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COHESION –
A REASSESSMENT**

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Civil Society and Social Cohesion – a reassessment¹

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Abstract

Civil society can usefully be defined as ‘social organisations occupying the space between the household and the state that enable people to co-ordinate their management of resources and activities’. The paper argues against the view that the Capitalist market economy is uniquely conducive to the creation of civil society. It shows that Locke and Ferguson, the originators of the concept, regarded civil society as much more widely applicable, associating it with social co-operation based on rational self-interest in all human societies. Historical and recent, non-Western examples are given in support of Locke and Ferguson’s position. Civil society may support or undermine the unity of the nation state, depending on historical circumstances. The paper traces the origin of current characterisations of civil society to the political agendas of those who debated the English agricultural enclosures that took place between the sixteenth and early nineteenth centuries. I argue that the currently popular usage of the term ‘civil society’ is unhelpful to the general understanding of social dynamics.

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Introduction

The concept of ‘civil society’ is central to the analyses of stability and instability in the nation state in the work of writers such as Gellner (1996) and Seligman (1992). As the post-Second World War Socialist regimes of Eastern Europe began to crumble, there was widespread optimism about the ability of people to come together to promote a common interest in self-determination and democracy, through the medium of civil society. Western governments who aided the dismantling of Socialism contended that a free market economy promoted self-reliance, and thus participation in civil society. The alleged absence of civil society under Socialism was taken as proof of its intrinsic connection with Capitalism. During the next few years, however, faith in the universal development of civil society was shaken by events such as the rise of ethnic nationalism in former Yugoslavia. Whether civil society could be said to exist in such cases was questioned. Relationships based on kinship and ethnicity appeared categorically opposed to those underpinning civil society; they seemed, in Adam Seligman’s (1992) terms, primordial, not rational. A number of questions are therefore addressed in the first part of the paper:

- How should ‘civil society’ be defined?
- Is civil society necessarily associated with a commercial economy (as Gellner and Seligman argue) or can it occur under different regimes (as Hann and White contend)?
- Does civil society necessarily tend to support or undermine the state?

In the second part of the paper I review what Locke and Ferguson actually wrote about civil society, showing that they intended the concept to have much wider application than its current usage. The third part of the paper therefore explores how the current, circumscribed and politically biased approach originated. I argue that it can be traced to the eighteenth century debate surrounding the enclosures of common land in England. Alternative, equally useful, approaches have been marginalised.

The Enlightenment concept of civil society was first formulated by writers such as John Locke (1689) and Adam Ferguson (1767). During the mid 1980s, political scientists in both east and west Europe advocated creating a civil society in eastern Europe as a way of pushing back the state (Hann 1990). The fact that the concept of civil society was coined during the period when Western European society was undergoing the great transformation from feudalism to mercantile capitalism was considered decisive by analysts writing in the 1990s. Because the concept was invented at the time when the divine right of kings was challenged, and the new bourgeoisie pressed for the abolition of feudal social order, it was assumed that civil society was itself born at that time.

According to Gellner, only a market economy ensures that contractual associations are sufficiently flexible and adaptive to create civil society (Gellner 1996: 100). Market society allows the individual to enter and leave specific-purpose, limited associations without elaborate blood ritual. (Gellner parodies the rigid structure of traditional societies.) Only the market promotes the rational pursuit of self-interest, or what Gellner (*ibid.*: 77) curiously calls ‘a disinterested pursuit of interest’. Many in Eastern Europe were at first willing to accept this claim. Given the sudden abandonment of communism people were, as Wedel (1998) writes, looking for quick answers to the problem of preserving social cohesion. The only alternative seemed the Western capitalism advocated by international aid agencies.

The paper contends that recent proponents of civil society have argued for a narrow definition that fails to do justice to the breadth of vision of the concept’s originators. As Sampson discovered, western models do not always match eastern realities; systems cannot be exported successfully if their institutional, social framework is absent. Kin, networks and ethnic groups often solve problems that are solved in the west by commercial or voluntary associations (Sampson 1996: 125). In the post-Soviet era, millionaire/billionaire former Communists and other Russians have searched in vain for a bourgeoisie committed to democracy, productive economic behaviour and civil society (Kingston-Mann 2003: 94). Mass privatisation in Russia did not create civil society, but profit-seeking oligarchs and gangsters who hire private armies and intelligence gathering teams, and perpetrate frequent car-bombings and contract murders (Kingston-Mann 2003: 109).

Defining Civil Society

Gouldner characterised civil society as a medium through which people ‘can pursue their own projects in the course of their everyday lives; and as ways of avoiding dependence on the domination of the state... [through] patterns of mutual and self-help’ (1980: 370-1). Dunn (1996: 27) describes civil society as ‘the domain of relationships which falls between the private realm of the family on the one hand and the state on the other’. Since the household is virtually universal in human societies I shall use civil society to refer specifically to *social organisations occupying the space between the household and the state that enable people to co-ordinate their management of resources and activities.*³

Institutions that only promote state policy are not civil institutions; they are part of the state. A particular institution may therefore have civic capability at some times, but not others, depending on the relative power of the state. In France the mayor plays a dual role, both

³ I am aware that establishing the boundaries of the household can be problematic (see Layton 2000: 124).

representing the state and implementing local civil society. The contemporary structure of French local government was laid down at the time of the Revolution of 1789. The mayor's position reproduces the tension which Abélès identifies in higher levels of local government, created by the conflicting policies of the Revolutionary government toward local democracy and a unified state (Abélès 1991: 111, 115). After local elections, the village council elects the mayor from among its own members. In the internal affairs of the commune (village), the mayor is the agent of the village council and obliged to put the council's decisions into effect. Chapman (1953) recorded a striking case of local autonomy in the early post-war period, when the mayor of one village, in response to pressure from his councillors, passed a by-law forbidding the carriage or use of nuclear weapons within the boundary of the commune. In the part of Franche Comté where I worked (Layton 2000), communes earn between a half and one million francs a year from the sale of timber and the municipal council has significant resources at its disposal. If the mayor refuses to enact his council's decisions, the council may appeal to the prefect, head of government in the *département*. The mayor is, however, also the State's representative in the commune and, in this role, answerable to no one within the commune. The balance of power between state and village has shifted several times. Election of mayors was introduced in 1789, but suppressed shortly after and not reinstated until 1871. In 1982 the balance of authority swung further toward the commune, when the State gave communes greater independence in the management of their budgets and reduced the government's right to annul decisions taken at the local level (Abélès 1991: 105, 116-8).

Lem (1999) has documented the subversive activities of mayors in the Languedoc region of France, where there is a century-old history of regional resistance to state centralisation. Everyone participates in the 'hidden economy' in order to avoid paying state-imposed taxes and insurance. Although the village council overtly campaigned to uncover such practices, the mayor participated in them. Lem interprets such subversive activities as the joint product of collective resistance and self-interest. While the village council was active in civil disobedience, the elected council of the local wine-producers' co-operative was considered a government agency, promoting the state's efforts to reduce over-production of cheap wine by planting higher-quality but lower-yielding vines.

Spülbeck (1996) reports that the mayor of the East German village she studied was arrested in the late 1950s, during the socialist regime, and charged with political conspiracy. No villagers were willing to take over, and the post was filled by outsiders for more than ten years. Although the post of mayor has been well paid since the collapse of socialism, and the political system is more liberal, it is still very difficult to recruit a mayor. State surveillance has left a crushing mark upon local civil society.

Function and History

One cannot include in the definition a moral requirement that civil society function to support or oppose the state, nor that it should exclusively promote individual liberty or group cohesion. The consequences of civil activities should be studied empirically. Gellner considers, but then rejects, a definition of civil society that specifies its role in relation to the state. He suggests civil society might be:

That set of diverse non-governmental institutions which is strong enough to counterbalance the state and, while not preventing the state from fulfilling its role of keeper of the peace and arbiter between major interests, can nevertheless prevent it from dominating and atomising the rest of society. (Gellner 1996: 5)

Gellner rejects a definition of this type because it would include ‘many forms of social order which would not satisfy *us*’ (Gellner 1996: 6, his emphasis). He argues there must be no segmentary tendencies in civil society because, if there are, civil society will fragment the state, not counterbalance it. His argument pre-empts the study of how civil society works in particular cases.

Seligman points out that Eastern and Western arguments for civil society differ due to the *contradictory* aspirations of its modern proponents. Full individual liberty would preclude equality, because that would unleash differences of power, but any guarantee of equality would require substantial state interference in the market economy (Seligman 1992: 116). This ambivalence is clear in Gellner’s essay. Gellner (1996) shifts his evaluation of civil society, depending on whether he is writing of the West or Eastern Europe. In the West, he argues, the state must restrain the power of the market economy. The state can be trustworthy in the West. The collapse of socialism does not justify an unfettered market since this brings about the morally unacceptable destitution of the weak. Profits often accrue to ‘smart-alecks’ who manipulate the market with dubious legitimacy. There must be some form of welfare state, because the household is too small to look after the disabled. Similarly the state must be responsible for the provision of many services. ‘If socialism means that political constraints are put on the economy, then virtually all (...) societies (...) are socialist’ (Gellner 1996: 170, cf. Seligman 1992: 113-117). On the other hand, Gellner argues, the market economy in Eastern Europe is too weak to create a genuine civil society. In Eastern Europe, it is civil society that must develop to counterbalance the state, not the other way round. Service industries already existed in semi-legal form before the collapse of Communism and have therefore been easy to stimulate as enterprises, but it has proved harder, Gellner argues, to establish a genuine open market. I argue that, before discussing the functions of civil society, one must investigate empirically what institutions lie between households and state, in other

words, what framework exists to enable members of different households to take joint action. It is then possible to ask which (if any) of these institutions enable people to promote their political aims. If civil society tends to undermine the state, the identity of the coalitions that replace the state are likely to depend on the structure of such intermediate institutions.

The concept of civil society also needs to be freed from the evolutionist assumption that it emerges within the social life of the state at some particular point in the state's evolution, particularly the point at which commercial capitalism dissolves traditional local communities (i.e. the period of the English enclosures). There are two weaknesses in this approach. It wrongly implies people were previously incapable of coming together rationally, to pursue their mutual self-interest. It also tends to imply, misleadingly, that the structure or extent of civil society is coincident with that of the state. 'A sphere of society distinct from the state and with forms and principles of its own' (Kumar 1993: 376) may precede the state (particularly in the case of colonially created states), or may cut across state boundaries (Kurdish society, for example). Complaining that these cases do not constitute civil society amounts to saying 'they do not engage with the state in the way I believe civil society should'.

Hann (2003) expresses surprise that Gellner, an anthropologist, should reject the possibility of civil society in a tribal or an Islamic society. Hann argues that a properly anthropological approach would look more closely at local patterns of sociality and investigate how issues of political and moral accountability can be resolved in civil ways that differ from modern Western solutions. The most astonishing aspect of Gellner's study is the way it parodies traditional society. According to Gellner, pre-modern societies often lacked the means to pulverise the societies they control. But the cost, he asserts, is that the peasant falls under the tyranny of the local community, of cousins and ritual. The historical evidence from European villages shows this claim to be untrue.

The simple layered model presented above ('*social organisations occupying the space between the household and the state*') may be misleading if it is visualised as an inverted triangle with the all encompassing state at the top, and the smallest component unit, the household, at the bottom. A civil institution may extend throughout the state (e.g. Polish Solidarity), and the state generally penetrates down to the local level (e.g. the village mayor). The state also frequently sets the rules for civil associations such as producer co-operatives, even though such associations are freely established and promote free association in pursuit of their members' local goals.

Civil society is, as Krishan Kumar (1993) shows, a term that has been used in various ways by different schools of political philosophy. Kumar concludes that the term has no neutral social-scientific meaning. I argue that the term is useful, but on two conditions. First, the

structure of civil society must be distinguished from the various functions it may perform in different times and places. A particular case should not be excluded from the category ‘civil society’ merely because the writer finds its social consequences undesirable. Second, civil society should not be equated with an alleged stage in the evolution of society.

Must Civil Society Engage with the State?

While there is a strong case for rejecting ethnocentric definitions of civil society, the question, ‘must the institutions of civil society play, by definition, a political role toward the state?’ is harder to answer. Wedel describes the western goal of creating civil society in eastern Europe after the collapse of the socialist regimes as one ‘in which citizens and groups are free to form organisations that functioned independently of the state *and that mediated between citizens and the state*’ (Wedel 1998: 83, my emphasis). Empirical ethnographic research suggests that particular institutions may play a political role at some points in their existence, but not others. I think it would be unhelpful to exclude such institutions from analysis except when they move into the political arena. One needs to know how they originated, and what circumstances prompted their members to transform their function so as to use them as a vehicle for political action. A classic example is Epstein’s (1958) study of how a missionary-founded library association in the Zambian mining township of Luansha was transformed into a Welfare Society that, in turn, provided rising Black leaders with the vehicle to challenge the urban authority of tribal elders. De Toqueville’s distinction between political institutions and civil institutions is helpful (cited in Kumar 1993: 381). Civil associations such as churches, professional, commercial and recreational associations can ‘pave the way’ for political association. To avoid classifying particular institutions as necessarily political *or* civil, it may be more useful to say that *civil associations* have some autonomy to manage resources and co-ordinate action, and therefore have the potential to advance their members’ political interests in dialogue with the state.

Seligman claims civil society did not exist under Socialism, since the civil and political elements were denied (Seligman 1992: 114). Buchowski disputes the claim that no civil society existed in Central Europe during the communist era (Buchowski 1996: 79, cf. Wedel 1998: 103). True, communist ideology sought to merge the state and society. The *nomenklatura* system ensured only loyal people could hold the most significant posts. Nonetheless, people followed their own interests through official associations created and licensed by the state. As a teenager in Poland, Buchowski argues, he was contributing to building a civil society when he belonged to a Peoples’ Sports Club and played football. He was, in other words, contributing to social organisations occupying the space between the

household and the state that enable people to co-ordinate their management of resources and activities. Other state sponsored organisations such as village women housekeepers' associations, sports clubs and volunteer fire brigades provided similar scope. Senior posts had to be approved by the party, and ordinary members were expected to respect authority. But such associations provided a significant means for collective activity and many, especially professional organisations, transformed themselves into dissident bodies in the 1980s.

Is Civil Society Segmentary or Unifying?

Case studies demonstrate that civil society may threaten or support the unity of the nation state. Where the state threatens to break down into smaller polities it is inadequate to characterise ethnic or religious affiliation as a 'primordial', that is 'innate and irrational' (Duffield 2001: 110). A comparison of the recent history of Yugoslavia and Poland makes this clear. Ethnic communities created fault lines in the Yugoslavian State. In some regards they predated the state into which they are incorporated and their persistence weakened the state, but the divisions that existed in 1990 were not 'primordial'. Their survival was due to covert recognition by the state and their character had been transformed by their interaction with the state. Serbia and Croatia have a long history as separate political entities. The medieval kingdom of Serbia was founded in the sixth century AD and lasted until its defeat by the Ottoman Turks in 1389. Ottoman rulers allowed the Serbs to continue practicing Orthodox Christianity, which therefore functioned as an expression of Serb identity in a predominantly Islamic state. Three small Croatian states existed in the eighth century. During this period Charlemagne brought Croatia into the Catholic Church. The Croatian kingdoms were unified in 1069, but Croatian independence was short-lived. Only thirty years later Croatia was defeated by Hungary. Croatia agreed to a union with Hungary but Croatia's political identity was preserved by the *Sabor*, or Croatian assembly, which continued to exist until the end of the Austro-Hungarian Empire in 1918 (Tanner 1997). Because Catholicism was shared with the wider Empire, it was not structurally significant as a defining institution of Croat identity.

After the First World War, Southern Slav unity was achieved with the creation of Yugoslavia. Unfortunately, the unified state suffered from a fatal asymmetry. Serbia gained independence from Turkish rule before Croatia ceased to be part of the Austro-Hungarian Empire. Serbs dominated the new state institutions while Croatia lost the relative autonomy it had exercised through the *Sabor*. Ethnic rivalry was therefore encouraged and Catholicism now became a salient aspect of Croat identity. After the Second World War ethnicity and nationalism persisted because Tito, the president of post World War Two Yugoslavia, created

an ethnically-based federal structure without genuine power-sharing. During the second half of the twentieth century, ethnic identity became irrelevant for many city dwellers, but it remained strong in the countryside. ‘Pan-Yugoslav consciousness existed and there is evidence it was growing in the 1980s but it proved too weak’ to overcome ethnic conflict (Gallagher 1997: 48). After Tito’s death, communist elites in both Serbia and Croatia embraced ethnic nationalism to ensure their survival, but those nationalist leaders had to draw their support from rural communities. Intermarriage and even contact with other communities occurred much less frequently in the countryside and villagers were ‘ready to take up arms against cities as mythical places of affluence and sin’ (Gallagher 1997: 66). Gallagher concludes that it is only a slight exaggeration to describe the conflict of the 1990s as one between urban (tolerant) and rural (nationalist) communities.

Poland, on the other hand, was fortunate in having civil institutions that extended throughout the country, exemplifying the point that the institutions of civil society are not necessarily less inclusive than the state. The position of the Catholic Church in Poland was unique in eastern and central Europe. In contrast to the divisive effect of churches in Yugoslavia, the Polish Catholic Church was an emblem of national unity. The communists could neither destroy it nor use it for their own ends. It represented the interests of various groups at various levels. Through its preaching it maintained freedom of speech. After martial law was imposed in 1981, churches became “safe havens” for secular dissidents (Kumar 1993, Buchowski 1996). The Catholic Church therefore played a practical role in promoting a national civil society.

The Polish Workers’ Defence Committee founded in 1976 was also a nation-wide organisation. It did not aspire to challenge the state, but aimed to build up autonomous social bonds and saw grass roots associations as the most effective defence against totalitarianism (Buchowski 1996: 87). Its ideas were put into practice by Solidarity, which had 10 million members by 1981.

Civil Society Transcends Modernity

Modernity has been used as a broad synonym for the era of Capitalism. Traditional loyalties to local communities were broken up by the mass movement of workers in search of employment, medieval traditions were discarded as irrational superstitions, and the Enlightenment vision of universal reason inspired attempts at planned intervention in the order of society. Gellner’s vision of civil society is a modernist one, according to which only a market economy guarantees flexible contractual associations and voluntary specific-purpose associations. Gellner also perpetuates the Modernist conflation of pre-modern European

societies (i.e., approximately pre-eighteenth century), and recent, non-Industrial societies (cf. Fabian 1983).

Historical evidence from European villages shows Gellner is incorrect to claim that civil society did not exist in the Middle Ages. In 1483, the Swiss village of Torbel already referred to itself as a peasant corporation when it laid down rules for the use of common pasture and forest it owned (Netting 1981: 60). In the fifteenth and sixteenth centuries the citizens of Torbel drew up charters stating that, while villagers might sell their own strips of plough land to outsiders, they could not transfer their rights in common land. New members could join the village if two-thirds of its existing members agreed. Before 1790, French village affairs were regulated by popular assemblies and officers appointed by *seigneurs* or local government (Gournay et al. 1967: 115). In the French Alpine village of Abriès, all household heads who held taxable land, including widows, had the right to attend the pre-Revolutionary assembly. The assembly elected consuls to represent its interests before higher courts, and used communal funds earned from leasing pasture to employ teachers and lawyers. In 1694, an army engineer wrote ‘these people govern themselves like Republicans not recognizing any leader among them nor having to suffer any nobility’ (Rosenberg 1988: 39). Village corporations clearly occupied part of the space between household and state.

Gellner (1996: 88) contends that in ‘the days of’ clans and lineages, you could not readily change your membership of a local group, preventing individuals from entering or leaving specific-purpose, limited associations (see above). Anthropological research shows bands, lineages and clans are flexible. Richard Lee wrote that the Dobe !Kung (Ju/’hoansi) hunter-gatherers of the Kalahari desert ‘move from camp to camp with distressing frequency; some alternate among two or more waterholes (...) others move right out of the Dobe area several times a year or for years at a time’ (Lee 1979: 42). Particular clusters of people have a history of association with one waterhole varying from a few years to several decades but, according to Lee, it rarely extends back to the grandparental generation of the oldest living people. Individuals may choose whether to join their mother’s or father’s band. Such flexibility is essential in an unpredictable environment subject to local drought. Glickman (1971) and Verdon (1982) demonstrated that lineages among the cattle-herding Nuer of the southern Sudan absorb non-kin who have lived in the village long enough to become accepted as members, while former lineage members who move away are forgotten. Schlee (2002) describes the Somali clan system as one in which the weak seek to attach themselves to the powerful. If the lineage model cannot embrace them, he writes, they can be attached by contract.

Gellner retreats to some extent from his rigid characterisation of pre-modern society when he discusses Islam. Following Ibn Khaldun, he notes that rural communities had some independence from the centre, and could periodically reform urban decay. The rural hinterland provided ‘a kind of political womb of cohesive communities, well able and indeed obliged to defend and administer themselves: these could also run a larger state when given the chance by the decline of a previous dynasty. The state was a gift of the tribe to the city’ (Gellner 1996: 84). However, Gellner also contends that, since tribes are not equipped to run a bureaucracy, ‘society is ruled by networks, quasi-tribes, alliances forged on the basis of kin, services exchanged, common regional origin (...) still, in general, based on personal trust (...) rather than on (...) a defined bureaucratic structure’ (ibid.: 27).

White (1996) challenges Gellner’s view that civil society must be based on contract. White agrees that ‘In urban Turkey, voluntary associations, grass-roots protest actions and other forms of civic activities often are organized on the basis of mutual trust and interpersonal obligation, rather than on an individual, contractual membership basis. Trust and reciprocity characterise communal life in general’ (White 1996: 143). But, she insists, civic action is *not* based on clan, tribe, family or other ‘primordial’ ties. It is created through the free choices of individuals, who decide whom to associate with among their acquaintances and in their community. This network creates a space in which women can act publicly without leaving the privacy and security of communal and gendered roles. The web of already existing community ties is the foundation of a civic culture upon which both Islamic and secular groups build organisational infrastructures among the working class.

Hann argues that the ethnocentric definition of civil society relied on by Western agencies damaged the way assistance was provided to post-socialist regimes in Eastern Europe. Communities that had just endured a massive experiment in social engineering under socialism were then subjected to an equally idealistic experiment in social engineering inflicted upon them by foreigners. A specifically Western concept of civil society, based on formal associations and individual agents, was exported to people who may prefer their own traditional associations. The positive aspects of socialist government: state support for pensions, education or health, are lost, but nothing is put in their place. ‘Huge numbers of postsocialist citizens feel they enjoyed a more civil society under the old regime than they do today’ [Hann, personal communication]. Hann suggests the effect of Western intervention may even be to strengthen loyalties based on kinship, religious or ethnic identity in reaction to the crudities and abuses of the foreign NGO sector.

Locke and Ferguson: the origins of the concept of ‘civil society’

Seligman (1992) and Tester (1992), writing on civil society in the wake of the collapse of East European socialism, have misrepresented the way the concept was first formulated in Locke’s *Two treatises of government* (1689) and Ferguson’s *An essay on the history of civil society* (1767). Neither Locke nor Ferguson claimed civil society was a new phenomenon. Tester, on the other hand, gives what he describes as a simple, or even simplistic definition of civil society: civil society is the milieu of private contractual relations; relations that go beyond the family, yet are not of the state. He concludes that ‘civil’ is implicitly opposed to ‘barbaric’. Civil society is made by civilising social relationships. Other, non-western, societies were therefore, by definition, uncivil (Tester 1992: 8-10). Tester is right to point out that Locke’s representation of contract as the basis of human society universalises the bourgeois property holder (Tester 1992: 44). But this does not justify going to the other extreme and asserting that people have no freedom to enter into or leave social relationships in pursuit of their self-interest, in societies other than commercial capitalism.

Seligman argues the idea of civil society emerged during the seventeenth and eighteenth centuries in response to a social crisis, and has re-emerged in the late twentieth century in response to another crisis (Seligman 1992: 15). He argues that in the seventeenth century the commercialisation of land, labour and capital, and the growth of market economy, led political theorists to replace the notion of binding traditions with that of a social contract. Seligman and Gellner therefore date the origin of civil society to that time. The discovery of non-Western societies where life was organised differently also called into question the ‘naturalness’ of European social life. Tester is correct to point out that the question, ‘what holds society together’ was a particularly pertinent one in Europe during the period the divine right of kings was rejected, and commercial capitalism overturned feudalism. But Locke’s and Ferguson’s interests were wider than an attempt to understand the unique condition of ‘modernity’. Contrary to Tester’s claim, that was not the first time ‘the voluntary associations of independent, mannered and civilised individuals were actually occurring’ (Tester 1992: 125), and nor do Locke or Ferguson suppose it was (further examples of pre-seventeenth century contractual relationships are given below).

Locke’s sociological method, shared with Hobbes and Rousseau, is to discover the natural human condition. Once the natural condition had been established, the condition in which people actually live can be measured against this reference point. Locke wrote his *Two Treatises* to refute Filmer’s argument for the ‘patriarchal authority’ of kings, traced from Eve’s original subjugation to Adam. Locke argued the contrary: ‘We are born free, as we are

born rational' (Locke 1960: 95). The liberty of acting according to our own will, not from compulsion by the will of others, is grounded on the possession of reason (ibid.: 309). Unlike Hobbes and Rousseau, Locke recognised that humans are intrinsically social. The natural condition is a social one. 'The *first Society* was between man and wife' (Locke 1960: 318-9, emphasis in original). Women are not naturally subjugated to men. Marriage is a contract made for the purpose of raising children and either partner has the right to withdraw. Contrary to Seligman's representation (Seligman 1992: 22), Locke clearly thought that contracts exist in the state of nature. The marriage contract is made *either* by the partners themselves 'in the state of Nature, *or* by the Customs or Laws of the Country they live in' (Locke 1960: 321, my emphasis). According to Locke, the state of nature has two distinctive characteristics. First, people rely on self-help, rather than appeal to delegated authorities, to defend their property. Second, parties to a contract formulate the terms of the agreement among themselves. Locke clearly considered civil society to be an aspect of the natural human condition (contrary to Laslett 1960: 107-8 and Seligman 1992: 22). 'Men living together according to reason, without a common Superior on Earth with Authority to judge between them, is *properly the state of nature*' (Locke 1960: 280, his emphasis).

Ferguson also took the view that humans are intrinsically social. He argued that a wild man caught in the woods is no more representative of humanity's original state than an eye that had never seen anything. A wild man would probably be as defective as an organ that had never performed its intended function. 'Mankind are to be taken in groupes [sic], as they have always subsisted' (Ferguson 1995: 10). Like Locke, Ferguson did not confine reason or civil society to mercantile capitalism.

For Locke, the natural condition ends and *political* society comes into being when people surrender their right of self-help 'into the hands of the community.' The community 'comes to be Umpire, by settled standing rules, indifferent, and the same to all parties; and by Men having Authority from the Community, for the execution of these rules' (Locke 1960). The community now sets the terms of contractual agreements. Those who belong to a particular political society share a common law and recognise the same authorities to resolve disputes (ibid). It is absolutely clear that Locke does not regard civil society as something that had recently come into existence. Equally, the state of nature is an ever-present possibility: 'Want of a common Judge with authority, puts all Men in a State of Nature' (Locke 1960: 281). 'Tis plain the World never was, nor ever will be, without numbers of Men in that State' (ibid.: 276).

Locke's account of the origin of property may misleadingly suggest he regarded property as a product of the Enclosure movement, and therefore something that originated in his own

time. ‘Whatever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his *Labour* with (...) thereby makes it his *Property* (...) that excludes the common right of other Men’ (ibid: 288). As Laslett (1960) notes, ‘Locke is using here the language of agrarian enclosure, the parcelling out of the common fields of the traditional manor as private property, which was so marked a feature of English economic history in the sixteenth century’ (Laslett in Locke 1960: 288, footnote to book II paragraph 28, lines 16-26). But Locke acknowledges (1960: 288-9) that the manorial commons ‘remain so by compact’, i.e. by agreement between members of the local community. He also recognises that foragers can own property: ‘He that is nourished by the Acorns he pickt up under an Oak, or the Apples he gathered from the Trees in the Wood, has certainly appropriated them to himself’ (ibid: 288). Locke is not wide of the mark: Marshall (1976) wrote that among the !Kung (Ju/’hoansi) of the Kalahari a game animal belongs to the person whose arrow first wounds it. This person is obliged to distribute the meat among households in camp. However, meat once distributed and vegetable foods once gathered become private property. One man was killed for stealing honey from a bees’ nest that had been found and marked by someone else. As Laslett concludes, ‘It is gratuitous to turn Locke’s doctrine of property into the classic doctrine of the “spirit of capitalism”’ (Laslett 1960: 106-7).

Ferguson, like Locke, did not confine reason or civil society to mercantile capitalism. ‘The inhabitants of a village in some primitive age, may have safely been intrusted to the conduct of reason’ to regulate their own affairs (Ferguson 1995: 63). The Iroquois Confederation, of which Ferguson learnt from the writings of Lafitau, is rationally sustained. ‘Many rude nations, having no formal tribunals for the judgement of crimes, assemble (...) and take their measures with the criminal as they would with an enemy’ (ibid.: 64). We tend to exaggerate the misery of barbarous times, Ferguson comments, because we imagine ‘what we ourselves should suffer in a situation to which we are not accustomed’ (ibid: 103). Every age has its consolations. In barbarous times, persons and properties were secure, because every one had a friend, who would protect one, according to maxims of honour and generosity (ibid: 104).

Ferguson differs from Locke, Hobbes and Rousseau in constructing a sequence of stages in the evolution of human society. But they are stages in the evolution of property, from savagery (hunting and gathering) to barbarism (nomadic herding), not stages in the evolution of rationality. The only property of a hunter-gatherer is his weapons, utensils and clothing. Because hunting is collective, game once caught belongs to the community, as do the crops that the women plant and harvest collectively in native North America. In North America the cabin and its utensils belong to the family, and children belong to the mother. It is consistent with this pattern of rights in property that society is egalitarian. Nor is that state based on

ignorance: ‘Men are conscious of their equality, and are tenacious of its rights’ (Ferguson 1995: 83).

Ferguson did not see the commercially oriented country in which he lived as the epitome of rationally organised civil society. On the contrary, he was concerned that civil society seemed under threat. Far from tracing the origin of civil society to the eighteenth century, he was worried about its disappearance. ‘Ruder’ nations tend to succumb to the better-organised armies of more civilised nations, but this does not justify an assumption of superiority (Ferguson 1995: 94). In commercially based societies the national spirit may be neglected. People rely on the agencies of the state to uphold social order. Commerce greatly accentuates inequality, and the majority are therefore obliged to employ every talent they have. Society thus becomes increasingly divided into separate callings, ‘and society is made to consist of parts, of which none is animated with the spirit of society itself (...). Men cease to be good citizens’ (Ferguson 1995: 207). Growth in the population and geographical extent of the nation has the same effect. The members of a community, like those of a conquered province, lose their sense of kindred or neighbourhood, and have no common affairs to transact except those of trade. ‘The mighty engine which we suppose to have formed society, only tends to set its members at variance, or to continue their intercourse after the bonds of affection are broken’ (ibid: 24).

Seligman agrees with Ferguson on this point. He cites De Tocqueville’s observation, made one hundred and fifty years ago, that life in the United States consisted of a multitude of individuals pursuing private pleasures and indifferent to each other’s fate (Seligman 1992: 138). It is, however, questionable whether Seligman represents Ferguson correctly when he writes of ‘the central and growing realisation [in the eighteenth century] that man is motivated by two divergent and contradictory principles – altruism and egoism’ (Seligman 1992: 26). This is a Weberian proposition (Weber 1947: 116). It is true that Ferguson writes at times as if it were only our inherent sociability that checks self-interest. If humans are primarily concerned with their own subsistence, he argues, we would be reduced to the level of animals, in which other people were merely useful or detrimental. In fact, we value social relationships more highly than subsistence (Ferguson 1995: 35-6). Warlike barbarians act like bandits and robbers toward the rest of mankind, but our sense of humanity makes us recoil from this attitude (ibid: 149). Elsewhere, however, Ferguson puts forward the stronger argument that people *enter into social relations out of self-interest*. Before the State assumed responsibility for upholding the law, people owed their safety to ‘the warm attachment of their friends, and to the exercise of every talent which could render them respected, feared or beloved’ (ibid: 211). ‘Intangled [sic] together by the reciprocal ties of dependence and protection, (...) the

subjects of monarchy, like those of republics, find themselves occupied as members of an active society, and engaged to treat with their fellow-creatures on a liberal footing' (ibid: 71). In a more 'rude' state, wealth can be unequally divided, but the differences do not amount to much; 'To enjoy their magnificence they must live in a croud [sic]; and to secure their possessions they must be surrounded by friends that espouse their quarrels.' (ibid: 238) For Ferguson, I believe, the interesting question was: Why does commercial capitalism undermine the coincidence of self-interest and reciprocal or co-operative social relations?

There is no basis in the work of Locke and Ferguson for constructing binary oppositions around the construct *modern = rational, pre-modern = non-rational* or 'primordial'. The restriction of civil society to the modern bourgeoisie was introduced by Adam Smith and Karl Marx.⁴ The formula rational is to modern as irrational is to pre-modern follows Weber's theory of development from traditional to bureaucratic government, that is, from blind adherence to tradition, to acceptance of a rational order (Weber 1947: 300, 327). Locke and Ferguson cannot be cited in support of the claim that universal citizenship was developed in the eighteenth and nineteenth centuries to create a broader solidarity than that based on 'particular and often *primordial* criteria of trust and solidarity' (Seligman 1992: 146, my emphasis). Seligman, however, repeatedly opposes rational to primordial social relations. Ties between individuals are no longer 'defined by a tradition of *primordial* "givenness" (membership of a territorial or kinship collective)' (Seligman 1992: 69, my emphasis). Seligman attributes recent ethnic nationalism in South-eastern Europe to the manner in which the Austro-Hungarian Empire was broken up at Treaty of Versailles. Thirty per cent of its inhabitants were minorities whose national aspirations would not be recognised. Hence 'particular, *primordial* criteria of membership, trust and solidarity' persist (ibid: 151). The case of Yugoslavia shows this is an over-simplification. Seligman, moreover, acknowledges that the Palestinian struggle for self-determination is not the mindless manifestation of some primordial ethnic identity, since in the contemporary Jewish State more than 1.5 million people are denied fundamental civil, legal and political rights (Seligman 1992: 152). Denich points out that, at a critical point in the break-up of Yugoslavia, adoption of ethnic identities became a rational strategy. Jobs and housing and therefore, she argues, personal survival depended on how the new state would be constituted and in whose name. 'If the state was to be redefined, average citizens needed to redefine their way of accessing it and had reason to fear being "left out in the cold" in the prospective power allocation along ethnic lines' (Denich 2003: 191). Discovering or re-asserting ethnic identity was not an innate or irrational impulse.

⁴ See Gouldner 1980: 356-7, Tester 1992: 49, and Kingston-Mann 2003 on Marx's changing views.

Pre-Modern Civil Society

Medieval Civil Society

Both Tester and Seligman claim that in feudal society there was ‘no distinction between public and private’ (Tester 1992: 14; Seligman 1992: 30-1; Tester attributes this claim to Hegel and Marx). This is simply not true. In the thirteenth century, the village communal assembly already operated effectively in France and Switzerland to co-ordinate peasant resistance against feudal overlords (Bloch 1966: 168-70, Viazzo 1989: 266). In England, the village community was ‘in a position voluntarily to accept fresh responsibility, to bind itself to the fulfilment of obligations, and to incur financial liabilities (...) (but) its legal status is not easy to define’ (Cam 1962: 79). Opposition to feudal lords was usually undertaken by individuals or small groups, although villagers sometimes successfully bargained collectively over the terms of their tenancies (Hilton 1954). The situation in France was quite different. Everyone understood that public matters were resolved by bargaining between rival centres of power: the corporate village on the one hand, and the nobility or king on the other (Mendras and Cole 1991: 127). My own archival research in Eastern France (Layton 2000) revealed that the villages of Franche Comté were repeatedly subject to demands for tribute during the later years of the *Ancien Régime*. Documents stored in the village hall at Pellaport, the locus of my research recorded that in 1673, for example, Pellaport’s assembly challenged the allegation made by monks from a local monastery that they had deliberately defrauded the monastery by mixing oats with the barley paid as a tithe. In 1761, a local *seigneur* attempted to reactivate feudal rights which, he claimed, had belonged to earlier holders of the *seigneurie* and were recorded in documents dated 1549 and 1657. Pellaport’s village assembly responded that it was an incontestable principle of French law that, to enter into a tributary relationship with a *seigneur*, two-thirds of the inhabitants must give their consent, at a freely convened meeting. The assembly produced documentary evidence to show that in 1657 there were between thirty and forty households in the village, yet the *seigneur*’s document had only been signed by seven men, some of whom were already bound to the *seigneur* of the time by other obligations. Similar arguments were used to reject the 1549 contract.

A long-standing school of political thought in England held that the peasant village was the cradle of democracy. The type of community extolled by this school of thought was typical of the Open Field (Champion) zone, which extended in a broad band from Dorset and Sussex, through the Midlands, to Yorkshire, but it was not found, for example, in East Anglia. This school’s views are directly opposed to those of Seligman, Tester and Gellner. The Victorian

historian Freeman visited Switzerland in 1863, and witnessed a local public assembly. He described the experience as ‘the realisation of a dream (...) to see (men) discharge the immemorial rights of Teutonic freemen (...) the eternal democracy (...) the constitution which was of immemorial antiquity in the days of Tacitus’ (quoted in Burrow 1981: 169). In the seventeenth century the Anglo-Saxon origins of English society were used to develop the theory of the ‘Norman Yoke’. According to this theory the English had lived before 1066 as free and equal citizens, governing themselves through representative institutions brought to England by Anglo-Saxon settlers from Germany (Hill 1958: 64). While it disregarded the fact that there was already social inequality in Anglo-Saxon England, Hill suggests the idea had probably been current throughout the Middle Ages among the non-literate, since it had previously been expressed in the Fourteenth Century (compare MacDougall 1982: 57). Supporters of parliament argued that English common law stemmed from Anglo-Saxon times and had survived the conquest, providing a legal precedent for the principle that the King was answerable to the people. For the Levellers, the Germanic village community realised the natural rights of Man (Hill 1958: 81). Ferguson may have had this tradition in mind when he referred to self-governing villages in ‘some primitive age’. In 1627 Isaac Dorislaus was deprived of his lectureship in history at Cambridge when, in his first lecture, he cited Tacitus as authority for the view that the king placed his right to rule in the people’s voluntary submission. Royalists argued for the counter view that current common law had been brought to England by William the Conqueror and that any liberties which previously existed had been extinguished by the conquest (Hill 1958: 68-73, MacDougall 1982: 78-9).

Hill (1958: 76) accepts the broad thrust of the historical argument, claiming that early Anglo-Saxon society was certainly much freer than the Norman society that supplanted it. The difficulty, he notes, was that little was known about the actual form of Anglo-Saxon society (and, one might add, even less about the earlier society described by Tacitus. See Layton 2003: 106-7). Edward the Confessor’s laws were spoken of, but no one knew what they were. Trial by jury at local courts, the federation of local communities built up from below, and annual parliaments derived from the communal assembly were generally accepted as Anglo-Saxon customs. The essential weakness of the historical school of thought was that it failed to explain why the supposed Germanic customs had survived, to show whose interests they served, and how such people had been able to perpetuate them. It fails, as Hill wrote, to see ‘society as a whole, with institutions and ideas themselves related to the social structure and of relative not absolute validity’ (Hill 1958: 116).

The Enclosures – two visions of civil society

The village democracy celebrated by writers from Dorislaus to Freeman came to an end with the Enclosures. Enclosure privatised common land and dissolved the communal village institutions that had managed common resources. The political arguments for and against enclosure reveal the emergence of two schools of thought that persist in the modern debate concerning civil society. Promoters of enclosure would support the claim that civil society ‘can be said to equal the milieu of private contractual relations’ (Tester 1992: 8). Its opponents would advocate the claim that civil society is ‘a web of autonomous associations (...) which bind citizens together in matters of common concern’ (Tester 1992: 8, citing Charles Taylor).

Gouldner traces the origin of civil society to the ‘independent self-managed social organisation outside of the feudal structure that developed in the West both in villages and towns’ (Gouldner 1980: 361). Between the tenth and eighteenth centuries, each English village under the open-field regime chose a jury at its village court. The court admitted new freeholders and tenants to the community, passed by-laws compelling residents to repair chimneys, clear pathways, forbidding them to encroach on access tracks by over-ploughing the edge of strips, or to allow animals to graze on fields before crops had been harvested. The jury also limited the number of animals each household could graze on commons (Ault 1972; Chibnall 1965: 231; Orwin and Orwin 1938: 154-9). Opponents of Enclosure condemned the loss of village democracy. Timothy Nourse denounced, but also praised commoners in 1700: ‘They were of leveling Principles (...) the very qualities of insubordination and independence that made commoners a nuisance also made them brave’ (quoted in Neeson 1993: 20). Contemporaries argued that destroying village relations by enclosure also endangered relations in the nation as a whole. It brought about an open dissatisfaction that risked mob rule (Neeson 1993: 22). John Clare linked independence and liberty to the right of all to enjoy and use common land.

Supporters of enclosure argued that real or threatened unemployment would encourage labourers to work hard. In the eighteenth century John Clark argued: ‘the inclosure of the wastes would increase the number of hands for labour, by removing the means of subsisting in idleness’ in other words, by eliminating self-sufficiency (Neeson 1993: 28). The commons, it was argued, killed enterprise. People living on the commons were lawless. Common property was a more primitive condition than private property, fenmen in East Anglia were compared to native Americans and Tartars (Neeson 1993: 30-1). Here one can detect the origin of Seligman and Gellner’s treatment of ‘primordial ties’.⁵ European ‘progressives’ saw

⁵ For the wider currency of this idea, see Duffield 2001: 110.

private property as the source of all virtue, from economic initiatives to high moral character: in *The wealth of nations* Adam Smith linked the advance of reason to private property; Blackstone's *Commentaries* links private property, and the right to exclude others, to freedom (Kingston-Mann 1999: 10-20). Accounts of the English agricultural revolution published by Toynbee and Prothero in 1880s captured popular imagination by attributing particular innovations to 'great men' who triumphed over a conservative mass of country bumpkins (Overton 1996: 3). All these claims are antecedents of the approach taken by Seligman and Gellner.

Whether enclosure was really necessary to implement improvements in agriculture is debated. Agricultural development originated among small holders in the Netherlands and took place without enclosure in parts of France and Germany (see Layton 2000: 84-6, 261, 336-346). Havinden (1961) wrote that, although it is customary to regard open-field agriculture as backward and static, many of the most important advances in open-field farming in Oxfordshire were made before the idea of agricultural progress became popular in the eighteenth century. Neeson also notes that clover and sainfoin were introduced in open fields of Northamptonshire with the consent of the parish. The strips were fenced off, but the owners were not allowed to pasture the livestock that would otherwise have grazed here on other land, so other commoners did not suffer (Neeson 1993: 98, 121). Overton (1996) questions the view that technological innovations in English agriculture were facilitated by enclosures. Critics have shown innovations were already in use. Allen argued that small farmers accomplished much of growth in productivity in the seventeenth century, and that the eighteenth century revolution was one of landlords appropriating income from farming (Overton 1996: 6-7, citing Allen 1991). Kingston-Mann notes that Arthur Young ignored his own discovery that the same outmoded techniques were used on both open and enclosed fields, and that Enclosure had little effect on yields (Kingston-Mann 1999: 17-18). Neeson (1993: 157) also argues that the greatest growth in crop yields during the eighteenth and nineteenth centuries may have predated enclosure by several decades.

Claims that commons were overstocked and that grazing was unstinted (i.e. unregulated) were used to justify enclosure (Neeson 1993: 36-7), but there are many documented examples of village juries enforcing control of common land through fines. Deliberate overstocking was a strategy used by wealthy landowners immediately before enclosure, to support their claim that only privatisation would eliminate over-grazing (Neeson 1993: 88, 116). Enclosed land was worth more, probably thirty per cent more, than open-field land. This attracted owners who rented land out. Abolition of tithes at enclosure increased the profits owners could make (Overton 1996: 163).

During the time between the abolition of village juries and *The Local Government Act* of 1894, unelected Justices of the Peace – often the local squires – were responsible for local government (Newby et al. 1978: 221-4; Plumb 1990: 34-5, Wilson and Game 1994: 42). Seligman (1992: 105) points out that the first English Reform Bill of 1832 left five out of six men disenfranchised. Even the reforms of 1884-5 excluded about half the urban male working class from citizenship. Civil society was under threat. And, as Marx insisted, wage labour is another form of disenfranchisement.

The view advocated by Gellner and Seligman, that civil society is uniquely associated with private property and a commercial economy, was thus born in a contest over who would own and manage English farmland. Seligman reproduces the enclosers' view when he claims that feudalism lacked the complete realisation of 'a civil society of autonomous, moral, and economic individual agents' (Seligman 1992: 107). The civil society of the Open Field village stood in the way of powerful interests. Dissolving that society released the land it controlled. Rural riots against enclosure were disciplined events aimed at preserving common rights and face-to-face marketing (Overton 1996: 190). Kingston-Mann notes that Marxist opposition to the Russian village community, the *mir*, was also based on the threat semi-autonomous communities posed to the power of the state. 'Finding it difficult to establish their social control over a social element which still possessed powerful ties to family, land and community,' Marxists turned their attention to the urban proletariat (Kingston-Mann 1999: 175). '*Soviet officials viewed the localism and autonomy of the commune as a danger to the state's monopolistic claims to leadership, authority and control*' (ibid: 183).

The debate has continued. The claim that the Open Field system prevented rational land management can be compared to T.E. Day's description of Aboriginal land in central Australia as 'dormant wealth lying about in almost criminal uselessness' (Day 1916, quoted in Layton 1986: 64). John Cowper's comment in 1732, that 'the profit of a few landlords was nothing compared to the "Good of the Whole"' (Neeson 1993: 21) parallels that of a missionary who objected to pastoral settlement of central Australia. 'This great area the source of food to such a considerable number of natives may not be taken from them for the benefit of one white man' (Albrecht 1937, quoted in Layton 1986: 65). McGuire describes two common, and parallel reactions to the traditional Pueblo system of the native southwest, among White Americans. Collier was a superintendent of Indian Affairs who advocated Indian self-government, but 'where Collier and his reformers had found communal co-operation, the conservatives found the violation of individual rights and freedoms' (McGuire 2002: 139).

Conclusion

At the start of this paper three questions were posed:

- How should 'civil society' be defined?
- Is civil society necessarily associated with a commercial economy or can it occur under different regimes?
- Does civil society necessarily tend to support or undermine the state?

I have argued that, to avoid prejudice, a descriptive definition is necessary, defining civil society as 'the social structures occupying the space between the household and the state that enable people to co-ordinate their management of resources and activities'. Much of the recent discussion of civil society concerns the engagement between civil organisations and the state. To appreciate how such engagement occurs, however, we need to look at a broader field of organisations and investigate the circumstances that bring about their political engagement at particular times. A functional definition that specifies what role civil society should play in relation to the state (whether it should oppose or uphold state policy) will inevitably be qualified by the writer's evaluation of the state. The claim that civil society, and the rational human social behaviour that underpins it, is uniquely associated with commercial capitalism originated in the enclosure debate and is too politically biased to underpin the cross-cultural study of civil society. Seligman concedes, 'I am not arguing here that the existence of group identities as such militates against the existence of civil society' (Seligman 1992: 163). Voluntary associations, political parties, interest and corporate groups are, he admits, vital. But groups of this kind, Seligman contends, are different to ethnic groups. Only the former are organised 'for the pursuit of mutual interest on the institutional level' (ibid: 164). However, this is precisely the purpose of ethnic nationalist associations. According to Seligman, only ethnic groups 'posit an alternative moral vision to that of society at large' (ibid.), but political parties do just that! Seligman claims that only voluntary associations, corporate groups etc. are based on 'instrumental-rational modes of behaviour'. But in a zero-sum game, ethnic exclusionism may be very 'rational'. If the concept of civil society was devised to explain how people acting rationally in their self interest can create a stable fabric of social relations (as Locke and Ferguson argued) this approach should be tested against all forms of human society.

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