the name of the former.

The purpose of this review is to enlarge our understanding of civil society by exploring the three prevailing theoretical frameworks within which the concept of civil society has been employed: first, the use of the concept of civil society in contemporary civil society theory; second, its use

in enlightenment thought (or modern natural law theory); and third, its use in the post-Enlightenment political philosophies of Hegel and Marx. If my central argument is right – that contemporary civil society theory loses touch with the critical substance both of Enlightenment and post-Enlightenment thought and should we recover a third way between the romanticization of civil society and its denigration – then we need to return to this tradition with an eye less clouded by contemporary assumptions.

The Concept of Civil Society in Civil Society Theory

What I am calling *civil society theory* is a loosely defined and diverse set of approaches, which emerged in the 1980s and was closely identified with struggles in Central and Eastern Europe against the Soviet Empire. Its distinguishing mark is that it *privileges* civil society over all other moments or spheres of social life, on the ground that civil society furnishes the fundamental conditions of liberty in the modern world. Its mission is to defend civil society from the aggressive powers which beset it: on one side, the political power of the state, and on the other, the economic power of money.

The concept of civil society was intended to indicate a 'third road': one that is neither 'utopian socialism' nor 'utopian capitalism' but the 'life-world' of the middle; in geographic terms one that is neither 'east' nor 'west' but 'central European'.[5] Civil society theory is a theory which *authorizes* civil society in relation to both capitalism and socialism, the free market and state planning, Americanism and Russianism. The common ground of civil society theory is that it places civil society on the side of *agency, creativity, activity, productivity, freedom, association, life itself.* In contrast to the vital properties of civil society, it identifies the properties of the economic and political systems in essentially moribund terms: *conformity, consumerism, passivity, privatization, coerciveness, determination, necessity* are the words which prevail. Through this opposition between life and death, activity and passivity, agency and structure, civil society theory justifies *the primacy of civil society* over the political and economic spheres. It elevates civil society as a special domain – one which needs to be recognized, nurtured and protected from the disciplinary forces of modernity. *Civil society theory is not just a theory of civil society but a theory which privileges civil society.*

I shall illustrate this claim through a brief visit to three types of civil society theory.

(i) *The Radical Type*

The most radical versions of civil society theory are also its most romantic and were developed in the course of the struggles in east and central Europe

against the Soviet empire. It expressed the refusal of dissident intellectuals to repeat the modernist politics of 'seizure of the state' (which were closely identified with Marxism) and their ambition to create something at once more 'self-limiting' and more far-reaching: *the replacement of the institutions of modernity by the life-world of civil society.*

Vaclav Havel exemplified this approach most eloquently when he pointed to the abyss between the 'aims of the post-totalitarian system' on the one hand and the 'aims of life' on the other.[6] The presupposition of his radicalism was the *contrast between life*, which 'in its essence moves towards plurality, diversity, independent self-constitution and self-organisation, in short towards the fulfilment of its own freedom', *and the post-totalitarian system* which 'demands conformity, uniformity, and discipline' and resembles in language reminiscent of Foucault a 'blind automatism'.[7] The faultline between life and system, Havel argued, runs through each individual, for in everyone the capacity for life is combined with a willingness to 'merge with the anonymous crowd and flow comfortably along with it down the river of pseudo-life'.[8]

For Havel, the hallmark of 'post-totalitarianism' was the same as that of modern 'consumer society' generally: life is subordinated to *system* because of the unwillingness of consumption-oriented people to sacrifice material certainties for the sake of their own spiritual and moral integrity. Beneath the surface, however, Havel perceived a complex ferment of undercover life which he described as a 'bacteriological weapon'. Its many forms – the support of intellectuals for a workers' strike, a rebellious rock concert, a student demonstration, a speech at an official congress, a hunger strike – do not take place in an explicitly political sphere but rather express 'the independent life of society', out of which citizens' initiatives arise: not to change one system into another but to turn to life itself. At a certain point, individuals form a *parallel polis* 'from below, because life compelled them', and demonstrate that living within the truth is a real, human alternative.[9] The structures of the post-totalitarian system 'simply begin withering away and dying off, to be replaced by the new structures that have evolved from below'.[10]

In this existential revolution, parliamentary democracy seems to offer no solution since mass political parties are as adept as post-totalitarian societies in excluding citizens from participation. The 'post-democratic' society which Havel envisaged, sinks its roots rather in the 'informal, non-bureaucratic, dynamic and open communities' that comprise the *alternative polis* and prefigure meaningful 'post-democratic' structures. In this mode, civil society theory was a revolt against technology; even legality was invoked only to be surpassed. Indeed, all the icons of modernity were attacked in a postmodern activism that had more in common with a

Heideggerian 'politics of being', devoted to the release of self-empowering subjectivity and to the end of all metanarratives, than with any form of enlightenment thought.[11]

The political premise of this form of civil society theory is that all business relating to public affairs must gain its *life from below*, from the people itself, and not from the institutional forms of the state. Conventional liberal democracy seems to offer no solution to the relics of state socialism, but rather something far more radical is required: the idea that truth cannot be objectively known or scientifically discovered but only *lived* and *felt* from the heart, and that the murky business of politics must give way to an ethics of responsibility in which the satisfaction of needs and the rational ordering of the state is subordinated to the crystallization of meaningful relationships.

The hallmark of this philosophy of life is hatred of politics. The phrase *anti-politics* is used 'to put politics in its place and ensure it stays there, never overstepping its proper office of defending and refining the rules of the game of civil society.'[12] Anti-politics, centred around distrust of official party politics, was presented as the very ethos of civil society, while politics was dismissed as disguised love of power. In this annunciation of the end of politics, civil society theory imagines civil society as the incarnation of ethical life and expresses its *ressentiment* against the politician whose lust for power is blamed for violence. The sacralization of civil society goes hand in glove with the demonization of politics.

(ii) *The Sociological Type*

Civil society theory assumes a more circumspect and sociological form when it seeks to establish a *modus vivendi* with the political and economic institutions of modernity, rather than to supplant them. Here it desires only that civil society regain its rightful place and receive its due in the modern world. Habermas exemplified this approach very well when, in the name of the 'Enlightenment project', he sought to distinguish the use of the concept of civil society as a *romantic alternative to the institutions of modernity*, from its reference as a *life-world within modern society and alongside modern institutions*. To this end he distinguished between post-traditional and traditional notions of civil society, reserving legitimacy only for the former.[13]

Traditional notions of civil society convey an idea of historical depth, in which communities, interpersonal bonds, public institutions and national cultures are created over long periods of time and become resistant to even the most oppressive political authorities. The forms of community, identity and association which they express appear as the historical bedrock whose foundations are too deep to be eroded by transitory political and economic

forces. Some Central European writers have argued along these lines that in their region, unlike in Russia, civil society is too deeply embedded for even Soviet-style (post-) totalitarianism to defeat.[14]

Habermas no longer saw any normative force in this traditional conception of civil society, whatever validity its commitment to *natural community,* grounded in history and place, might have had in the past. He challenged it in the name of choice and critical reflection on the part of human agents, and substituted for it a more fluid image of identity formation and reformation, of communities being created and recreated in short periods of time, in brief, of *unnatural community*. Civil society in this *post-traditional* sense indicates an arena of association where emphasis is put on choosing those with whom one wants to associate and choosing the terms on which associations are formed.[15] It is meant to indicate a mature form of critical reflection, which marks the transition from a 'conventional' orientation to fixed rules, unreflective duty and respect for authority, to a 'post-conventional', critical attitude toward identity construction. In this civil society, individuals burst asunder the 'sociocentrism of a traditional order' by learning (in a Kantian style) to evaluate moral authority for themselves in terms of general ethical maxims.

Habermas expressed this thesis in the binary vocabulary of a *life-world* beset by colonizing *systems*: a distinction conceived as one between *social integration*, which takes place at the level of action and communication, and *system integration* which takes place at the level of functionality. The life-world is 'the transcendental site where speaker and hearer meet ... reciprocally raise claims that their utterances fit the world ... criticise and confirm those validity claims ... settle their disagreements and arrive at agreements':[16] the site of 'mutual understanding' and 'unproblematic, common, background convictions' for which the only appropriate method of study is that of a hermeneutic insider. The economic and political systems are conceived as the domains of money and power respectively, uncoupled from communicative action by virtue of their increasing vastness and complexity.[17] Once social systems 'burst out of the horizon of the lifeworld', they replace and devalue communicative processes of reaching understanding and become accessible only to the 'counter-intuitive knowledge of the social sciences'.[18] It is but a short step for the systems to intrude on the lifeworld through various forms of *colonization* – interference, mediatization, technicization – and for the life-world to resist these intrusions and defend its borders.

In this creative fusion of phenomenology and functional sociology, Habermas reformulates the well established opposition between the intimate community of direct, face-to-face, intersubjective relationships (*Gemeinschaft*) and the reified world of large-scale rational organization

(*Gesellschaft*) as a relation of equilibrium between opposites. This version of the dualism of life-world and system is premised on a double movement: on the one hand, the *reification of systems,* and on the other, the *personalization of the life-world* – each side in its own way divorcing structure from agency, agency from structure.

The *reification of economic and political systems* has been widely discussed by commentators in relation to Habermas' 'middle period'. Many have seen it as a step backward in relation to his earlier, more exclusive emphasis on action and reflection, but it did represent an attempt at least to confront romanticism and allow structure a place in the world.[19] However, this particular resolution removed both politics and economics from the sphere of human agency – save for the residual role of 'steering mechanisms'.[20] The *personalization of civil society,* the counterpart to the reification of systems, has been less discussed in the literature. Habermas drew the life-world in the pale colours of an intersubjectivity untouched by state or money, where space is conceded only to second order norms which recognize the heterogeneity and plurality of modern civil societies and which regulate social differences without imposing any substantive conceptions of social morality.[21] The characteristic of this notion of civil society is that it renounces any idea of a common good except for the permanent obligation to communicate over what people have in common, and that it offers a 'critical associationism' (to use Michael Walzer's phrase) in which all alignments are changeable, all ties revocable, all associations limited, all unities and differences imagined.[22] Such a scenario is usually represented as the most radical inheritance of enlightenment thought; however, by reducing any notion of what is right to the exchange of opinions, it may also be seen to accord to the least worthy of principles the same status as those which are most worthy, and to turn solidarity into a matter of extreme contingency and precariousness.

(iii) *The Economic Type*

My third form of contemporary civil society theory takes us far from the ideals of associational life and has been exemplified in the work of Ernest Gellner.[23] He too paid tribute to the renewed aspiration for a civil society born out of the social conditions of the Soviet world, looked forward to the replacement of centralism by a new pluralism, and distinguished the modern notion of a pluralist civil society, based upon the separation of politics and economics, from the traditional pluralism of segmentary societies which he illustrated through Solzhenitsyn's return to the simplicities of primitive Christianity. His inspiration was drawn, however, from eighteenth-century political economy rather than philosophical idealism. He embraced the idea that bourgeois civil society is the bearer of moral as well as economic

benefits, and that the source of these benefits lay in the expanded division of labour to which the exchange of commodities gives rise. The insight of political economy, according to Gellner, was that this new commercial society not only ushers in perpetual growth in the wealth of nations, but also prepares the ground for a politically and culturally civilized society.

The key to the political achievements of civil society, Gellner maintained, is its dissociation of wealth and power: no longer is the acquisition of power the royal road to wealth since the specialization of functions generates mobility rather than estates and those in office are not disproportionately remunerated; and no longer is the acquisition of wealth the material route to power since the pursuit of wealth becomes a 'disinterested' end in itself. The effect of this dissociation of wealth and power seems to Gellner to be noting short of 'miraculous'.[24] He tells us that civil society acts as an *antidote to the rise of ethnic nationalism* and that, even if it temporarily allies itself with nationalism in the fight against centralized rule, they will naturally fall apart once the individualism, universalism and cosmopolitanism of the former confront the communalism, particularism and parochialism of the latter. He tells us that civil society offers a grounding for reason which does *not turn reason into an absolute* nor present political winners as its voice nor demean losers as enemies of the people.[25] Gellner acknowledges that civil society is an *amoral order* but this turns out to be its strength: for it is this which saves it from the moral fervour which on entering public life cries menacingly for justice, virtue and the unmasking of hypocrites.

Gellner declared a special debt to Ferguson's classic *Essay on the History of Civil Society*, but dissociated himself from Ferguson's critique of the corruptions of civil society. For example, he responded to Ferguson's anxiety that in civil society the division of labour between commercial and military activities would turn the minds of citizens away from civic virtue and turn the specialists in violence into a new source of oppression. Gellner responded that Ferguson's fear of a new serfdom has been proven unfounded, since according to him the military have rarely taken power in advanced commercial societies and when they have, economic imperatives soon prove to be their undoing. From Gellner's viewpoint Ferguson was to be criticized for a pessimism 'invalidated ... by the expansion of productive power'.[26]

We catch a glimpse here of the inner nature of civil society theory: that it presents itself as a return to enlightenment but as soon as it looks it in the face, turns away from its critical dimension. True, Gellner rejected the principle of the 'night-watchman state' on the ground that technology is too powerful, the uncontrolled market too dangerous, the gains accruing to unproductive speculators too easily gotten, the burden of looking after the

needy too heavy, for modern civil society to manage without a more interventionist 'weather-making' state. Yet his idealized view of civil society as the flexible instrument of 'modular man' caught little of the dialectic which traversed Ferguson's critical analysis of the modern division of labour as the source of new 'corruptions'. Ferguson writes that:

> the separation of professions, while it seems to promise improvement of skill and is actually the cause why the productions of every art become more perfect as commerce advances; yet, in its termination and ultimate effects, serves, in some measure, to break the bands of society, to substitute mere forms and rules of art in place in ingenuity, and to withdraw individuals from the common scene of occupation, on which the sentiments of the heart and mind, are most happily employed... till {they} can no longer apprehend the common ties of society, nor be engaged by affection in the cause of their country ... The members of a community may, in this manner ... lose the sense of every connection, but that of kindred or neighbourhood, and have no common affairs to transact, but those of trade ... .[27]

For this critique Gellner substitutes this critique a wishful depiction of civil society as 'an order in which liberty ... is available even to the timorous, non-vigilant and absent-minded'.[28]

The Concept of 'Civil Society' in Enlightenment Thought

The primacy afforded to civil society in contemporary civil society theory, though usually presented as the heritage of Enlightenment, is in crucial respects negated by Enlightenment thought. It might be considered closer to its usage in traditional natural law theories, whose equation of civil and political society seems to prefigure the propensity of civil society theory to subordinate politics to civil society and its requirements. The great achievement of enlightenment thought was to recognize the historical specificity of civil society as a middle ground between private life and the political state. This change of perception did not occur in the realm of pure theory untarnished by historical circumstance, but reflected the growth of a sphere of social life that was in fact independent of political society and founded upon the emergent bourgeois world of commerce, exchange and commodity production.[29] In the sphere of civil society the individual appeared for the first time as an independent owner of private property (whether that property be capital, land, money, personal possessions, labour power or one's own person) and the existence of masters and slaves, lords and bondsmen, the privileged and the dependent was deemed incompatible with its principle.

This new way of thinking was expressed in many different theoretical modes, but the common ground was to place civil society between the poles of property on the one side and the state on the other. The political thought of the Enlightenment revolved around a triunal schema of private property, civil society and the state – and not, as is usually suggested in civil society theory, a dyadic schema based on the opposition between the life-world of civil society and the systems of politics and economics. Enlightenment placed civil society at the centre of a 'dialectic' which ran along the following lines:

(i) *Thesis:* the natural or rational character of the right of private property.
(ii) *Antithesis:* the contradictory character of civil society.
(iii) *Synthesis:* the reconciliation of the contradictions of civil society through the formation of the modern nation state.

The natural character of private property was either justified as an originary condition of humankind or as the realization of natural liberty at the end of history. Its rational character was justified in terms of its functionality for freedom (in more materialist versions) or its embodiment of freedom (in more idealist accounts). Either way, what was emphasized was the role played by private property in the emancipation of humanity from the personal dependencies, status inequalities and other injustices associated with the old political order, and more positively its role in establishing the conditions of freedom in the modern world. Private property appeared here as the material form in which individual rights, universal equality and respect for others are realized.

Civil society appeared in this model as generalized private property: the society formed when its constitutive elements are 'bourgeois individuals' whose right of subjective freedom is constrained only by the rights of others. The great achievement of enlightenment thought in general was to analyse the dynamics of this form of society; political economy, in particular, did not shy away from the conficts of civil society: the subordination of natural sympathy to egoism; the class divisions and inequalities between owners of land, labour and capital; the anarchy of the market place and recurrence of economic crises; the usurpation of the state by the rich and the political apathy of the poor. As Rousseau simply put it, civil society engenders both 'the best and the worst ... both our virtues and our vices, our science and our errors, our conquerors and our philosophers'. It is exciting and revolutionary; expansive of human needs and of the means to satisfy them; productive of material and cultural wealth and the progenitor of political freedom; but it is also incapable of self-determination or self-sufficiency. Rousseau's description of civil society still resonates:

> The loss of one man almost always constitutes the prosperity of another... Public calamities are the objects of the hopes and expectation of innumerable individuals ... Men are forced to caress and destroy one another at the same time ... Usurpation by the rich, robbery by the poor and the unbridled passions of both, suppressed the cries of natural compassion and the still feeble voice of justice and filled men with avarice and vice ... (*Discourse on Inequality*).

Rousseau might appear to have been a romantic, but his depiction of inequality was not greatly different from Adam Smith's more hard-nosed depiction of class relations in civil society, when he wrote:

> the poor provide both for themselves and for the enormous luxury of their superiors. The rent which goes to support the vanity of the slothful landlord, is all earned by the industry of the peasant ... The labourer who bears, as it were, upon his shoulders the whole fabric of human society, seems himself to be pressed down below ground by the weight ... Those who labour most get least ... (*Wealth of Nations*).

It was acknowledged that civil society had within its own sphere certain resources for alleviating these 'inconveniences': legal systems to enforce respect for property rights, policing systems to execute the law and provide a minimum of welfare, and associations to overcome the forces of atomization. But from within civil society none of these developments could suffice to meet the problem, since the very forms of legality, policing and free association designed to counter the particularism of civil society, also functioned to reproduce it in another form.

There appeared to be no prospect of abolishing civil society since this would mean returning, as Rousseau put it, 'again to the forests to live among bears'.[30] Even for the more historically-minded Smith, who located the rise of civil society in the last of the four great stages of human history, civil society appeared as a 'state of *natural* liberty' and the consequence of a 'certain propensity in human nature ... common to all men ... the propensity to truck, barter and exchange one thing for another'.[31] Unable to envisage the abolition of civil society, Enlightenment thought looked beyond it to the formation of the modern state. Its various prescriptions for an *ideal or rational state* were intended at once to restrain the hypertrophy of subjectivity which marked the world of private property, preserve civil society by reconciling its antagonisms, and embody within its own constitution a *universality* that found no expression in civil society.

In Enlightenment thought civil society denoted a sphere of contradiction. Even in its most anti-state forms it did not grant the primacy to civil society which is the hallmark of contemporary civil society theory.

Indeed, it was a mark of *the decline of enlightenment* that one or other form of right was artificially privileged over the rest: private property in the case of liberalism; the state in the case of authoritarianism, and civil society in the case of those looking for a third way. To the Enlightenment, reason had lain in the movement of the whole.

Hegel's Critique of Civil Society

In the iconography of civil society theory, Hegel occupies an ambiguous position. Sometimes he is placed not far behind Marx in the list of antagonists of civil society who idealized the state as the embodiment of ethical life and subsumed civil society under its overarching authority. At other times he is treated as the first political theorist clearly to identify civil society as an autonomous domain demarcated from the state in which the modern idea of the right to subjective freedom is finally given its due.[32]

Jürgen Habermas emphasized the statist conception of absolute ethical life which Hegel developed in his *Philosophy of Right*, but read this as a regression from his earlier recognition of intersubjectivity in *The Phenomenology of Spirit*. Rooting for phenomenology over philosophy, Habermas translated the former as a search for second order norms which recognize the heterogeneity and plurality of modern societies and regulate social differences without imposing absolute conceptions of social morality. He read the latter, the philosophy, as moving toward an implicitly authoritarian conception of the 'absolute' embodied in the modern state. From this perspective, it seemed that the intersubjective dimension of the young Hegel's phenomenology was defeated by this philosophical descent into absolute *Sittlichkeit*.

Habermas employed the concept of 'emphatic institutionalism' to support the claim that in *Philosophy of Right* 'the individual will ... is totally bound to the institutional order and only justified at all to the extent that the institutions are one with it'.[33] Habermas contrasted the monarchical view of the state which Hegel had seemingly elevated to 'something rational in and for itself' in his later work, to his earlier commitment to the democratic self-organization of society, arguing that when the demands of democratic self-determination reached the older Hegel's ears, he could only hear them as a 'note of discord' which 'offend against reason itself'. It seemed that Hegel's philosophical proposition, 'the actual is rational and the rational is actual', represented no more than a 'blunting of critique' and absolved philosophy of the task of confronting 'the decadent existence of social and political life'.[34]

From the same standpoint, that of civil society, but with the opposite conclusion, Andrew Arato declared the Hegel of *Philosophy of Right* to be

'the representative theorist of civil society'.[35] He acknowledged that there was an *etatist* thread running through the text which celebrated the role of the police, executive, crown and parliament in imposing order on civil society, but he argued that this was subordinate to the main theme: the autonomous generation of solidarity and identity through the associations of civil society, their representatives in parliament and public opinion. According to Arato, Hegel's concept of 'bourgeois civil society' was neither wholly *civil* nor wholly *bourgeois,* but a dynamic whole, vulnerable to its own disintegrative tendencies, yet capable of performing the tasks of social integration with only peripheral help from the state.

According to this one-sided reading of a dialectical text, Hegel recognized that in modern society citizens play only a restricted part in the general business of the state, but that it is essential to provide people with activity of a general character over and above their private business. Hegel's innovation was to expand the negative liberties of civil society into positive rights of participation in its mediating institutions. The 'corporations' were to involve high levels of participation but in a particularistic mode; the 'estates' were to be more universalistic but less participatory; the result was to be a dynamic integration of direct and representative democracy. Arato read Hegel as inheriting the classical, republican notion of the 'public sphere', but instead of restricting it to a single social level, that of political society, he extended it pluralistically to 'a series of levels ... including the public rights of private persons, the publicity of legal processes, the public life of the corporation, and finally the interaction between public opinion and the public deliberation of the legislature'.[36]

In Arato's interpretation Hegel is assimilated to the heartlands of contemporary civil society theory; in Habermas' reading, Hegel's incompatibility with civil society theory is given due recognition and treated as proof of Hegel's absolutism. Both, however, share the same premise, the validity of civil society theory, and neither allows a reading of Hegel to challenge his presuppositions. The Hegel question within civil society theory is largely formal, concerned only with whether or not his phenomenology and philosophy shared the premises of civil society theory itself. It seems to me, however, that there is more to be learnt from Hegel than this Oliverian portion. At no stage was Hegel either an absolutist hell-bent on the subordination of civil society to the state, nor a civil society theorist in disguise, but rather he remained a critic of the enlightenment model of civil society and the most perceptive inquisitor of its totalitarian implications.

Hegel agreed with the enlightenment tradition that the historical emergence of civil society had become the crucial problem which political philosophy had to address, for civil society was the 'achievement of the

modern age' which distinguished it radically from antiquity and the traditional order. Civil society, Hegel agreed, 'for the first time has given all the facets of the "idea" their due'[37]: free individuality, universal equality and social solidarity. It invalidated all forms of unfree labour as inimical to its core principle, 'the feeling of individual independence and self-respect in its individual members';[38] it vastly expanded human needs and the means of their satisfaction; and for these reasons it contained within itself 'the aspect of liberation': the strict natural necessity of need is concealed and man's relation is to his own opinion, which is universal, and to a necessity imposed by himself alone, instead of simply to an external necessity, to inner contingency and to arbitrariness'.[39] From the viewpoint of ancient republicans, this 'self-sufficient development of particularity' appeared as no more than an 'influx of ethical corruption and as the ultimate reason for their downfall'.[40] But under modern conditions such a nostalgic vision of political life could only be actualized by the suppression of civil society. The point was to 'enjoy the present', not to take flight from modernity.

Hegel's defence of civil society was tempered, however, by his critique of the two notions of civil society which prevailed in Enlightenment thought: one elaborated within Kant's formal natural law theory and the other within Smith's empirical natural law theory. The basic problem he saw in Kant's formalism was that it idealized the social relations of civil society – hiding its failure to meet concrete human needs behind the institutional duties of office-holders and rights of citizens, masking the exclusion from the public realm of women, servants, foreigners and the poor with abstractions of reason and unreason, and neglecting social inequalities on the ground that individuals are free to obtain private property and are concerned only with securing this right by law. Against this formalism, Hegel recognized the achievement of political economy was to uncover the system of needs within civil society and in this regard considered Adam Smith's empirical natural law theory superior to Kant's formalism. At least Smith recognized the inequalities which are inherent in civil society, even if he ultimately justified them. But political economy was a science which adopted the viewpoint of civil society and could not see beyond it. It was an inductive theory of civil society which drew 'simple principles of the thing' from an 'endless mass of details' and thereby discovered the laws that determine its formation; it thereby naturalized civil society as its object of knowledge and ended up justifying its inequalities.

Both Kant's metaphysics and Smith's political economy were one-sided. Political economy emphasized *existence* at the expense of the *concept*; metaphysics emphasized the *concept* at the expense of *existence*. The point was to rediscover the unity of concept and existence in the *idea* of civil society and thus complete the denaturing of civil society which *modern*

natural law theory had began.[41] As the sphere of 'difference' between the family and the state in the formation of ethical life, civil society was a complex social and historical phenomenon, irreducible to any one of its aspects. Kant had reduced civil society to a system of rights and policing, political economy had reduced it to a system of needs and association, but Hegel sought to grasp it as a differentiated whole: *the sphere of conflicting relations between needs and rights, policing and association.*

Hegel described it as 'ethical life lost in its extremes' where the right of subjective freedom cohabits with an external dependency which renders contingent the satisfaction of even the most basic human needs. The *concept* of individual personality is certainly affirmed but it is also contradicted by the 'contingent arbitrariness and subjective caprice' of civil society. This is a certain outcome in a situation in which 'each individual is his own end and all else means nothing to him', but where he or she 'cannot accomplish the full extent of his ends without reference to others' who are, therefore, 'means to the end of the particular person'.[42] The universality attained in this system of needs is inevitably formal because the pursuit of particular interests and ends remains the basic content of civil society.

The separation of the means of labour from labouring individuals drives the latter into dependency and distress, while the accumulation of wealth is released from all its traditional constraints.[43] 'In these opposites and their complexity', Hegel observed, 'civil society affords a spectacle of extravagance and misery as well as of the physical and ethical corruption common to both'.[44] Inequalities are reproduced in civil society not only because the 'right of particularity' does not cancel out inequalities posited by nature, but also because social inequalities are generated around skills, resources and education. 'The possibility of sharing in the universal resources – i.e. of holding particular resources – is ... conditional upon one's own immediate basic assets (i.e. capital) on the one hand, and upon one's skill on the other; the latter in turn is itself conditioned by the former, but also by contingent circumstances ... .'[45] In civil society these social inequalities are *overlooked* when individuals are treated just as citizens (as in Kant) and are *justified* when individuals are considered solely from the perspective political economy (as in Smith). Civil society, however, is neither a *rational* nor a *natural* order waiting to be set free from external restrictions but a definite *social* order characteristic of our age in which subjective freedom, legal equality and economic wealth coexist with 'dissoluteness, misery, (and) physical and ethical corruption'.

To enlightenment consciousness the 'power and depth' of the principle of modern states was to preserve civil society by reconciling its contradictions at the same time as surpassing civil society in the name of a substantive universality (the general will or national interest). The so-called

rational state as one which allowed 'the principle of subjectivity to unfold completely to the extreme of autonomous personal particularity, while at the same time guiding it back into the substantive unity of the state.'[46] Hegel recognized that this ideal of moderation, of a harmonization between civil society and the state, was premised on a view of civil society expressed both in Kant's formalism and in Smith's political economy which made it ultimately unable to take into account the social problems which were to determine its future development. As Karl Löwith put it, 'the question of how to control the poverty brought about by wealth ... the progressive division of labour ... the necessity of organising for the masses forcing their way upward ... and the collision of liberalism with the increasing claims of the will of the many ... which now seeks to rule by force of numbers', all these factors undercut the search for the mean.[47] Enlightenment stood for the free individual, the preservation of civil society and a state that guarantees the freedom of the citizens on the basis of rational and calculable norms, but in the face of real contradictions it was small wonder that post-enlightenment thinkers (notably the young Hegelians) turned to extremes rather than moderation.

Hegel identified the emergence of two dominant poles of extreme thinking: state authoritarianism on the one hand (the dominance of reason over subjective right) and the hypertrophy of subjectivism on the other hand (the dominance of subjective right over reason). The source of the former, the authoritarian turn in political thought, lay in the incapacity of civil society to construct anything more than a formally universal interest since the constituents of civil society are individual property owners whose particular interests are paramount. It seeemed that only the state could guarantee the rational organization of society. As Marcuse put it:

> The anarchy of self-seeking property owners could not produce from its mechanism an integrated, rational and universal social scheme. At the same time, a proper social order ... could not be imposed with private property rights denied, for the free individual would be annulled ... The task of making the necessary integration devolved therefore upon an institution that would stand above the individual interests ... and yet would preserve their holdings.[48]

When the contradictions of civil society were exacerbated by the increasing gap between the accumulation of capital and the impoverishment of the working class, the solution could only be an independent and powerful state which reduces individuals to 'mere moments' of its own existence. State authoritarianism was not Hegel's prescription but a potentiality of the modern state which he diagnosed.

The inverse side of the authoritarianism of the modern state that Hegel

identified lay in the failure to distinguish the state as a rational architectonic from the movement of civil society. This failure had been anticipated in Kant's equation of *status civilis* (state) and *societas civilis* (civil society) and in Smith's materialist definition of the state as an instrument for the protection of private property in a class divided society. But it was expressed in far more vulgar and extreme form in the thinking of those who 'identify right with subjective ends and opinions'[49] and who (like the radical anti-Semite Fries) 'reduce the complex inner articulation of the ... state ... to a mush of "heart, friendship and enthusiasm"'. If the state is confused with civil society and 'the interest of individuals *as such* becomes the ultimate end for which they are united', the rational element will necessarily be lost.[50] Faith in civil society is no answer to faith in the state. At its limit, the subsumption of the rationality of the state to the particularity of civil society was to become the hallmark of totalitarian regimes. Marcuse was among the first of the contemporary 'Hegelians' to recognize that the so-called totalitarian state was an instrument used by the strongest element of civil society to terrorize the rest. He put it thus: 'Hegel's deified state by no means parallels the Fascist one. The latter represents the very level of social development that Hegel's state is supposed to avoid, namely the direct totalitarian rule of special interests over the whole. Civil society under Fascism rules the state; Hegel's state rules civil society.'[51]

Conclusion: Marx's Legacy

The identification of civil society theory with the struggle against official 'Communism' in Central and Eastern Europe in the 1980s provided the political context in which hostility was declared not just to official 'communism' but more broadly to Marx and Marxism. Sometimes (particularly in the prehistory of civil society theory) the early Marx and/or 'western Marxists' of the order of Gramsci and Luxemburg were exempted from this wholesale censure, but in general *remembering the dead* also meant *forgetting Marx*. Marxism appeared as the main enemy because it was allegedly the most powerful voice against civil society. The 'death of Marxism' was welcomed because it seemed that Marxism had dismissed civil society as a fraud (functioning only to conceal violence and exploitation behind a facade of benign institutions) and that it had offered in place of civil society a dangerously utopic ideal of an harmonious social order, free of exploitation and oppression, which translated in practice into the abandonment or even suppression of civil society.[52]

It was recognized within civil society theory that Marxism was not a monolith: that it possessed both authoritarian and libertarian potentialities. But each mode appeared equally to dissolve the notion of civil society – one

through the absorption of civil society into the state and the other through the absorption of the state into civil society. Both seemed to come together in the form of the party-state. To be sure, there were theorists working within this paradigm, like Habermas, with a Marxist background who were concerned that 'rectification' should not mean a return to those relations of production that socialist movements had endeavoured to overcome, notably the indifference of a market economy to its external costs, and who believed that civil society theory should encapsulate within itself a 'radically reformist self-criticism of capitalist society'. This radical reformism, however, was increasingly dissociated from Marx and Marxism.[53]

There is no space in this analysis to explore in detail Marx's own contribution to the critique of civil society, a task which strangely enough still remains to be done. However, it should be said that the dismissal of Marx in civil society theory is not only based on a caricature of what he actually wrote and an impoverished version of what can be advanced on the basis of what he wrote, but that his dismissal incurs serious costs for civil society theory itself. The reason why the exclusion of Marx is so damaging to our understanding of civil society is that his critique of civil society, by building on Hegel's earlier critique, enables us to grasp the relation between agency and structure, freedom and determination, in a way that is blocked by the opposition between life-world and system.

In his critique of political economy Marx argued that, despite the reified forms of the modern economy, human agency is not absent from the sphere of economics and that the economic forms of modern society are but the objectified or fetishized forms of appearance of definite social relations between people. What was less developed in Marx's own work, but serves as the converse of his critique of the *economic* forms of political economy, was his critique of its *political* forms. Following closely on Hegel's heels, Marx began to argue (though admittedly with less consistency and completeness) that the characteristic fetish of the juridico-political forms of modern capitalist society is that they seem to embody or materialize the freedom of individual and collective agents, whereas in fact they are the determinate and definite product of society at a certain stage of its development and in this respect are independent of the will of individuals. Marx's basic proposition was that the political forms of modern society (for example, rights, property, contract, family, civil society, the state, representation, relations between states, and so on) are the 'subjective' expression of the self-same social relations of production whose 'objective' expression lies in the economic forms of value, price, money, capital, interest and so on.

Though Hegel focuses on the *hypertrophy of subjectivity* in the ethical relations of modern society and Marx on the *fetishism of commodities* in the

economic relations of modern society, seen together Hegel and Marx reveal that one of the distinguishing features of modern society lies in the split which arises between subjectivity and objectivity: between the economic realm of the seemingly deterministic and the political realm of the seemingly voluntaristic. In the course of capitalist development, both illusions broke down: the seemingly objective world of economic forces was revealed as one in which the scope for will, agency, action and freedom was not simply or entirely annulled; and the seemingly subjective world of political forms was revealed as one in which the scope for will, agency, action and freedom was restricted by all manner of social determinations. In the face of these pressures the attempt to harmonize the different political forms of modern society, which had been the characteristic mark of enlightenment thought, broke down. Instead, there was a search for extremes on the part of the young radicals: some looked exclusively to rights and egoism; others to the free movement of private property; others to the collective will embodied in the modern state; others to the organic unity of the nation or community; now many radicals look exclusively to civil society as the sphere of freedom. In this movement toward extremes, the spectre of political freedom, which was the result of the separation of politics and economics, was not dispelled but rather displaced on to one or other particular moment of political life.

Civil society theory may be understood in this context as the displacement of the fetishized forms of freedom onto civil society alone. The attempt of civil society theory to present civil society as the privileged sphere of agency and association is no less an illusion than the presentation of private property or the state in this blinding light. Civil society theory is not to be faulted for wishing to rediscover enlightenment – indeed such a rectification is overdue and fertile – but its concomitant victimization of Marx digs up an old scapegoat and distorts the whole process of restitution.[54] Born out of the struggle against totalitarianism in its communist form, civil society theory contains within itself elements of that which it most opposes. When it takes one moment of the complexity of modern ethical life, civil society, and grants it primacy over all other moments – property, family, state, and so on – it unwittingly mirrors its enemy's conceptual armoury. It was a genuine and major achievement of civil society theory to recover the concept of civil society in the face of the would-be totalizing state, but the reactive privileging of civil society loses sight of its place within the whole. The simple family remedy of identifying civil society with ethical life not only avoids confrontation with the uncivil nature of civil society, but opens the gates to the hunt for the Alien or Other deemed responsible for its 'deformations': be it the system, politics, the parties, Marxism, consumerism, technology, totalizing discourse, and in

some nationalistic versions even Jews and foreigners. This is why, in the end, contemporary 'civil society theory' does not prepare us for the violence of civil society but for a *ressentiment* which knows no peace.

NOTES

1. Within civil society theory, Marxism is usually treated as an extreme form of scepticism. Ernest Gellner, for example, writes that 'the central intuition of Marxism is to say: Civil Society is a fraud' in Ernest Gellner, *Conditions of Liberty: Civil Society and Its Rivals* (London: Hamish Hamilton, 1994), p.1.
2. We find this usage still present in Kant: 'the first decision the individual is obliged to make, if he does not wish to renounce all concepts of right, will be to ... abandon the state of nature in which everyone follows his own desires... and enter into a state of civil society'. Kant then equates 'civil society' (*societas civilis*) and the 'civil state' (*status civilis*) as identical terms: *Metaphysics of Morals,* para.44, in Immanuel Kant, *Political Writings* (Cambridge: Cambridge University Press, 1991), pp.137–8.
3. This argument has been developed by Manfred Riedel in '"State" and "Civil Society": Linguistic Context and Historical Origin', *Between Tradition and Revolution: The Hegelian Transformation of Political Philosophy* (Cambridge: Cambridge University Press, 1984), pp.129–56.
4. John Keane, 'Remembering the Dead', in *Democracy and Civil Society* (London: Verso, 1988), pp.31–68. For Keane, 'remembering the dead' also meant burying Marx. Tolerance has its limits.
5. David Ost, *Solidarity and the Politics of Anti-Politics: Opposition and Reform in Poland since 1968* (Philadelphia, PA: Temple University Press, 1990), p.vii..
6. Vaclav Havel, *Power of the Powerless* (London: Hutchinson, 1985).
7. Ibid., p.30.
8. 'Not only does the system alienate humanity, but at the same time alienated humanity supports this system as its own involuntary masterplan ... as a record of the people's own failure as individuals', ibid., p.38.
9. Ibid., p.80.
10. Ibid., p.85.
11. See Aviezer Tucker, 'Vaclav Havel's Heideggerianism', *Telos*, Vol.85 (1990), pp.63–78. Havel follows Heidegger in his revolt against modern technology – 'that child of modern science which in turn is a child of modern metaphysics' which has become 'out of humanity's control, has ceased to serve us, has enslaved us and compelled us to participate in the preparation of our own destruction'. His aim was to restore 'a relation between human beings and the order of Being', pp.71 and 75.
12. [George] Konrád, *Antipolitics* (London: Quartet, 1984), p.92. See also Havel, 'Anti-Political Politics', in Keane, op. cit., pp 381–98, where he wrote:

    > I favour anti-political politics: that is, politics not as the technology of power and manipulation... but politics as one of the ways of seeking and achieving meaningful lives ... I favour politics as practical morality, as service to truth, as esssentially huaman and humanly measured care for our fellow-humans. ... It is becoming evident that truth and morality can provide a new starting point for politics ... Yes, anti-political politics is possible. Politics from below. Politics of the people, not the apparatus. Politics growing from the heart, not the thesis ... , pp.397–98.

13. Jürgen Habermas, 'Historical Consciousness and Post-Traditional Identity: The Federal Republic's Orientation to the West', *Theory of Communicative Action: Lifeworld and System*, Vol.II (Cambridge: Polity, 1987), pp. 249–67; Habermas, *The New Conservatism: Cultural Criticism and the Historians' Debate* (edited by Shierry Weber Nicholsen) (Cambridge: Polity, 1991); Habermas, 'The Role of the Student Movement in Germany', in *Autonomy and Solidarity* (London: Verso, 1992), pp. 229–36.

14. See, for example, Mihaly Vajda, 'East-Central European Perspectives' and Jeno Szucs, 'Three Historical Regions of Europe', in Keane, op. cit., pp.333–80 and 291–332 respectively.Vajda writes: 'political structure and society are more or less congruent in Eastern Europe ... In contrast to this, in the East-Central European region, a totalitarian state must continually coerce society in order that it should outwardly conform to the Eastern model', p.339.
15. Peter Wagner, *A Sociology of Modernity: Liberty and Discipline* (London: Routledge, 1994), p. 186.
16. Habermas (1987), p.126.
17. Ibid., p.119.
18. Ibid., p.173.
19. Compare with Habermas, *Knowledge and Human Interests* (London: Heinemann, 1972).
20. See Johann Arnason, 'The Theory of Modernity and the Problematic of Democracy', *Thesis Eleven*, Vol.26 (1990), p.39.
21. Habermas (1990), p.40.
22. Michael Walzer, 'The Idea of Civil Society', *Dissent* (Spring 1991), pp.293–304.
23. Gellner, op. cit.
24. Ibid., p.99.
25. 'This led ... to the undignified habit of regularly renaming cities, squares, thoroughfares, bridges and railway stations. You might say that a real Civil Society is one which does not rechristen all its railway stations and boulevards and issue a new city plan each time the government changes', ibid., p.136.
26. Ibid., p.79.
27. A. Ferguson, *Essay on the History of Civil Society* (Edinburgh: Edinburgh University Press, 1966), p. 364, quoted in Adam Seligman, *The Idea of Civil Society* (Princeton, NJ: Princeton University Press, 1992), p. 39.
28. Gellner, op. cit., p.80.
29. See Gianfranco Poggi, *The Development of the Modern State* (London: Hutchinson, 1978), pp.79–85.
30. Jean-Jacques Rousseau, *The Social Contract and Other Discourses* (London: Dent and Sons, 1973), p. 113.
31. Adam Smith, *The Wealth of Nations* (London: Penguin, 1974), p.117.
32. Jean Cohen and Andrew Arato, 'Conceptual History and Theoretical Synthesis', *Civil Society and Political Theory* (Cambridge, MA: MIT Press, 1992), pp.83–116; and Andrew Arato, 'A Reconstruction of Hegel's Theory of Civil Society', in D. Cornell *et al.* (eds.), *Hegel and Legal Theory* (London: Routledge, 1991), pp.301–20.
33. Habermas (1990), p.40.
34. Habermas (1990), p.43.
35. Arato (1991), p. 301. The idea of 'two Hegels' fighting an internal battle was developed by K.H. Ilting, who argued that with one voice Hegel treated the state as a secular deity whose claims upon its citizens are always 'unquestionable and irresistible'; and with another identified universality with a free body of citizens – the idea which civil society theory embraced. The 'unresolved antinomy' in Hegel's thought – in which the state appears at once as an 'immanent end' of individuals in civil society and as 'external necessity and their higher authority' – was addressed by Ilting in 'Hegel's Concept of the State and Marx's Early Critique', in Z.A. Pelczynski (ed.), *The State and Civil Society* (Cambridge: Cambridge University Press, 1984), pp.93–113.
36. Arato (1991), p.318. A similar republican argument may be found in Fred Dallmayr's reading of *Philosophy of Right*, where he argued that Hegel initiated a new institutional format of the state: one which takes cognisance of the instrumentalization of existing state structures in the hands of bureaucratic and economic elites, and relocates the rational state in the associational life of civil society; particularly, in the new social movements which through rainbow coalitions constitute an 'open-ended public space' and become the emblem of a 'democratic social bond'. Precisely how such an aggregate of passing particular interests in civil society could be transformed into the institutional embodiment of the universal, is not made clear: Fred Dallmayr, 'Reading the Hegelian State' in Cornell, op. cit., pp.321–46.

37. G.W.F. Hegel, *Philosophy of Right* (Cambridge: Cambridge University Press, 1991), p.260A.
38. Ibid., p.245.
39. Ibid., p.194.
40. Ibid., p.185.
41. Thanks to Anastasia Ioannidou (this volume) and Margarita Kavkayanni-Doukidou for their discussions of the relation between Kant, Smith and Hegel's concepts of civil society.
42. Hegel, op. cit., p.182.
43. Ibid., pp.243–44.
44. Ibid., pp. 184, 185.
45. Ibid., p.200.
46. Ibid., pp. 260, 260A.
47. Karl Löwith, *From Hegel to Nietzsche* (Peterborough: Anchor, 1967), pp.240–41.
48. Herbert Marcuse, *Reason and Revolution* (London: RKP, 1968), p.201.
49. Hegel, op. cit., Preface, p.18.
50. Ibid., p.258.
51. Marcuse, op.cit., p.216.
52. See Gellner, op. cit., Ch.1.
53. Habermas (1990), pp.17–19.
54. See my own *Democracy and the Rule of Law: Liberal Ideals and Marxist Critiques* (London: Pluto, 1984) for a less polarized view of the relation between Marx and Enlightenment.