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**A Critique of the Normative Assumptions of Civil Society and an Evaluation of  
its Relationship to Democracy**

**Jeffrey James Warrington**

**Submitted to the University of Wales in fulfilment of the requirements for the  
Degree of Doctor of Philosophy**

**University of Wales Swansea**

**2003**

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## Summary

This thesis offers a critique of the normative assumptions of the concept of civil society and an evaluation of its relationship to democracy in contemporary political discourse. The proposition is that civil society represents the only feasible aspect of society that can maintain any democratic expansion. But I will argue that civil society must first of all detach itself from liberal theory. To this end, a number of reconstructions of the 'assumed norms' of what constitutes democracy will be made. Democracy is in crisis, but the legitimacy of political systems remains. The purpose of the reconstructions in this thesis is to assess the factors that contribute to democratic development and those that mitigate against it. The method employed is an immanent critique of the normative bases of civil society – privacy, publicity, plurality and legality – and their reconsideration. Two sets of criteria must be met in these reconstructions: those required by democracy (as an empowerment in society), and those that maintain the connections between theory and the actual. Each of these norms contains a number of principles and assumptions, axiomatic in liberal theory but problematic for civil society, and so for democracy. When subjected to critical enquiry, some of these references to political and social freedoms are antithetical to the conditions of democratic development. The conclusions arrived at point to the reconstruction of the concept of privacy, and how this relates to what is understood to be 'private' is basic to democracy. The factors that contribute toward this legitimacy (privatism) impedes civil society, and consequently the development of democracy.

## Contents

<b>Introductory Chapter</b>	<b>1</b>
<b>Chapter 1</b> <i>Privacy</i> (A domain of self development and moral choice)	<b>30</b>
<b>Chapter 2</b> <i>Publicity</i> (Institutions of culture and communication)	<b>77</b>
<b>Chapter 3</b> <i>Plurality</i> (families, informal groups, and voluntary association whose plurality and autonomy allows for a variety of forms of life)	<b>123</b>
<b>Chapter 4</b> <i>Legality</i> (Structure of general laws needed to demarcate <i>plurality, privacy, and publicity</i> from at least the state, and tendentially, the economy)	<b>169</b>
<b>Concluding Chapter</b>	<b>208</b>

## Introductory chapter

Dismissal of the emancipatory potential of civil society theory as romantic illusion or idealist impracticability could be grounded empirically without too much reference to its theoretical antinomies. The collapse of the communist states in Eastern Europe gave rise to an opportunity for 'civil society' to seize, and realise the ideals of the various 'movements' that had loosely comprised the democratic opposition. But as G.M.Tamas writes in his essay 'Victory Defeated', "... what we did was to do away with the remnants of the old regime – and what happened to us, in the absence of a new social order of our own, was capitalism".<sup>1</sup>

There are two important points to highlight at the outset, ones which can be extracted from Tamas's lament. The first is explicit, that 'civil society' in its contemporary relevance is as 'anti-capitalist' as it is 'anti-state', it refers to an analytical identification of a sphere of social relations that correspond to neither state nor economy. The second point refers to the 'absence of a new social order of our own' and concerns the problematic of 'self-limitation'. A principled adoption, rather than political strategy subverts the will to become democratic, concluding with the veiled domination of capitalism 'replacing' the more explicit domination of the state. The two are interrelated and reflect 'civil society's' neglect of the power of the culture of capitalism to transform, or rather divert, civil society (as 'presented' by the dissident opposition in the East) into one in which its leading figurehead, in this instance a former electrician from Gdansk, can proclaim that 'There is no freedom in solidarity' (Lech Walesa). The failure to assert the normative bases of civil society to politics in what would have appeared to be its optimal nursery, the vacuum left by the state in communist Europe,

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<sup>1</sup> G.M.Tamas 'Victory Defeated' in R.Andorka, R.Kolosi, & G.M.Tamas (eds.) *A Society Transformed: Hungary in Time-Space Perspective* Central European University Press 1999



demands a closer look at the agency of civil society with specific attention being paid to this *principle* of self-limitation as opposed to a *strategy*.

The imagined societies of the democratic opposition in eastern Europe did not revolve around the establishment of free association through markets; indeed this conception of civil society is antithetical to the ‘solidarism’ that did provide the pivot for this ‘free association’. The absence of a ‘new social order of our own’ allowed for the hegemony of, as would one of the latest clichés to enter political theoretical debate describe, ‘the only game in town’ to quickly establish itself in the inseparable form of democracy and capitalism. On a perilous course through the Charybdis of the state and the Scylla of the market, the *idea* of civil society steered by goodwill and ‘living in truth’ alone was always likely to founder on the latter. The ‘institutionalised lie’ of the state<sup>2</sup> has been replaced by the global trend of private accumulation in increasingly privatised societies. The process of absorption of the private into the public of state communism has been reversed into the privatisation of the public, and of the *self*. Where Tamas only intimated the ‘anti-capitalist’ element of civil society above, he is more explicit elsewhere, asking whether it is “... possible to argue that what we now see, ten years after 1989, the *annus mirabilis*, is the moral exhaustion of liberal capitalism brought about by its global victory?”<sup>3</sup>

A look towards Eastern Europe then gives little cause for optimism, and the more difficult search for sociological moorings in ‘western society’ for similar emancipatory lead is considered by many commentators to be a vain one. The question that now begs is why bother to continue with a concept that is theoretically vague and open to contradictory interpretation. Its historical demise after 1989 should be reason enough for regarding the *idea* of civil society as having little or no substance to it.

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<sup>2</sup> V.Havel ‘The Power of the Powerless’ in *Open Letters: Selected Writing 1965-1990* New York. Vintage Books. 1992

<sup>3</sup> G.M.Tamas op.cit p.63

The foremost justification for its continued theorising is that it can provide a conceptual language for democratic struggle and discontent on a universal basis once shorn of its commonsensical assumptions. In more prosaic terms, 'civil society' can begin to define these struggles in their real and global conditions. It is only through the development of civil society, as an ethical composition, that democracy has any chance of becoming anything more meaningful than the façade of representation that is the political aspect of the developed capitalist world.

Broadly, civil society represents a radically democratic social order whose fluidity can border on dis-order, and whose *plurality* (as forms of social relations) can play an effective part in the shaping of its own environment and the meeting of its needs. Its utopia is a radically democratic social order whose *plurality* plays an effective part in the shaping of the environment and the meeting of its needs. It is a society which is voluntaristic, implying determination as both cause in the reproduction of a social order, and 'faith' in the capacity to determine the nature of that order. Adam Michnik stresses the importance of this latter form of determination: "Faith in one's ability to exert influence on the fate of society is an absolute pre-requisite for political activity".<sup>4</sup>

Cohen and Arato put it thus: "... a society without political projects is [...] undesirable, for the civil privatism or 'realism' that would result would really be just another name for egoism, and the corresponding political culture would lack sufficient motivation to maintain, much less expand, existing rights, democratic institutions, social solidarity, or justice".<sup>5</sup> Wisely they keep these projects vague, but the shortcomings or defects of their theory cannot, in light of the normative demands of these themes, become an adequate vehicle for the project of radical, or revolutionary, democratisation (although it might be more amenable to the balance of rights they attach to democracy).

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<sup>4</sup> A.Michnik *Letters from Prison and Other Essays* trans. M. Latynski) Berkeley University of California Press 1985 p.137

The method of this critique is an examination of civil society's claims to support an expanded and deepened democracy through the lenses of four core normative categories, with Cohen and Arato's tri-partite model of civil society as a focal point of analysis. These core categories are the subject matter of the four main chapters of this thesis. They comprise:

(1) *Plurality*: families, informal groups, and voluntary associations whose *plurality* and autonomy allow for a variety of forms of life; (2) *Publicity*: institutions of culture and communication; (3) *Privacy*: a domain of individual self-development and moral choice; and (4) *Legality*: structures of general laws and basic rights needed to demarcate *plurality*, *privacy*, and *publicity* from at least the state and, tendentially, the economy. Together these structures secure the institutional existence of a modern differentiated civil society.<sup>6</sup>

The approach to these normative categories will be as literal as possible. That is, not taken in their usual sense but in their 'primary' sense – without the cultural assumptions and mystification that define them as normative 'givens'. The intention is to elaborate the *idea* of civil society in terms of normative necessity and sociological reality. A requirement of this is some significant revision to the central concepts of civil society theory and academic discourses. I will outline these re-definitions, re-considerations, and re-interpretations here in glossary form.

The first, and in super-ordinate terms also perhaps, is the term *privacy* vis-a-vis 'the private'. The common synonymy belies the antagonism and contradiction between the two. Much of the first chapter is given to elaborating this, for civil society crucial, difference. The terms are never here used interchangeably. *Privacy* refers to a development and, following a lengthy discussion of the *self*/subject in Chapter 1, one dependent on 'public' processes. 'The private' on the other hand represents the deepest rooted obstacle to the development of a democratised civil society. The second reconsideration is more a clarification and re-focusing of the relevant aspects of *publicity* to civil society. *Publicity* refers to the wider cultural and

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<sup>5</sup> J.L.Cohen & A. Arato *Civil Society and Political Theory* Cambridge Mass. The MIT Press 1997 p.33

<sup>6</sup> *ibid.*p.346

communicative aspects of society – almost a definition of society itself. From this, two reductions are then required to identify an ethical kernel to these aspects of *publicity*. The first is the ‘public domain’ as the primary source of self- and societal-perception. It provides the content of that part of society as it exists in our consciousness. The condition of this public domain, however, does not reflect the normative expectations of a public realm. For this reflection of the *idea* there must be a further reduction to a normatively constructed ‘public sphere’. Moreover, this ‘sphere’ must not be construed as a *particular sphere* rather it is the communicative aspect of countless forms of social movement and *plurality*. The public sphere, heavily laden with normative criteria, represents a form of discourse rather than a *site*.

The reference here to *plurality* as social movement is an indication of the re-adjustment to the understanding of ‘social movement’ in the context of a developing civil society in universal terms, as well as the basis of civil society in the advanced capitalist world. The shift in focus from social movements to social *movement* reflects the revised understanding of ‘freedom of association’. This association, forms of social relations or *plurality*, is, in Chapter 3, considered as subject rather than object in relation to freedom. In other words, it is the association itself to which the freedom must be ascribed or attached and not the individual exercising a freedom ‘to associate’.

I have also used two methodological divisions taken directly from other theorists that provide the analytical framework for a higher level of abstraction: George Schopflin’s ‘developed political systems’ vis-à-vis ‘undeveloped’ systems,<sup>7</sup> and Gramsci’s ‘economic-corporate’ and ‘ethico-political’ categories. According to Schopflin, ‘developed political systems’ are characterised by their primarily economic political agenda and priority, and references in this thesis to such a system have in mind the liberal democracies of North America and Western Europe. Systems that are ‘undeveloped’ are based more on ethnic and

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<sup>7</sup> G. Schopflin ‘Post-Communism’ in *International Affairs* 67 1991

moral identity of 'non-material interest'. The systems to which Schopflin specifically refers are those of eastern Europe where former communist rule had homogenised and atomised economic interests. His division is too clear-cut, even the questions concerning ethnicity do not exclude economic factors and 'material interests'. His contrasting of the 'robust democracies' of developed political systems and their unstable counterparts (in the East –and South?) is not, of course, unproblematic. First it should be pointed out that formal political exclusion is not only determined by 'non-material' interests, but is also the outcome of a politics based on private (material) interest. The link between enfranchisement and property still exists in 'developed political systems', albeit in a much weaker and seemingly unimportant form; that between the homeless (propertyless) and their denial of the right to vote. This formal 'material exclusion' may affect a minority (although this is no defence against consideration) but is only the sharply identifiable end of political exclusion.<sup>8</sup> More importantly for the wider argument, the conception of democracy must involve considerably more than exercising a periodical right to vote. Otherwise the less obviously brutal and exclusionary nature of 'developed' systems will continue to operate without democratic interference, unless we are to be content with a limited notion of democracy that is confined to formal political representation. Questionable 'development' notwithstanding, if we follow Schopflin's analysis we can then question the differences and similarities between the two types of politics, and whether at a fundamental level, that is crucial to the development of civil society, this differentiation becomes invalid. Throughout, I will make use of Gramsci's concepts of 'economic-corporate' and 'ethico-political' categories of political consciousness as identifications of *political development*. Thus 'civil society' is not re-defined, indeed consistency with the *idea* is maintained throughout, rather it is a re-clarification of its ethical bases as the development/realisation of this 'ethical society'. In its composition of the re-

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<sup>8</sup> The link between property-ownership and political exclusion shows a negative correlation with less than 3% of those who own property missing from the electoral register, whereas 38.2% of those who rent furnished

considered elements of some of the core categories of its theory, civil society amounts to the 'ethico-political' practical discourse of social movement.

I take civil society to mean a sphere of social relations which are not derived from the demands of economic or bureaucratic efficiency but which are vulnerable to the logic of these demands. It implies a democratic immanence that assumes, as a common feature, protest against the systems of domination that are received as a graspable issue. But these relations do not correspond readily to identifiable institutions. Gramsci's recognition of civil society's limits to an methodological device, rather than analytical, still applies to a developed form of what is essentially the same concept - that is, recognisably distinct from both the economic infrastructure of society and the political society of its 'superstructure'. One need look no further than 'the university' as an example of an institution which, although (historically and inevitably) contains elements of civil society, cannot be excluded from the functions of 'economy' or 'state'. A clear demarcation between civil society and the state, based on a separation of the institutions of a 'developed political system' does not hold. Only when (civil) society has found its political (democratic) voice can a substantive differentiation be made. Thus civil society as a tangible category of political sociology is peripheral. It is better understood as the convergence of protest formations and democratic struggles, albeit in inchoate form. Despite this *plurality* of objectives, civil-political activity of a non-articulated mass are struggles, protests, and campaigns which nevertheless focus on the same objects - domination by the state and the increasing command of 'globalised capital'. A cautionary note must be made here however; an implication of this is that all social movement and campaigns are normatively desirable. This is not the case. Reactionary elements in society do not meet the 'norm' of a civil society whose discourse is conducted at an *ethico-political* level. The *economic-corporate* level of particularism that is the discursive mode of these elements

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accommodation have never bothered to vote. Source: Democratic Audit Charter 88 1997

differentiates them from ethico-political social movement which, rather than pointing inwards and toward exclusion, has a universal orientation of inclusiveness. Furthermore, the discourses of the reactionary elements are more amenable to accommodation with the state. Civil society is the crystallisation of the normative components – re-assessed.

Cohen and Arato's model of civil society has the merit that the dualistic models lack in that it retains an awareness of the difference between 'bourgeois society' and 'civil society', even if it falls well short of theorising it adequately. A state-civil society distinction is fundamentally flawed if it proceeds from the premise of the wholly inadequate and outmoded concepts of 'private' and 'public' as bipolar distinctions. Pre-requisite of a radically democratised society are levels of political activity that go beyond those required of a 'realist' driven 'economic theory' of democracy; in other words the faith that Michnik talks of as pre-conditional. The 'faith' that does seem to exist in 'developed political systems' however, is tied up with the identity of 'consumer' rather than 'producer' and the power, real or otherwise, that goes with it. The great problem for civil society theory is that the 'faith' in the capacity to change society, becomes in effect a faith in one's capacity to change one's position in society, or the conditions of one's own existence into a 'privatised' consciousness that, I shall argue, cannot support the ethic of civil society. It reproduces a culture that throttles civil society, a culture that Cohen and Arato consider the 'undesirable' antithesis to their project. This democratic promise will be lost, however, if civil society is to be misinterpreted and then hamstrung by its own submission within the realist frame of reference. In order that their 'model' can become an intelligible whole as a theoretical reference, it is appropriate that a more generalised account of Cohen and Arato's civil society, its philosophical grounding and its theoretical claims, is offered. It is to this task that I shall turn first.

The thesis of Cohen and Arato is developed from the proposition that the safeguarding of liberties, and their expansion, depends upon the democratisation of institutions within civil

society. Their method is an exploration of rights and democratic legitimacy within a framework of discourse ethics and a conception of civil society (with a revised meaning of 'private'). Before turning to these two processes, I will first look at their balancing of the two principles of rights and democratic legitimacy against a background of three current and dominant debates in political theory.

There is the debate around concepts of democracy, realist and normative, in which we have listened to, at the one pole, the followers of Schumpeter's lead and, at the other, those who criticise the realist extraction of so many of its core principles that it no longer retains any resemblance to its original meaning. The second of these dominant issues is that between rights-oriented liberalism and communitarianism. The strength of this debate underlines the (theoretically speaking) ascendancy of the 'normativists' over the 'realists' in the first argument, thereby signalling perhaps a none too soon end to the ideologically professed priority of stability and efficiency as the essential features of democracy. In amongst the intricacies of this second debate, conducted at variously ontological and political levels, is the issue of greatest concern: "... whether the idea of freedom should be explicated primarily from the standpoint of individual rights or the community's shared norms".<sup>9</sup> Is the irreducible ethical entity individual or social? Or is it some combination of both? The third debate concerns the state, and its role (if any) in the provision of welfare. This last can claim some merit over the other two in that, as far as Cohen and Arato are concerned, it has not been going around in circles for so long. This particular concern has two entrances, economic and political. The protagonists have come up with variations on two broad positions: either "more social engineering, more paternalism and levelling, in short, more statism"<sup>10</sup> or a free market perhaps coupled with an authoritarian social and political organisation.

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<sup>9</sup> J.L.Cohen & A Arato op.cit p23

<sup>10</sup> *ibid.* p.27



Initial criticisms to make are that their thesis of a 'politics of influence', emanating from civil society, does not offer an alternative to the dualist orthodoxy; but its dependence on liberal concepts ultimately reduced to 'private individuals' prevents this. Another fundamental problem of their thesis is their application of 'self-limitation' as a principle. The *principle* of self-limitation, that has become a principled attachment to civil society, is extremely problematic. Cohen and Arato's application of it ties up social movement theory in 'identity politics' and sectional (private) interest. The term is used in civil society theory as if there is some firm understanding of where these limits are supposed to be applied. The strictly bounded communicative action of the 'lifeworld', as we shall see below, offers conceptual definition for self-limitation, but it inevitably limits the development of democracy when efficiency dictates the limits of the democratic project. Democracy is subordinated to the demands of efficiency, whether they are economic or bureaucratic.

The problem of limiting democracy was recognised by the civil society of Poland in the 1980s. It was aware that the democratisation of 'the economy' is an integral part of the democratisation of society as a whole; at the very least it cannot remain immune to it if democracy is to be a radical current that, by its very normative demands of self-governance, should have no limit. In Poland, democratisation of the economy was very much a part of the vision of society that the Solidarity Congress of October 1981 put forward. The 'self-governing republic' enshrined in the programme of that congress was founded on such principles as "self-management ... (advocating) ... transferring the control of factories ... to democratically elected workers' councils".<sup>11</sup> The democratic opposition's drive was not limited, or limiting; it demanded power (in this case in the economy) formerly wielded by the state. But the democratic objectives of Solidarity were pushed off the agenda by the 'realism' of the market creed, and its ideologically constructed intrinsic relation to democracy in the

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<sup>11</sup> Z.A.Pelczynski 'Solidarity and 'The Rebirth of Civil Society'' in J.Keane *Civil Society and the State New European Perspectives* London. University of Westminster Press 1999

1990s. So complete was the transition from solidarity to market individualism that the latter became identified with freedom and incompatible with the former. As the outcome was a neo-conservative politics and economics, the danger of over-estimating the influence that 'civil society' brings to bear on society as a whole serves as a reminder that civil society is a vulnerable enough proposition without the self imposition of limitation. This fracturing of civil society in Poland highlights the fragility of the necessary solidarity of civil society when subjected to the privatising effects of the market. It demonstrates with stark clarity the shifting foundations of 'moral choice and self-development', the notion of *privacy* that anchors a normatively necessary civil society.

A major problem for Cohen and Arato's thesis is that a culture of privatism is not the 'most appropriate' to a modern civil society; even if such a culture makes no difference to the liberal conception. But a culture of privatism is endemic in Western societies, indeed it is the defining social phenomenon of a 'developed political system'. If this liberation from the state can be achieved 'without it necessarily becoming bourgeois', then it ought to be a matter of far greater concern as to what it is dependent upon, and how the obstacles to these conditions can be addressed. The implication of 'self-limitation' is that the mere detailing away of capitalist economy into some category not amenable to a hermeneutic understanding does not address the problem of civil society becoming 'bourgeois'. However, Cohen and Arato maintain that their version of civil society can offer some lead out of the impasse of the debates that dominate political theory. I will turn briefly to look at the validity of these claims.

The first task for Cohen and Arato here is the synthesis of the normative core of participatory models of democracy with the institutional requirements of modern complex societies. But this amalgam will only reproduce a vitiated expression of its core, subsumed under the 'realist' accommodation of the demands of efficiency. Although 'conceding some terms to the pluralist school of elite democratic theory', they reject their own inclusion on the

grounds of differences in key areas: “[they] do not accept the view that the ‘civic culture’ most appropriate to a modern civil society is one based on civil privatism and political apathy”.<sup>12</sup> However, their claims that their ‘revision of the private’ can avoid the dangers inherent in neo-conservatism and the fragmentation of civil society are ill-founded. Their revision of ‘the private’ is more a relocation of it from institutions to the human consciousness. “The two sets of public and private dichotomies, one at the level of subsystems (state/economy), allow a distinction between two meanings of privatization and ‘publicization’”,<sup>13</sup> and one of the consequences of this distinction is that “... economic liberalization [does not] logically mean the erosion of public and private spheres”<sup>14</sup>. But if we understand the notion of ‘private’ in Cohen and Arato’s model as *privacy* in the civil society theme of individual self-development and moral choice, and take Poland again as the test case, we can see that this erosion is very much a consequence. The most obvious criticism to make is that little consideration of some of the most hierarchically structured and discreet systems of authority within ‘the economy’ as part of the democratic project inevitably means less participation; consequently there is less of the normative component of the participatory models, and more the efficiency of the realist model. Any immanently derived will to democracy becomes stifled and substituted with an emphasis on *legality* and ‘rights’ that, in their privatistic exercise, subvert the whole democratic project that motivates civil society.

The second of the perennial problems of political theory with which civil society has to contend is the matter of whether freedom is to be pursued from an individually or a socially located starting point of analysis. The argument that Cohen and Arato offer is that the political implications, of rights-based liberalism and democratic forms of communitarianism, are not antithetical even though their philosophical origins are very distinct. They contend that “what is best in rights-oriented liberalism and democratically oriented communitarianism constitutes

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<sup>12</sup> J.L.Cohen & A.Arato op.cit p.35

<sup>13</sup> *ibid.*p.430

two mutually reinforcing and partly overlapping sets of principles”.<sup>15</sup> Their theory claims a subscription to universal principles, which underpin rights discourse, without having to subscribe to an individualist ontology. I will dispute this claim in chapter 1 by arguing that their idea of ‘moral consciousness’ is just that. Their universality rests on the regulative principles of rational public debate.

What we have then is an embedded individual rights bearer whose capacity to rationally communicate with others makes good his or her claim to the validity of those rights. But their theory rests on the ability of an individual to transcend its environment and recognise the unconscionable in its conflict with law. The ‘politics of influence’ of Cohen and Arato’s civil society has to depend on similar assumptions made, more explicitly, by those who advocated a ‘politics of conscience’.<sup>16</sup> Their argument rests on two assumptions: the existence of an aspect of consciousness that ‘independently’ reflects on law, or more complete, on social norm and the foundation of tradition; and that there is sociological means for sufficient democratic counterweight to a proliferation of ‘rights’ that is characteristic of the privatised societies of ‘developed political systems’. But one only has to look as far as the ‘first generation’ of the United Nations charter to see how the ‘hidden positive duties’ attached to rights of the ‘freedom from’ variety are barely given an acknowledgement. Or to Poland to see how an ‘escalation’ of rights within a society can erode the necessary democratic ‘overlap’ that might arise from a discourse of rights that emphasises ‘freedom to’.

Their claim to some reconciliation of the third pre-occupying debate in political theory is not well founded either. This involves the relatively new antinomies of the statist/neo-conservative debate. They are keen to distance themselves from the neo-conservative argument by stressing their objections in two key areas. Firstly, they agree that “certain features of the welfare state fragment collectivities, destroy horizontal solidarities, isolate and

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<sup>14</sup> *ibid.*

<sup>15</sup> *ibid.* p.27

render private individuals dependent on state apparatuses”<sup>17</sup> but they also recognise that unrestrained capitalist expansion has the same destructive consequences<sup>18</sup>. The second key difference refers to ‘tradition’ and its central role in the political dimension of the neo-conservative remedy. They refer in their thesis to a ‘post-traditional civil society’ that is founded on a ‘post-traditional relation to tradition’, but never elaborate this, what sounds like a post-modernist, relation.

Problematically for Cohen and Arato, in the first key difference, their conceptual framework cannot challenge the direction towards the market that their model would inevitably take. These limitations will become implicitly as well as explicitly clear during the course of this thesis. But broadly, their reliance on legally enshrined rights as the basis of their understanding of civil society provides the conceptual foundations for ‘the market’, and its maintenance in ‘developed political systems’.

In their second objection to the ‘neo-conservative remedy’ Cohen and Arato are altering the very conception of tradition and how we relate to it. Instead of ‘bowing’ to it as a legitimating principle of stability and ‘governability’ in the neo-conservative prescription, there emerges, in Cohen and Arato’s civil society, a ‘critical and reflective relation to tradition’. Habermas’s rationalised lifeworld, a product of the modernisation process, has by communicatively grounded interaction opened up the ‘sacred core’ of traditions, norms, and authorities. It is true to say that parts of this ‘sacred core’ are not intrinsic or peculiar to capitalist economy. Indeed, the idea that patriarchy, for example, as a structure of power integral to capitalist power structures is no longer, if it ever was, tenable. But this fails to recognise capitalist-consumer economy as part of this ‘sacred core’; it comes to be seen as a mechanism for a critical and reflective relation to tradition, rather than a subject for critical reflection.

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<sup>16</sup> V.Havel ‘Politics and Conscience’ in *Open Letters* op.cit

<sup>17</sup> J.L.Cohen & A.Arato op.cit p.25

Cohen and Arato offer a prescription before identifying the hegemonic culture of consumer-capitalism that is easily accommodated by and indeed provides the conditions for the application of the neo-conservative remedy. Their solution is founded on *legality*: "... to guarantee the autonomy of the modern state and economy while simultaneously protecting civil society from destructive penetration and functionalisation by the imperatives of these two spheres".<sup>19</sup> The maintenance of 'society' (that is its defence not the control of) by legal means runs counter to the development of civil society as radically democratic *idea*. *Legality* is the discursive legitimating mechanism of the state in 'developed political systems'. The discourses of *legality* contribute to the political alienation of 'developed political systems'. It is problematic for democracy in a number of ways including its replacement as the means of accountability of government, and moral underwriting of action at the levels of both the state and the *self*.

The revised theory of civil society that Cohen and Arato offer is likely to contribute little to radical democratic extension through the institutions of civil society. This revision establishes a philosophical framework to provide a political ethic that can articulate the claims of rights oriented liberalism and of radical democracy. It then revises the conception of civil society as the private sphere, so that the implications of such an ethic can materialise. The framework is constructed from a defence of discourse ethics "as a political ethic and as a theory of democratic legitimacy and basic rights"<sup>20</sup>, the only means available to reconcile, they argue, the claims of rights-based and democratic discourses. Its purpose is to complement already existing forms of democracy and not to replace them; to apply the idea of the public sphere to (influential) political effect. Where civil society refers to rights, of *privacy*, *publicity* (free expression), and (formal-legal) equality, the role of discourse ethics is to provide the counterweight of legitimate democratic principles. As Cohen and Arato put it " the

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<sup>18</sup> *ibid.*

<sup>19</sup> *ibid* p.25

rediscovery of the key components of civil society by contemporary collective actors, however, does not in itself imply its normative justification. The projects of social movements are hardly self-validating”.<sup>21</sup> ‘Discourse ethics’ is, then, pivotal in its task of limiting the tyrannies that develop in the power structures of society itself, particularly those aspects of *publicity* that fuel them.

The peculiarity claimed by discourse ethics as a political ethic that distinguishes itself from other forms of political legitimation is that it focuses on “the normative necessity and empirical possibility of democratisation in civil society”<sup>22</sup>. Here Cohen and Arato defend representative democracy as the most accommodating model for the democratisation of civil society as ‘the only feasible means of will formation’. All existing forms of democratic procedure can be complemented, and in themselves democratised further, when subject to discourse ethics but they are not replaced by the outcome. There are two links between discourse ethics and its supplementing of ‘existing democracy’, and civil society. Firstly, “civil society and the existing forms of representative democracy politically and juridically presuppose one another”<sup>23</sup>, and secondly, an “institutionalised *plurality* of democracies”<sup>24</sup> can only be conceived in civil society. Characteristic of modern civil societies and representative democracies is a ‘political society’ that mediates between the two by means of principally the public sphere and voluntary associations.

Representative democracy may be the most effective framework of settling disputes that arise within society, although the authority of this representation is legally rather than democratically grounded. The whole process of reaching a consensus is dependent on the ‘condition’ of the public domain whose channels of communication determine the agendas to be settled. This is clearly problematic for *ethical*- discourse. Moreover, self-limitation means

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<sup>20</sup> *ibid*

<sup>21</sup> *ibid* p.428

<sup>22</sup> *ibid* p.103

<sup>23</sup> *ibid* p.23

that it cannot, as can the steering mechanism of money, issue enough momentum in the public domain for its proposed actions to make a necessary transition to a 'politics of influence'. Coupled to this claim is that modern civil society potentially democratises representative democracy itself: "This is in line with the tendency of discourse ethics to defend existing forms of democracy while simultaneously demanding further democratisation"<sup>25</sup>. But this tendency must hold up against the 'logical' power behind the intellectually accessible appeals of the 'cultural production' of the public domain. The political implications of this production will be examined in Chapter 2, and seen as an impediment to any developing ethical discourse in the 'public sphere' (reconsidered), and further elaborated in Chapter 3 as the impediment to its expression in 'social movement'. A criticism to make here of discourse-ethics, so applied, is that the political legitimacy Cohen and Arato seek for their model externalises its democratic element. It sets the terms upon which an abstracted rational agreement can be reached. This position neglects the democratic component of solidarity that inheres in civil society itself. It becomes effectively the legitimating ethic of a 'politics of influence' that can only reflect the divisions of society based on a politics of identity. This particular problem is an important part of the argument of Chapter 3, where I will critically examine the concept of 'identity' as part of the overall critique of the paradigm of the 'new social movement' (N.S.M.).

Democratisation in terms of civil society sets up two points of concern for Cohen and Arato: what the structural possibilities of and limits to democratisation are, specific to each space (political, economic, and civil society); and the pluralisation of democratic forms within each space. 'Direct' democratic models are rejected as incapable of allowing the steering mechanisms of the state and the economy to function effectively. Direct participation at the state level is precluded by the requirements of due process and efficiency ("at most,

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<sup>24</sup> *ibid*

<sup>25</sup> *ibid* p.97



participants can work at this level indirectly through party and parliamentary supervision, control, and *publicity* – in other words, through the institutions of political society”.<sup>26</sup> Here the principle of self-limitation must be applied, and the tendency of discourse ethics toward further democratisation must be curbed. Similarly with the economic system; the democratising process must be self-limiting as Cohen and Arato warn that “... the requirements of efficiency and market rationality can be disregarded in the name of democracy only at the cost of both”<sup>27</sup>. The institutionalisation of various forms of democracy within the economic sphere ought not go beyond the point at which “efficient steering is threatened”<sup>28</sup>. Democracy itself becomes subject to the demands of the efficiency of material accumulation. The efficiency required for the meeting of needs becomes indistinguishable from the efficiency of the production of choice. It is to the institutions of culture and communication (*publicity*) and its dominant cultural norms that we must look to ascertain the sorts of levels of importance attached to ‘efficiency’, and at what it is we want to be ‘efficient’. Of concern is ‘the uncontrollable economy’ (of economic globalisation and expansion of the market into all aspects of life); it comes to be perceived as a ‘mechanism for democratisation’. This problem of ‘economy’ for civil society is dealt with in Chapter 2 in the discussions on ‘the public domain’ and the narrowing of the democratic vision by confining terms of reference to material access to it. These limits to the democratisation of the economy (and state), however, “would be partly compensated for by the democratisation of social associations that can indirectly influence the state and economy as well”<sup>29</sup>. Constant rational scrutiny of these associations can promote not only a more democratic local government, but can also nurture a wider ‘democratic political culture’. But apart from anything else, this

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<sup>26</sup> *ibid* p.365

<sup>27</sup> *ibid*

<sup>28</sup> *ibid*

<sup>29</sup> *ibid* p.372

culture is an inseparable question from determining a 'more democratic government' at any level.

Their revised model of civil society, Cohen and Arato claim, is capable of addressing number of crucial theoretical problems. Its claims, for instance, as a product of modernity, to a 'post-traditional relation to tradition' stems from a rationalised lifeworld which subjects traditional norms to rational scrutiny on variously reflexive levels. The democratic revolution 'goes on' and is deepened in this fashion. Certainly the breaking down of cultural and social 'standards' is characteristic of the 'crisis of absolutes' in modern capitalist societies, but the inroads made in the different spheres by democracy is asymmetrical. The most salient instance of this is the emancipation of women, where the pace of change varies from the rapidity and successes of the ongoing sexual revolution at the social level to the glacial speed of change in the political and economic spheres. (This point will be returned to in more detail in chapter 3 on *Plurality*).

Cohen and Arato's thesis seriously underestimates the effect that 'the economy' has on civil society, or can have on its possible development. It matters little that the problem (of 'economy') can be abstractly set aside when:

... the danger lies in the fact that the totalising logic and the coercive power of capitalism become invisible, when the whole social system of capitalism is reduced to one set of institutions and relations among many others, on a conceptual par with households or voluntary associations. Such a reduction is, in fact, the principle distinctive feature of 'civil society' in its new incarnation. Its effect is to conceptualise away the problem of capitalism, by disaggregating society into fragments, with no overarching power structure, no totalising unity, no systemic coercions – in other words, no capitalist system, with its expansionary drive and its capacity to penetrate every aspect of social life.<sup>30</sup>

This point is well made. Although there is a tendency in it to reduce the analysis of power structures to 'the economy' even if we can find in E.M. Wood's comments a tendency toward

an economic analysis of power structures. The threat to civil society (at least the kind that Cohen and Arato envisage) from the culture of the market as an inevitable product of 'capitalist democracies' is nonetheless well summed up in the phrases 'expansionary drive' and 'capacity to penetrate every aspect of social life'

The aim of Chapter 1 is to reconstruct the understanding of *privacy*; or perhaps re-affirm its literal translation of *self-development and moral choice*. The chapter will begin by assessing the legitimacy, both substantive and normative, of the concept of 'the private'. The argument then goes on to show how this complex, and sometimes contradictory, concept of property ownership, underlines the condition of the intimate sphere, and ultimately the course of self-development. I will develop the critique of 'the private' by following its logical course of sociological and political development. The notion of 'the private', as Salvador Giner points out, "... becomes the most characteristic achievement of a sound and strong civil society" yet an excess of it 'depoliticizes democracy'.<sup>31</sup> This 'excess of *privacy*' will be considered here as a 'privatism'. The question cannot be addressed fully without proper assessment of the public domain, and the discussion overlaps with that of chapter 2. It may be more logical to examine the public domain before presenting 'privatism' as an obstacle to democratic expansion; either cause, if they are wholly separable, originates there.

The manifold processes of 'privatism', form one of the more formidable 'enemies' of civil society'.<sup>32</sup> They are the basic cultural currents and practices of 'developed political systems' in effecting the idea of the development of the self as a 'private affair'. A fetishised conception of 'the private' has enveloped *privacy* and effectively prevented its development both ontologically and politically. Stripped of its reified status the concepts 'the private' is on a different trajectory to self-development, if they are not entirely contradictory. Politically,

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<sup>30</sup> E.Meiksins Wood *Democracy Against Capitalism* Cambridge University Press 1995 p.241

<sup>31</sup> S.Giner *Mass Society* London. Martin Robertson. 1976 p.47

and in terms conducive to civil society – that is ‘ethico-politically’, ‘the private’ de-politicises society, thus denying the possibility of retaining anything much of the normative core of democratic theory.

There are questions to be asked of *privacy* that can only be raised at an abstracted level: Is there any validity attached to a concept of ‘the private’ that can withstand a critical inquiry into the substantiveness ascribed to it? Or put another way, can there be, as an actual sphere of social relations, an objectivity from which to claim rights? If the answer is ‘no’, then the other objection to raise against ‘the private’, on the normative grounds of its desirability, would then seem redundant. But this is not the case. Even if there is no objective foundation to ‘the private’, it commands a ‘reality’ in ‘developed political systems’ that requires examination for its fitness for an application of the *idea* of civil society. Included in this critique of ‘the private’ are references to feminist perspectives, which highlight some of its more the repressive effects.

The definition of ‘the private’ is revised in Cohen and Arato’s model rejects the ‘oppositional’ perspective. The more orthodox bifurcation of public and private is a ‘spatial metaphor from which we cannot reason’, “[i]nstead, we must start from the assumption that *privacy* attaches to the individual in certain capacities (as an autonomous moral subject”.<sup>33</sup> But this is a mistaken assumption of ontology that afflicts the development of civil society theories like theirs from ‘moving beyond’ the kind of ‘reformism’ they condemn,<sup>34</sup> (and to whose discourses they can only contribute).

By way of introducing ‘the subject’/*self* into the discussion, I will look at this question of ontology from a discussion of *conscience* to underline the problematic nature of ‘the self’ in academic civil society discourse. The notion of ‘conscience’ is varyingly explicit in some of the earlier East European discourses on civil society as basic to the opposing the ‘The

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<sup>32</sup> See J.A.Hall (ed.) *Civil Society: Theory, History and Comparison* Cambridge. Polity 1995

<sup>33</sup> J.L.Cohen & A.Arato op.cit p.430

Method'<sup>35</sup> of the communist state, and developing a kind of politics qualitatively different from the liberal representative variety in the 'developed political systems' of the West.

The argument will develop in Chapter 1 by examining the distortion of *privacy* as 'privatism'. The roots of this development lie in the philosophical heritage of conjoining property (as 'private') and self-development (as freedom). I will look at Hegel's doctrine of property to establish this link, and argue that this 'embodiment of external objects' (as part of an ethical process, originating in 'the family' and resurrected by 'corporations' and 'estates') cannot provide the foundation for the development of civil society as an ethical ideal. There is a general division among the studies of the phenomenon of privatism. There are those that see it from an ideological perspective, and those who see it as a retreat from the loss of public spaces and institutions.<sup>36</sup> But I find no reason why the two perspectives cannot be drawn from simultaneously to clarify what is in fact a 'symbiotic' relation. In Chapter 2 I will approach this problem from the perspective of the domination of the public domain by the state and, particularly, 'the market'.

In the latter part of Chapter 1 I will employ the Gramscian concept of 'intellectual and moral reform'.<sup>37</sup> This 'reform' is *representational* of 'an autonomous moral subject' but it is not conceptually and *actually* dependent upon this individualist account of agency. It represents what the psychiatrist Victor E. Frankl describes as being the 'last of the human freedoms' – that is, a change of one's own attitude. Intellectual and moral reform must entail receptivity to (public) discourses that reflect the contingent nature of social formations (and 'who we are'). An awareness of the possibility of such reform may be experienced as a cognitive dissonance regarding one's own position in society, or of the necessity of one's own

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<sup>34</sup> *ibid* p.26

<sup>35</sup> This is how Czeslaw Milosz refers to dialectical materialism and its omniscience in all matters on *human* inquiry. C.Milosz *The Captive Mind* London. Vintage Books. 1988

<sup>36</sup> Proponents of the former view would include Louis Althusser and Antonio Gramsci; of the latter, Jurgen Habermas and Andre Gorz.

actions, or the value of one's own priorities. Thus a 'change in attitude' is not by course an ethical progression. Certain 'directions' to this re-form must be taken if its to be the 'consciousness' of *applied*, or 'living the life espoused by the *idea* of', civil society. Unequivocally this reform must direct itself away from 'the private' as the primary informant of a socio-cultural base to society, and embrace a 'public' conception of *self* and *development*.

The concern of Chapter 2 is essentially this public domain. I will try to theorise the normative elements of *publicity* as the required condition of 'the public sphere'. This sphere reflects the ethico-political discourse of civil society, as social *movement*. It is not, therefore, a *site*, but is, rather, a 'content' of specific tendencies. It is important to distinguish such a mode of discourse from the entanglement of *publicity* in its wider sense. The hegemonic culture and communication of the public domain retains elementary features of 'the private': from the ownership of media as private property to the '*privacy*' of culturally constructed conducts that manifest in privatism. The first part of the Chapter dissociates the term '*publicity*' from the notion of 'political publicness', and certainly from what the 'public sphere' requires as a normative understanding. The 'public sphere' must reach a certain level of normative criteria if it is to be conceptually lifted from the wider public domain. Once the concept of the 'public sphere' has been established, the Chapter will go on to consider its political application. Some of the points raised here concern themselves directly with the question of the relation between civil society and the state, and so overlap onto the subject of Chapter 4 on *legality*.

I will consider Habermas's 'core-periphery' model of democracy that provides a framework for a 'politics of influence', but it is flawed before any criticism regarding the 'state-civil society' relation can be mounted. A 'crisis of conscience' at the 'periphery' translates as political apathy and disinterest that denies any pretensions to a participatory form of democracy. It reduces its 'core' to the 'limit' of democracy as a realist model, such as is the

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<sup>37</sup> A.Gramsci *Selections from Prison Notebooks* Q.Hoare and G.Nowell-Smith (eds and trans.) London. Lawrence & Wishart. 1971

established institution of 'developed political systems'. Attempted up-dating of Habermas's public sphere, following developments in information and communication technology fails to understand the democratic *idea* inherent in civil society discourse. It may extend the (political) choices available to the subject as voter (or consumer), but it does not, in this narrow fashion at least, deepen the idea of democracy as something to be assumed rather than consumed. It must be clear, however, that these technological advances are not, for the sake of the *idea* of civil society, to be dismissed as the product of an 'alien' or 'inhuman' rationality and therefore antipathetic to civil society. Indeed they are essential to its realisation. Ambivalence over the development of public communications is nothing new. The political implications of the development of cinematography caused a divide in the prognoses for democratic development.

Parallels must be made concerning the contemporary development of communications and media cartels. A substantial part of the Chapter is given to focusing on the communication and cultural production of the 'public domain', in the condition of 'developed political systems', and its implications for democracy, and so for civil society. The conclusions reached on discussions of 'cultural production' and access to it in the public domain does not, however, provide much of an optimistic platform from which to herald the development of civil society. Whilst interests remain at the 'economic-corporate' level of consciousness, the 'ethico-political' foundations of a 'normatively necessary'<sup>38</sup> civil society cannot be laid.

Any prescriptive political theory must include an assessment of what is feasible sociologically, according to its own normative criteria. Cohen and Arato identify this element in their own theory thus: "Social movements constitute the dynamic element in processes that might realise the positive potentials of modern civil societies".<sup>39</sup> Chapter 3, on *plurality*, will examine this dynamic and argue it is better understood as social, or democratic, movement rather than as specified social movements based on 'economic-corporate' categories of

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<sup>38</sup> J.L.Cohen & A.Arato op.cit p.23

<sup>39</sup> *ibid* p.492

'identity'. To this end, the Chapter begins with an examination of the social relations as described in the category of *Plurality* (families, informal associations ...). 'The family' is of particular importance here as it is, as the 'intimate sphere', the source of communicatively based desirable ethical relations. But it is not just its patriarchal or bourgeois form that is problematic here (for Hegel this formation was 'the ideal' anyway), it is the privatisation, rather than an ethical grounding, of social relations that this intimate sphere effects. A critical assessment of the relations of the 'intimate sphere' shorn of all 'traditional' connotation, shows it to be antithetical to the *public* nature of *privacy*.

The 'ethical root' of civil society must be sought elsewhere; in social relations that are 'public' in their origin and identifiably 'ethico-political'. The Chapter will move on to establish the important differentiation of social movement and social movements. With reference to the New Social Movement paradigm, I will first differentiate between freedom *of* association and freedom *to* associate. The development of the freedom *of* association reflects the development of social movement into an 'ethico-political' category. Following a brief overview of social movement theory, I will focus on Cohen and Arato's analysis of the 'dual-organisational logic' of *new* social movements. It is their view that the relation of 'new' movements to their predecessors is of less importance to our understanding of them than their relation to contemporary civil (and political) society. Their treading of a fine line may recognise the tensions between 'the political' and 'the cultural' but does little to resolve them. The principal lesson from any historical link with 'old' movements (and here we/they are talking about the labour movement) is that the political process of mediation failed the aspirations of the original movement, a point completely missed it seems by Cohen and Arato's 'politics of influence'. This in mind, the hierarchical and bureaucratic inevitability that stage theory pessimistically resigns itself to appears to be accurate. 'Movement



development' is denied by the consolidation of its own ('economic-corporate') identity within the established and formal political framework, however much its influence might be.

Much of the literature on this 'secondary' question tends toward the view that the social movements of the 1960s and 1970s were in a number of ways qualitatively different - a new phenomenon. Against this current, Craig Calhoun argues that the links have not been given due recognition, nor has the importance of more peripheral movements (religious; abolitionists; women's) been adequately stressed.<sup>40</sup> There is, I shall maintain in this part of the chapter, a link, although differing in identity and context, which represents an ethical lineage in the form of democratic struggle.

But even if we eschew this relation with the 'old', the relation of social movements to civil society in the framework of Cohen and Arato is still problematic, for two reasons. First, (in their own terms of reference) it does not allow for social movements to 'cross over' from the *lifeworld*<sup>41</sup> and subsequently does not make clear what the civil/political society 'mediating' link is. The second problem, a corollary of the first, is the estrangement of civil society actors from their political representatives. The strategy, or rather *principle*, of 'dual-logic', principle that inheres in the N.S.M.'s 'thematization of their own newness'<sup>42</sup> is, according to Cohen and Arato, the resolution to this problem, or at its least is a significant advance towards it. Their claim is that the N.S.M.s (and here they are talking about the American feminist movement) have provided the analytical basis for rejecting the linear development of stage theory. But where this 'thematization' is supposed to involve a 'fluidity of labour' (actors crossing the civil/political divide) that prevents the fatal hierarchy of stage theory, it is a matter of empirical accuracy that political representation of civil society actors is viewed as being one

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<sup>40</sup> C.Calhoun ' 'New Social Movements' of the Early Nineteenth Century' in K.Nash (ed.) *Readings in Contemporary Political Sociology* Oxford. Blackwell. 2000.

<sup>41</sup> J.L.Cohen & A. Arato op.cit p.354

<sup>42</sup> *ibid.*

of estrangement, and the only feasible conception of a 'politics of influence' is the one that fits 'developed political systems'.

The Chapter will conclude with perhaps its most difficult task, that of grasping the 'ethico-political'. The difficulty is compounded by its essential quality of being without definition by way of any formalised ideologies. Its terms of reference demand that core categories of moral political theory are 'turned inside out' so that any normative elements can be discerned properly. Defining the term negatively against the category of the 'economic-corporate' is obviously a first step by forming at least an impression of what it is not. I will offer a theoretical interpretation of this Gramscian concept that offers a more accurate normative requirement of social movement than the N.S.M. paradigm, and reflects more accurately the forms of social movement in ascendance at the beginning of the 21<sup>st</sup> century.

The critique of *legality* in Chapter 4 must not be confined and subsequently confused as a critique of law and the practices and institutions of the state legal order in 'developed political systems'. *Legality* involves discourses that go beyond the precision of the positivist and rational form of law it represents. The legal language of objectivity and authority is transformed into a language of moral justification and guideline to conscionable action. The very concept of *legality* can ensure a political allegiance as well as democracy. The Bush presidency is legitimate because of *legality* rather than democracy even as an attenuated quantifiable system of voting. In this particular instance, the legal 'precision' may not have been fully understood by the majority of the electorate but its verdict was to enough legitimise a government in the 'most developed' of all political systems. Such a mystification cannot be accommodated by the transparency demanded by the *idea* of civil society.

The chapter will start by establishing an understanding of 'law', to ascertain what, if anything, sets it apart from *rules*. For insight into the role that 'law' (as *legality*) plays in the lives of subjects of 'developed political systems'. Preliminary to an investigation of 'law' is

the question of 'the subject of law'. The 'subject of law' is not necessarily a human person. It can include impersonal categories such as corporations, and factional groups and identities in society such as recognised minorities who are ascribed specific legal rights as categories of 'the subject of law'. 'The family' is another subject of law; indeed, in its bourgeois form, founded on a marriage recognised by the public power (God, legal statute, etc.), is an institution created by law. But, for a critique of law that is interested in its impact on social relations, the investigation of 'the subject of law' must be focused on the *self*.

A materialist theory of law that can account for the *authority* it holds as part of the consciousness is required. *Legality* is a discursive authority that provides the state legal apparatus its legitimacy as 'public power'. This is where 'law' departs from 'rules', but not in an inherently different or qualitative way. It is more a superiority of *authority* in its extent than an intrinsic differentiation. A substantial part of the Chapter is given to a critical analysis of the discourses of *legality*. Rights, justice, neutrality etc. are all presented as incorporated in the 'legal-ideal'. The Chapter will then examine the problematic relation between civil society (as ethico-political social movement) and *legality* (as form of public power or authority).

It is on the question of the *self* that a critique of the normative assumptions of civil society begins and ends. The future development of democracy, if there is to be any, depends on this question. Democratic theory and civil society theory are being forced by the conditions of politics in 'developed political systems' to converge. The political alienation that characterises these systems at the beginning of the 21<sup>st</sup> century suggests that we need to reconsider and reconceive much of what is thought to be the footings of 'democracy' – in generic categories: *privacy*, *publicity*, *plurality*, and *legality*. But many of these conceptions, inherited from the liberal tradition are, in their *actuality*, limiting to the expansion of democracy. Civil society, in all its variegated forms of contextual specificity, the only possible aspect of society that can

accommodate a radical form of democracy that is an assumption of power in society, and not merely expanded in 'political society'. A democratic civil society *becomes* political society.

## Chapter 1

### Privacy

#### (A Domain of Self-Development and Moral Choice)

The definition of *privacy* in civil society theories as the domain of individual self-development and moral choice is scant as a justification of the concept as a normative element of a radically democratised and ‘post-traditional civil society’.<sup>1</sup> A more thoroughgoing understanding of its constitution is required if it is to provide this society with one of its ethical bases. First and foremost, it is important to distinguish the concept of *privacy* from ‘the private’. The latter is common currency in social and political theory but is an anachronistic and inapplicable concept that cannot reflect the reality it claims, neither can it withstand a critical inquiry into its desirability. Cohen and Arato concur with the first part at least; they correctly point out that: “One cannot reason from a spatial metaphor or division among institutions to designate the boundary between private and public, between what should be left to the moral choice or personal judgement of individuals and what should be legally regulated”.<sup>2</sup>

However, the attachment to individuals, that is this interpretation, is not unproblematic. Firstly, the proposition that we must start from the assumption that *privacy* attaches to the ‘individual as an autonomous moral subject’ presumes an autonomy that is derived from an individualist ontology (that Cohen and Arato claim to reject) and condemns civil society theories to an idiosyncratic version of liberalism. I will consider the problematic notion of moral autonomy as a critique of the concept of ‘conscience’ that was an important original element of civil society theories, but its political application is/was negligible since this ethical

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<sup>1</sup> J.L. Cohen & A.Arato op.cit p.14

dimension has been inadequately theorised. Any political application of such 'agency' is doomed by the very nature of its ontological misrepresentation; the subsequent neglect of 'the subject' consequently overlooks the cultural conditions that are either 'appropriate'<sup>3</sup> or otherwise.

The reconstruction of *'privacy'* in this chapter challenges fundamentally the notion of moral autonomy. First, I will show that *'privacy'* viewed as an objective and substantive category is unsustainable; that there is no basis to what is traditionally considered to be 'private', and then go on to show that its 'reality' exists only as a part of a reified consciousness. The second important consideration of *'privacy'* (as interpreted/translated as 'the private') is its 'negativity' from a political perspective of furthering the cause of democracy. Indeed it could be the arbiter of action that is neither sympathetic nor conducive to a society that has radically democratic aspirations. Secondly, legal demarcation is not equipped to counter the threat to civil society posed by a deformed version of *privacy* (certainly an 'inadequate' one) in the form of privatism. If *privacy* is to serve as a core normative category of civil society then there are interpretations of its precise meaning to be reviewed, some of which lend themselves to a political application that has no part to play in the 'ongoing project of democratisation', and some of whose distortions will actively prevent the necessary 'political culture' for such a vision.

The development of the space for the 'exercise' of a 'reconsidered' *privacy* is not within some 'private sphere', but is in the social milieu: the realm of moral 'choice' and self-development. But this requirement is undermined by two interlocking processes that form 'privatism'. To claim that privatism is a deformation of *privacy* is not only an acknowledgement of the conceptual legitimacy of the latter, but also requires some definition from which to measure the legitimacy of the claim. In other words, rather than a diversion

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<sup>2</sup> *Ibid* p.352

from some ontology that is 'natural' or 'correct' for human being, it is a development away from the necessary conditions of a radical democracy, although it would be fair to say that these are inextricable. As *privacy* has been allocated a subjective category, rather than as a term that applies, as in its common understanding, to objective sociological spheres and relations, a critique of this common understanding will be followed by a contribution toward its reformulation and reconstruction. From this a working definition of *privacy* will be deployed as a means of analysing privatism as a deformation. An unavoidable task in the compilation of this definition is an exposition of 'the self', or 'the subject' of what it is that is being developed and making moral 'choices' (and the ramifications for morality, or 'a moral tendency').

If *privacy* is to lock the compound normative unity that civil society theories point to, then its precise meaning must be identified. For this it is necessary to debunk some of the 'givens', that are in fact confusions of self-identity, associated with the contingent categories of 'the private'. The main proposition of this chapter, following the conclusions reached on the initial investigation of 'the private'/privacy, is then that civil society as a radical political project must dispense with the notion of 'the private' as idealised in liberal theory. It can only command a normative basis if it is understood as (part of the) consciousness, and then measured in terms of the extent of its (public) resistance to reification and assimilation.

To establish this end, the chapter is split roughly into three parts. The first part deals with the question of 'the private' (*privacy*) in its un-reconsidered form and questions first its substantiveness, and then its desirability. Despite the former proving to be without foundation, the latter part of the question is still of critical relevance to civil society. I will look at the philosophical legacy of 'the private' paying particular attention to the inextricable links it has with property and 'the self'. The focus here will be on Hegel's doctrine of property which gives insight into the contemporary 'reality' of 'the private' and its ideological/cultural impact on 'the

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<sup>3</sup> *ibid*

self. Following this, I will offer an understanding of *privacy* that is actually inseparable from its conceptual antithesis of 'publicness'. Such an interpretation is the only feasible condition for the development of civil society and the radical democracy it promises.

I will, by way of examining the (in)adequacy and (in)accuracy of more 'objective' interpretations of *privacy*, try to establish that *privacy* can only conceptualise the narrow definition that relates to consciousness (offered by Cohen and Arato). But I will argue that consciousness in this context is a construct, and that the 'individualist ontology' that civil society theories (including Cohen and Arato's contribution) tend to rely on is neither an accurate ontology nor could it be the basis of a radically democratic 'post-traditional civil society'.

An extensive discussion of 'the self', the subject of development as coterminous with *privacy* then follows. Individual moral autonomy is undermined. Without such a basis of normative agency, the whole notion of civil society based on the public nature of the reconstructed concept of *privacy* itself as a political idea is put into doubt. I will go on to consider the public 'construction' of 'the self' and, crucial cultural development for the political development of 'civil society'. The self is an amalgam of cognitive processes whose incompatible fixture presents an inconsistent, contradictory, and distorted 'world-view' and self-identification. *Privacy* as reconsidered must entail certain 'ethico-political' developments to support the ethic of civil society and commitment to democracy. I will consider Gramsci's under-considered concept of 'intellectual and moral reform' as a necessary process toward ethico-political development, and offer a specific application of it to 'the self'.

The final part of the chapter ties together the conclusions reached on the question of 'the private' and its relation to 'the self'. It deals with the social process or phenomenon that is 'privatism', ultimately leading to political and social exclusion rather than a deepening of democracy. It may be that the existential security found in privatism is a frustrated reaction to



the loss of public space in which to offer this resistance; the spaces required for self-development and moral choice. This will provide a starting point for the approach to privatism in the next chapter. Or it may be that because moral choice and self-development are elastic concepts, the effects of certain choices and certain developments are 'autonomous' but incompatible with public or civic participation, only this time rather than frustratingly embraced are ideologically chosen. The latter analysis would at first glance indicate a capacity for resistance whose development is beset with difficulties harder to tackle than the more structural obstacles to public expression and participation. The differentiation is, I believe, at the same time a misplaced yet necessary line of enquiry if the normative status of *privacy* is to be determined and the 'enemies' of its (unimpeded) development identified. It is misplaced in its oppositional analyses insofar as it misses their symbiotic processes, but, on the other hand, an exposition and 'synthesis' of these two perspectives is necessary in providing the means of clarifying the links between 'agency' and 'consciousness'. If the 'autonomy of privacy' itself is to be rejected then an examination of *privacy* requires an explanation of the dominant forces that shape its development, and specifically those which lead to its deformed 'sanctuary' or 'conclusion', rather than civil society.

There are two basic questions to ask of 'the private': is it substantive? and is it desirable? The general response to these would be in the affirmative on both counts. However, in trying to answer them I will establish that substantiveness in terms of objectivity is unsustainable, but as a 'reified' concept it commands a 'reality' and then that it is normatively undesirable in a number of respects - all of which have direct implications for a radical conception of democracy. The concept of 'the private' is not universally recognised; it is specifically related to 'developed political systems' - at least it is in these systems that it is itself most developed. But we need not declare that 'the private' is a deviation from an ideal ontology; only that it is a deviation from a democratic course and as such must have a negative impact on human being.

There is an understanding of democracy that supports the claim that 'the private' is detrimental to the development of democracy.<sup>4</sup> Not only is democracy of *instrumental* value but has an *intrinsic* value. The claim is that to be prevented from participation in political life is a major deprivation (the cultural prevention that is privatism would qualify as a means of this deprivation). Political and social participation is a crucial component of political freedom, and therefore freedom in its wider understanding. I will elaborate this 'participation' further into the Chapter, for the time being it is enough to propose that social and political participation are one and the same thing and cannot be separable issues of choice for the subject of 'developed political systems'.

A serious challenge to the concept of 'private' has been mounted from a number of different perspectives, whether it is valid regardless of any possible moral content attached. The obvious point from which analyses of 'the private' (or *privacy*) start is that which is opposed to 'the public'; functioning as a form of separation of the individual - by means of restricted access - from others, in the 'public domain'. *Privacy* claims a realm that is 'shut off from the rest of the world'. But this claim has little substance to it; such a strictly demarcated area does not (and cannot) exist. Any value that is placed on *privacy* must be reducible to other values which are enabled by it - such as property rights and claims to liberty from state regulation. Even in this legalistic reduction of it, 'the private' cannot retain a strict objectivity. But more importantly 'the private' has become ideologically ingrained on the consciousness of the subject of a 'developed political system'; fetishised as the protector of these liberties and so 'freedom' itself. It is in this respect that 'the private' can claim its reality.

Two areas that have been identified as fundamental to an analysis of *privacy* ('the private') are: *control* over information about oneself; and *access* to information about oneself.<sup>5</sup> But the feasibility of either is questionable. Moreover there are normative concerns over any

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<sup>4</sup> Amartya Sen *Development as Freedom* Oxford University Press 2001

*control* over information about oneself, which I shall come to below. Any objectivity attached to 'the private' cannot be constructed from either basis of *access* or *control*. It is more likely that the value that is attached to it is *instrumental*, because it enjoins legally/culturally/traditionally the exercise of other values. The most obvious of these is the exercise of property rights in 'developed political systems', but there are 'privately informed' values whose exercise is less obvious, and which is anti-pathetic to any will to become democratic.

The restraints placed on sexuality may not have an obvious connection with democracy. If this is the case then the conception of democracy that one has in mind has little in common with the conception of democracy as an *assumption* of power from the formal political processes of the state. Nor is there much of a link with any notion of democracy meaning something like exercising the will to form the conditions of the subject's existence. By confining sexuality to the realm of 'the private', the development of an awareness of a 'public self' (a public conception of *privacy* necessary for a democracy grounded strongly in its 'core values') is disallowed. Sexuality is perhaps the most responsive aspect of human existence that enables the self to accommodate the processes of intellectual moral reform. I shall discuss this reform at the end of the Chapter. For now though, this receptivity to the possibility of fluidity to all cultural norms is negated. Self-development is severely impeded by sexuality being essentially the most 'private' aspect of the *self* in 'developed political systems'. The value of 'the private' in this instance is especially dubious. There is no persuasive argument that sexuality is a matter of the utmost private concern. Unless it is instrumental in its necessity to the reproduction of certain political values that uphold anti-democratic forms of patriarchy in religion, tradition, and 'the family'.

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<sup>5</sup> J.Innes *Privacy, Intimacy, and Isolation*. Oxford University Press 1992

With regard to *access*, it is not sustainable as a support for the (objectivity of) 'the private'. There is more than a suggestion of contradiction to a need for access in the first place; for this the (private) information must have been determined 'publicly'. The most obvious example of this is access to medical information about 'the self' that must have been diagnosed and compiled 'publicly'. A further complication, to the whole question of there being any substance to the concept of the 'private' as being defined as something 'autonomously' accessed and not controlled 'publicly', comes from a recently developed global computer surveillance network. (Development of this 'total information awareness' through communications technology comes predictably from the U.S. military). Just as the internet was the product of American military technological developments in the years of the Cold War, the Pentagon has developed a system of 'Total Information Awareness'.<sup>6</sup> What is ironic about this development with all its sinister implications is that it intrudes upon '*privacy*' that is not subject to the power of disclosure by the individual, but 'private' information controlled by government (state) and commercial/(economic) databases.<sup>7</sup>

The second aspect fundamental to *privacy*/the private is the *control* over information about 'the self'. The implication here is that this information is derived from the self, and not externally - which makes the question of *access* irrelevant. However, as it already been shown above, the question of access to information about the self (by the *self* alone) underlines the spurious nature of 'the private'. The 'fact' of an exclusive access brings to the fore the questions surrounding the desirability of this idea of 'the private'. The 'information' that could

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<sup>6</sup> Source: <http://www.epic.org>

<sup>7</sup> Contracts are being offered to private communications industries to research and develop the technological capacity to store countless pieces of information about individuals ( such as lending library records, personal bank transactions, and travel records). This development is beyond any pretence of 'legality'; no search warrants are required (the control over which is not held by the individual anyway but by the state). The justification for this is predictable in the light of current American foreign policy. The argument runs: the war against terrorism is global therefore the data used in its combat must be 'global' too. It may be the case that such a policy will be given a tacit public acceptance given the 'uncertainty' that now prevails as the justification for this war (which beyond the largely rhetorical 'war against terrorism', is an attack on the individual subject of society itself). *The Guardian* 8/2/01

be so derived is extremely minimal; it could only amount to a 'cognitive-rational' reflection of consciousness, whether this reflection is critical or otherwise.

'The private' occupies more than merely an instrumental space, however, in the social imaginary; it is an 'end in itself'. Its existence is objectified and becomes intrinsic to the conditions of self-development. A private realm 'closed off' is the theoretical realm of absolute negative liberty - the domain of the freedom of the *individual*, the only agency of 'freedom'. But this offers nothing to the furtherance of democracy through civil society - indeed it is a philosophy that runs counter to it. The reconsideration of *privacy* will show that for '*privacy*' to fulfil its normative claims, it must be thought of as 'subject' and not 'object'.

The question of whether 'the private' is normatively desirable might now seem redundant. But this is not the case. This form of control may appear beyond the reach of critical inquiry; its condition of moral ambiguity is not *immediately* apparent. If we ask the question: how much control *ought* we have over this aspect of *privacy* (understood as information about oneself)? then the answer would likely be 'complete control'. But feasibility aside, this is fraught with difficulties. Its 'undesirability' in this case is illustrated by an example of 'complete control' where an individual is HIV positive. Does this individual have the (moral) right to withhold this information (from a prospective sexual partner)? Or does the prospective sexual partner have a (moral) right to *access* to this information? There must surely be a moral case for the prospective partner in this instance, where information about another individual could make a claim that would appear to have the same moral footings which underpin the argument for the right of control over disclosure. If this *access* is to refer to a domain that, 'by right', automatically commands respect for its inherent moral nature, then we can dismiss it. A further cause for its undesirability is to be found in domestic violence. This was for a long time (and still is) testimony to *the fact* of a private realm.

If we recognise the 'publicly' derived information about a 'self' as *becoming* private then the question of its desirability remains relevant. The example above concerning medical information about the self, and how *access* gives it then a 'private' nature in the 'cognitive-rational' processes then the moral implications about its *control* become more apparent. The objectivity of 'the private' may have been shown to be unsustainable as a category, but as a reified element of consciousness its substantiveness should be in no doubt. By looking at different aspects of the pervasive culture of 'the private', I will show that this culture provides an ontology that is at the same time politically alienated and politically 'convenient'.

There are three main areas of concern although it is impossible to separate them and look at them in isolation, they are: 'the self'; 'the social'; and 'the political'. The function that 'the private' plays in these aspects of society regarding the furtherance of democracy, it seems to me, is wholly negative. The question: How does 'the private' affect 'the self'?' might be better put thus: How does the private *effect* 'the self'? (This is an important point in determining its desirability). When this question is applied to the second aspect – 'the social' – the immediate problem is recognisable enough as the differentiation between 'bourgeois' and 'civil' societies. 'The private', at a fundamental level, shapes 'self-development' and 'moral choice' and subsequently the very cultural condition that civil society theory is at great effort to condemn when it is not focusing exclusively on the state (and in some versions its distinct separation from society). The effect that 'the private' has on social relations is, in a simplified way, 'separation' from the political, the social, and, ultimately, the self.

The effect that 'the private' has then on the political is to support (political) systems whose democratic accountability exists only in the flimsy suggestions of it in their own self-ascribed titles of 'democracies'. Consequently, the political alienation takes different forms. More directly it disenfranchises significant numbers of their populations and, less obviously, the understanding of democracy becomes so confused that it is perceived as real and exercised

in the pursuit of 'the private life'. That governance which then supports these conditions most favourably then becomes accepted as the institutionalised political framework of democracy.

Material interests, the salient feature of developed political systems, ultimately narrow the conception of the political through a process of privatism supported by such axiomatic props as the identification of self-development with property accumulation. In the unfolding of self-consciousness, to use Hegelian language, the human capacity for acquisition has been firmly entrenched as rational, inevitable, and right. 'Ownership' and 'identity' are deeply embedded as a conjoined relation; one acquires identity through ownership, where the accumulation of property and social status become indistinguishable from the process of self-development. This relation is perhaps the most deeply rooted 'given' in our consciousness, and rarely subject to critical questioning. It is in this sense that aspects of our consciousness can be said to be 'false', because it is recognised as otherwise, that is – true and immutable. This is not to argue that there is a definitively 'true' consciousness, rather a consciousness that is not false can only be true in the recognition of its own contingency. The 'givens' of our consciousness present a 'politics of the achievable', amounting to a limited political objective determined by 'realism'. Their sturdiness can be illustrated in a 'non-material' way also. The limitations of concern within a privatised view of life are extended to wider categories whose interests can be threatened externally. It describes and explains the potency of national-consciousness, inextricably bound up with a (privatised) self-consciousness, and the willingness of the subject to submit to certain self-imposed abrogation in the cause of that significant and powerful part of its identity. Consider the paradox that is the pride of the professed 'internationalist' in a fellow national who made enormous personal sacrifice for a principled internationalist cause in Spain in 1936. A rational admiration is swollen by a pride effected by causes that the rational admiration is there to condemn, in this case 'national

identity' and an awareness of the self as part of an exclusive group (whose retention denies 'internationalism').

In similar fashion, but in a sense reversed, is the occasional defiance of 'cultural rationality' by the consciousness in racial and sexual terms. Few would admit to race based pre-conceived notions, but perhaps fewer are the number who have not internalised various myths and lies about different races and cultures. Again, arguments that attempt to maintain what are patriarchal assumptions by 'reason' are not listened to; they can only be maintained by some sort of appeal to 'the affective' (however inadequately it may be dressed up as 'reason'). That these imperatives are defensible only in terms that are non-rational, insofar as their foundational principles are culturally exposed to be illusory, underlines the power of ideology and the strength of 'privatised' identities that it creates in its informing role of constructing worldviews, consciousness, and who we are in what kind of society.

Far from being that aspect of consciousness that can be identified with its 'conflict with law, it can through political manipulation effectively uphold the law through its vulnerability to misplaced (or perhaps contingently placed) indignation and protest. This aspect of consciousness as that which 'the private can only be interpreted'<sup>8</sup> is contingent upon the strength of its own identities, and how the interests of these are threatened externally – i.e. another 'identity'. Examples of this kind of political manipulation could be seen fairly clearly in the discourses of the public domain of the Thatcher reign in the 1980s. To counter the social consequences of her governments' incomes policy of unemployment, the political rhetoric of the public domain pointed to the demands of a flexible labour market and who, or rather which social groups, were fulfilling those roles and consequently seriously undermining the social position of the identity of 'white male worker'. The requirement of 'more flexible labour' was provided predominantly by women, ethnic minorities, and disaffected/displaced

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<sup>8</sup> Cohen and Arato op.cit. p.64



youth; providing also a misplaced object of 'protest'/blame against the rapid increase in male unemployment in the early 1980s. The blame for unemployment was therefore laid at social groups whose 'primary identity' posed an external threat to the interests of another more powerful economic-corporate identity; that of the 'white male worker'. For the political purposes of Thatcherism the demise of this latter was to be welcomed and encouraged, and the distraction of other groups to be promoted and articulated politically as the cause of unemployment. The problem for the governments was that many of the cultural assumptions that provided the bedrock of their conservative 'common sense' also threatened to collapse. It was not just the identity derived from a 'full-time job for life' culture that was at stake, but some of the very foundations of sexual and racial assumptions that culturally fitted better the 'more paternal political application' of capitalism. Its 'more uncloaked' version was, paradoxically, also dependent on the same assumptions for its ideological supports. Thus the contradictions of Thatcherism were exposed by the 'ongoing cultural revolution'<sup>9</sup> for which it acted as an economic accelerator.

The important point in this is that, whilst the cultural dominance of an 'identity', in this case white male worker, proves to be contingent – the idea of 'identity' itself remains. But the identity itself of any social movement developing from collective identity locks it into an economic-corporate political realm of bargaining where any potential for an ethico-political democratic development within civil society is lost. It is not necessarily the law that becomes the object of attack from that aspect of consciousness that Cohen and Arato rely on so much. Resistance and protest is contingent upon the discourses to which the subject is predominantly exposed and receptive, not dependent on a legal affront to a moral consciousness.

To avoid the assumptions made from an ontologically individualist position, as Cohen and Arato claim they manage, it is necessary to consider the 'subject' or 'the self' as a social

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<sup>9</sup> *Ibid* p.31

construction. I share the proposition made by Chantal Mouffe that: "A person's subjectivity ... is itself the locus of multiple possible constructions, according to the different discourses that can construct that [social] position".<sup>10</sup> But as this subjectivity is only 'precariously' and 'provisionally' fixed, it then follows that the 'subject' who is 'sutured', to use her Lacanian term, at the 'intersection of various discourses' will inevitably and primarily become the identity of the dominant discourse.

The vulnerability of identities to other more 'powerful' discourses is shown by the ascendance of 'consumer identity' over 'national identity', for instance. The universal pretensions of consumerism de-stabilises identities based on dubiously moral and mythical foundations (like national-consciousness) but they also undermine the cultural context of democratic possibility and its development accordingly. *For the purposes of democracy*, the concept of 'identity' is disfiguring. This disfigurement relates specifically to 'developed political systems' where an economic-corporate consciousness of the 'subject'/self has already been established by the rationalising processes that are the regulating effects of *legality*. (These effects will be the greater subject matter of Chapter 4).

The cultural logic of privatism develops the dominant (individuated) identity of 'private accumulator', more recognisably 'consumer'. In this way, the consolidation and expansion of 'consumer' (into areas including those designated by *legality* such as 'patient' and 'client') as the dominant identity of 'developed political systems' is a consolidation and expansion of 'the private' itself. The greater the accumulation, the greater is 'the private' condition of existence.

This progression mitigates against the conditions for the development of social relations whose orientation is (*for the purposes of democracy*) necessarily *public*, and which are regarded as the subject of freedom. (This last condition is raised in Chapter 3 - *Plurality* - where I shall show that it is an important consideration of social relations generally, and social

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<sup>10</sup> C.Mouffe 'Hegemony and New Political Subjects: Toward a New Concept of Democracy' in K.Nash (ed)

movement as (ethical) agency particularly). Democratic development requires resistance to this (or indeed any other) identity consolidation. The boundaries of exclusion to this are at two different levels: the exclusion of those denied the private accumulation that founds the identity of the *self* in 'developed political systems; and, by way of defining these systems as 'politically developed', the exclusion of political concern to that which promotes 'the private'.

The question of why the identity of consumer/private property owning individual is more durable, or deeper-rooted, than are other identities must be addressed. It may be the case that a person's subjectivity is not constructed only on the basis of his or her position in the relations of production, but it is also the case that the primary 'subject position' is materially constructed in a society whose organisational principle revolves around consumption rather than production.<sup>11</sup> Consumption rather than production has become the organising principle both of society and individual life. According to Zygmunt Baumann the principle relates to moral and functional aspects of society: '... individuals are engaged (morally by society, functionally by the social system) first and foremost as consumers rather than producers'.<sup>12</sup> The identity of 'consumer' is readily assumed in the more affluent capitalist societies of 'developed political systems'; certainly this identity would be more recognisable than 'producer'. In a 'consumer society' by definition, our participation revolves around consumption. This corresponds to the main body of the political agenda in the 'developed' political systems of Western Europe, as opposed to the 'fledgling democracies' of the east. Where the electoral stakes in western Europe revolve around issues of 'who gets what' and ultimately levels of taxation, political battle lines in eastern Europe are drawn around issues of 'non-material' interest (such as ethnicity).

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*Contemporary Readings in Political Sociology* Oxford Blackwell 2000 p.296

<sup>11</sup> *Ibid* p.296

<sup>12</sup> Z.Baumann *Intimations of Postmodernity* London Routledge 1992 p.49

The depth of the problem of 'the private' and its particular relation with property should not be left in doubt. The contemporary public domain is dominated by discourses of property, the sovereignty of the consumer (the contemporary 'property owner' as enfranchised citizen), and wealth accumulation. The private-property relation has weighty philosophical pedigree in the Western tradition: normative claims of 'natural right' (Locke); an instrumental attribute of 'making for social utility and harmony' (Hume).<sup>13</sup> Relations within society are geared by the status of property, and Hegel affords it a degree of eminence that gives it a central role; possession of a thing does not, in itself, mean that the object has become property. For Hegel, its 'internalisation' is sine qua non for property status, and thus for the self-emancipatory process. Equally important, or more so as I shall attempt to highlight, is the role of labour in this process, which he illustrates with the master-slave relation. But there appears here a suggestion of incongruence concerning this external realm, where the Idea is given 'being'. Through labour, theoretically, the self-emancipatory process is furthered by the will externalising the idea without 'internalising' a dead object that holds any significance in this process other than a means to a creative end. Property, on the other hand, in the Hegelian system, by the very fact that it is external to the mind of the individual in its origin must in some part determine. This may not compromise freewill in the Hegelian sense. That is, when an individual conceives an object he is depriving it of its quality that makes it stand opposed to the individual. Hegel says that when he thinks of an object, "I make it into a thought and deprive it of its sensuous quality; I make it into something which is essentially and immediately mine."<sup>14</sup> But by the very act of depriving, or abstracting, the individual is confronted with an object that is already 'fetishistic' in containing that quality.

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<sup>13</sup> J.Locke *Essay Concerning Human Understanding* R Woolhouse (ed.) London. Penguin 1997; D.Hume *An Enquiry Concerning Human Understanding* T.L.Beauchamp Oxford University Press 1999

<sup>14</sup> G.W.F.Hegel *Elements of the Philosophy of Right* A.W.Wood (ed.) H.B.Nisbet (trans.) Cambridge University Press. 1991. Section 4

The inherent egoism of civil society makes it impossible, in Hegel's account, for it to overcome its own antagonism. His insight into the negativity of the 'achievement of modernity' takes Adam Smith's descriptions of the social division of labour, production and exchange further, highlighting their contradictions which themselves create poverty, a condition which precludes the ethical dispensation of an estate. The complexity of the Hegelian dialectic within civil society is evident in this passage from *The Philosophy of Right*:

Particularity in itself, on the one hand indulging itself in all directions as it satisfies its needs, contingent arbitrariness, and subjective caprice, destroys itself and its substantial concept in the net of enjoyment; on the other hand, as infinitely agitated and continually dependent on external contingency and arbitrariness and at the same time limited by the power of universality, the satisfaction of both necessary and contingent needs is itself contingent. In these opposites and their complexity, civil society affords a spectacle of extravagance and misery as well as of physical and ethical corruption common to both.<sup>15</sup>

The contingency to which particularity is susceptible makes it potentially limitless, and in the same section of *Philosophy of Right* Hegel accounts for the demise of pre-modern states as the uncontrollable expansion of self-consciousness. The division between the disposition towards and actualising of this expansion can only be rectified by the universality embodied in the modern state. But Hegel ties up the principle of subjective freedom with property. Earlier in the text, Hegel makes explicit the importance of the latter to the former: "In property, my will is personal, but the person is a specific entity; thus property becomes the personal aspect of this specific will. Since I give my will existence through property, property must also have the determination of being this specific entity, of being mine. This is the important doctrine of the necessity of private property. ... a community does not ultimately have the same right to property as a person does."<sup>16</sup> The positive role of property in the development of personality is accentuated in Hegel's writing, yet property is central to the dialectic within civil society which is its negative aspect.

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<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

To understand Hegel's view of the role and effect of property, it is important to clarify a fundamental distinction he makes, that between property and possession. As part of the realisation of self-consciousness, the individual internalises his property and objectifies his subjectivity. This linkage is also the consequence of labour, but is impelled from the opposite direction. Before elaborating this proposition, I will concentrate first on the concept of property vis-à-vis possession in Hegel's philosophy. The extent to which property becomes a part of the individual is illustrated in the union of two people, as in marriage. The union, according to Hegel, can only be complete when their respective relationships with external objects also becomes united. If one is to retain possession of property without this union of objects then a certain independence, or separate individuality, is retained and the union cannot be complete. This identification with property goes beyond possession:

To have even external power over something constitutes possession, just as the particular circumstance that I make something my own out of natural need, drive, and arbitrary will is the particular interest of possession. But the circumstance that I, as free will, am an object to myself in what I possess and only because an actual will by this means constitutes the genuine and rightful element in possession, the determination of property.<sup>17</sup>

Hegel seems to be constructing a doctrine of property here based on the premise that an individual, as will, owns himself, as being. To say that 'I own my own body' seems otiose when we consider the possessive language used to refer to parts of the body or the body as a whole. But to follow on from this that ownership is therefore a 'natural' phenomenon of an individual, a sort of 'homo owner', is to assume an innate acquisitiveness. The property and the person are one and the same as the embodiment of personality; having had conferred upon it a soul by the will of the individual, the property already fetishised becomes internalised. But from where does the mind derive its conception of the value of a particular object as to want

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<sup>17</sup> *Ibid.*

to 'internalise' it and abstract its essence and accommodate it as personal embodiment? The value of an object becomes relevant in terms of exchange rather than use-value and is determined by a stability set by culture and custom. But because this stability is vulnerable to fluctuation and crises, the value of the object that has become internalised by the Hegelian individual is subject to factors external to and beyond the control of that individual. Hegel does include 'recognition' as a criterion for the status of property, but it is his view that it is the embodiment of personality that causes problems in that the individual's being at a fundamental level becomes subject to the vagaries of the market. If the object in question is part of the natural world, i.e. objective, then the will, the subjective, is transferred or linked to objectivity. But this appropriation particularises part of the objective world. The internalisation of property becomes an important aspect in the transition from property to contract where the recognition of one's property by another is the relation of one will to another, the sphere of contract, on the terrain of freedom. If an individual wills that something should become his then this alone is not enough to make this something property, the existence of personality in the thing is when it becomes property and is recognised by another will. Without recognition of possession of a thing, the property in question is not yet identical with freedom, it is a matter of arbitrariness and external circumstances and "what and how much I possess is therefore purely contingent as far as right is concerned."<sup>18</sup> However, the problem is that even if this possession becomes property, the 'value', or worth of the individual then becomes a matter of the 'stability' of that individual's internalised objects; in other words his material assets.<sup>19</sup>

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<sup>18</sup> *Ibid*

<sup>19</sup> Any dispute over the right to property is in essence a recognition of this right. Superficially it may appear as the squabble over the possession of an object, but the reality for Hegel, is the struggle between two (or more) wills, which, on the terrain of civil society alone is a potentially dangerous and violent struggle, without legal recourse or political institution to check this potential. It may be that the struggle becomes internecine, or it may be that a master-slave relationship results. Either way, the dispute is resolved by risk where the goal is to establish oneself as master rather than slave; to achieve one's ends and desires through the subordination of another. This latter outcome is conceived by Hegel in *Phenomenology of Mind*, where the dialectic of this relationship illustrates the

The seemingly inextricable relation between the self and property makes the prospects of the 'reforms' of consciousness (intellectual and moral), necessary for civil society look indeed bleak and remote. When the abstracted Hegelian analysis of property relations is set in the context of 'developed political systems', the cultural obstacles become complex variations recognised essentially as *private* (from the privatisation of public institutions to the privatisation of social relations) and whose value is measured by accumulations of wealth. The political implications of a 'privatised society' - i.e. one that has imprinted on its 'collective consciousness' that property accumulation and self-development is an inseparable process that privatises life itself - are self-evidently anti-democratic. Political concern itself is 'privatised' in the sense that what becomes important politically is that which promotes a 'private life'. Where capitalism has reached its geographical limits, there is still the unexhausted consciousness of human being on which to further promulgate its logic through a fetishistic notion and applications of 'the private'.

A 'privatised existence' is in a strong sense *false* in its claims to ontological certainties. This falsity is not to suggest that there is a *true* or a specific and authentic mode of existence, but that this 'privatised existence' is 'inauthentic' insofar as it is based on 'givens' and 'truths' - such as the conjunction of self-development and property accumulation. It is, as Cohen and Arato recognise, an 'inappropriate' political culture. 'The private' contributes to the estrangement of the self from political freedom through the cultural processes of privatism. It

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relation between freewill and property, and the role of labour in the unfolding of freedom. The coupling of recognition and a potentially boundless self-consciousness is the source of conflict, and the expansion of self-consciousness (freedom) is attained through risking life itself. ... references/sections etc } A successful outcome to such risk is, in the words of Hegel, "the consciousness that exists for itself; but consciousness 'for itself' is mediated with itself through an other consciousness" (10) which it dominates (the slave). But there is a problem for the master here, and it is here that we can see quite clearly that labour is more important, less problematic at least, than property in the emancipation (or development) of the self. Although the relationship is self-evidently one of domination, it is the dominant party who is trapped by his dependence on the slave. It is through labour (that of the slave) that the consciousness of the slave develops, "...in fashioning the thing, self-existence comes to be felt explicitly as his own proper being, and he attains the consciousness that he himself exists in and for himself... Thus precisely in labour where there seem to be merely some outsider's mind and ideas involved, the slave becomes aware, through this rediscovery of himself by himself of having and being 'a mind of his own'" (Hegel *Phenomenology of Mind* J.B.Baillie (trans.) George Allen and Unwin 1910 p.188)



also contributes to social estrangement in its translation of what are human conditions into conditions of personal idiosyncrasy. Defenders of *privacy* as a private moral category point to its loss as a violation or loss of agency. Its detractors describe it more as a condition from which we should flee, a condition which separates human being from 'the social', 'the political', and ultimately its 'self'.

An individualist ontology is explicitly rejected by Cohen and Arato. However, the conception of *privacy* that they employ in their thesis is one that implicitly recognises it:

we must start from the assumption that *privacy* attaches to the individual in certain capacities (as an autonomous moral subject), regarding certain relations (those impinging on identity needs), and within the framework of certain relations (friendship, intimacy) that we must be ready to analyse and give arguments for.<sup>20</sup>

*Privacy* attaches to our very consciousness; the 'sphere' in which autonomy is adjudged to be exercised. However, Cohen and Arato's agent of consciousness draws on a moral resource that is not fully explained by them. It encounters the same problematic questions that face the idea of 'conscience', a concept that has little obvious distinction with the 'moral resistance to law' that provides their basis for understanding of 'private'. But for it to be a praxis for a post-traditional civil society this resistance must be expressed publicly.

However, the identification of *privacy* with consciousness is conceptually wrong; our consciousness is a reflection, however nuanced, of the external world. That aspect that concerns itself with *privacy*, our self-development and moral choice, is a capacity for autonomous judgement that may be of a critical rather than passive reflection. It is that critical part of our consciousness that can infuse the 'subjective' into democracy; that challenges, either notionally or actively, alien or external control, whether it is legal or cultural, state enforced or marketing techniques.

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<sup>20</sup> Cohen and Arato op.cit. p. 352

A comprehensive revision of *privacy* is required then if the 'private' and the 'public' are not going to collapse into meaningless concepts. The 'private' realm of a liberal polity, when subjected to certain enquiry, is a fiction. Moreover, the more the concept of 'the private' is retained, the greater is the process of privatism which gives the illusion of *privacy* (and self-development and moral choice) as bound up with rights discourse. If nothing else, the normative core of democratic theory (its socially based principles of participation) requires that the development of the self and moral choices are in accordance with this core, and not 'separated off' into fragmented 'consumer protest' which alarmingly appears to be filling the 'democratic deficit' in the West. *Privacy* must be understood as the development of the self, and not exclusively as an umbrella term for rights of intimacy and confidentiality etc. By identifying *privacy* with 'the private', as the space beyond intrusion by state (and society), the 'continuation of the democratic revolution' will be impeded by a diversion into 'privatism' and its sufficient political framework of a 'realist' and formalistic democracy.

But this aspect cannot be taken as 'given'. It is necessary to determine the source and role of this part of our consciousness that 'comes into conflict with law'. Their attempts at synthesising the demands of reality, through parliamentary representation, and the participatory elements of democratic theory, through associational life in society, are threatened by a misunderstanding, or inadequate account, of *privacy*. That part they call 'private' will perceive society accordingly. The area of conflict (where 'morality questions legality') will not be roused sufficiently to support the normative pillars of their model. More obstructively, if *privacy* maintains a translation as an exclusively 'private' sphere (in the sense of the dubiously private spheres of family and contract etc) then *privacy* is understood not only as a right of retreat from the state, but also from society – developing into the very privatism that maintains an 'inappropriate' political culture.<sup>21</sup> Rather, *privacy* must be

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<sup>21</sup> *Ibid.* p354

perceived as part of the maintenance of a democratic and just polity, and not merely as one of the fruits of its outcome. If retention of self-development and moral choice from the potentially totalitarian intrusion of the state is the fundamental objective of civil society then what is being defended must be clearly defined, and part of that definition cannot not be one that conceives of 'private' as the antithesis of 'public'.

The reconsideration of *privacy* must be premised on it being 'subject' rather than 'object'. The very conception of *privacy* is interwoven with the idea of the construction of 'the self', and not as an objective, much less tangible, space *in which* this construction (and development) takes place. This part of the chapter looks at the subject of 'the subject'. Civil society theories ignore this problematic at the risk of obsolescence. The aim here will be to identify the subject of civil society from a reconstruction of *privacy* as part of the construction of 'the self'. A cursory view of 'the subject of civil society' as employed by civil society theories is one of: a social ontology of the self, but at the same time a self that involves an individual agency that if not rationally transcends its contextual 'common sense' totally as liberal theory would have it, but an agency that is nevertheless at least separated from the condition of its own development (either as conscience, or an aspect of moral consciousness that comes into conflict with law, if indeed there is a substantial difference between the two). It is a convenient view of 'the self' from which to begin to articulate the kind of 'ethical' democratic society that civil society has in mind as 'the idea'. But the latter part of the above definition of the self is problematic.

First of all, the term 'social being' is a fact of the human condition. To support this, we can say that it is within 'systems of need' that humans exist, however primitive these systems may be compared to those of 'developed political systems'. But a claim of 'social-being' based on crude relations of contract and expediency is not enough. It may be sufficient for liberalism, but for civil society, if it is to detach itself from the philosophy of the individual, must

recognise that this 'social-being' must itself recognise the importance of the prefix and so exercise its agency in accordance with changing politico-cultural conditions. In other words, rather than rationally transcending its cultural milieu, or drawing upon that aspect of moral consciousness that comes into conflict with law, it must sink the foundations of its *rationality* (its categorical imperatives and givens) into amorphous cultural forms that cannot be accommodated or made sense of by its existing 'rational framework'.

The subject of civil society is *privacy* itself; that is, a developmental conception of the self. Arguments about whether this development of the self is best achieved 'privately' or 'publicly' are a matter of persuasion. The undesirability of 'the private' as a cultural foundation for civil society (established above) should indicate that if civil society is to be persuasive then this development must be perceived as better facilitated 'publicly'. But persuasive arguments about optimal conditions for self-development that contain a positive stipulation (that they are 'public') would sound like too much of a prescription for the 'good life' for one whose world view is shaped by the philosophy of the individual (even if the latter is no less prescriptive - or ideological - for its claim that conditions must be 'privately' considered). To an 'autonomous individual' such prescriptions, however 'thin', contradict the logic and central tenets of the philosophy from which the illusion of the autonomy of that individual is woven and fabricated. They 'impinge' upon rights discourses that underpin the 'autonomy' of the individual who sees itself as, by way of 'free-will', the arbiter of these conditions and, by logical corollary, culpable absolutely for the consequences. 'Common sense' then guides the individual onto a privatised course of (self-) development that consequentially reinforces the structural conditions that maintain 'privatised' development through the 'moral choices' made.

In his essay on the hypnotic effects of communist state ideology, Czesław Miłosz writes that: "Whoever truly creates is alone"<sup>22</sup>. He does not mean here a subjective matter where, for

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<sup>22</sup> C.Miłosz op.cit p.217

instance, the artist or creator who works alone reproduces or objectifies his/herself, or part of it. But he is wrong to make this claim on the basis that all creativity and expression is solitary. On the contrary, it requires recognition, in much the same way as Hegel's doctrine of property. (Few artists have been known to actively prevent the 'publicising' of their work (Kafka? Orwell?). Milosz's statement sounds like the affected condition of an artist who, by publicly expressing the 'private' condition of creativity, disqualifies any authenticity, or 'true creativity', attached to its own maxim. The reality is that without the reception of expression (an audience) the creative act is incomplete. The necessarily public expression of any creative act can be supported at a personal level, in the catharsis of human emotion, and at the social and political level, in the *public* development of social movement as opposed to the 'inward-looking' commercial processes of 'private expression'. Albert Camus observed that the democratic will and impulse of creativity is subordinated, in 'developed political systems', to production: "The society based on production is only productive, not creative."<sup>23</sup>

Without 'reception', the creativity or expression cannot in any significant (and certainly 'positive') way become a means for the development of 'the self'. This requirement is perhaps better illustrated in the emotional expression per se of the self. Any human emotion, if it is to become contributory to the development of the *self* must be recognised by at least one other if it is to be expressed and not merely acknowledged or 'owned' by the self. Milosz would have it that no such recognition is necessary, and that the self only truly expresses itself 'privately', 'art needs no audience' and the self does not need public recognition for its development. But a creative or cathartic act can only be complete when the expression of the self is 'made public'. This is the essence of the public nature of *privacy*. Indeed, if there is to be a *development* it is inescapable.

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<sup>23</sup> A. Camus *The Rebel* (A. Bower trans.) London. Penguin. 1977 p.237

To give this 'public condition' greater definition, I will apply it to the question of 'social and political participation' and its division into two aspects (political and social), and argue that it is an impossible separation. At least, it is conceptually impossible to maintain, and can only claim some credibility in the illusion of a privatised society that political and/or social participation is a matter of *choice*. It can only be conceived if the social aspect is perceived as removed in reality from well-defined political processes, and is regarded as the whole of autonomous social relations constructed from rational (individual) agency. If the social aspect is considered in more functionalist terms, the ideological (political) dimension to 'participation' becomes more apparent.

In an (ideological) functionalist analysis, political and social participation is one and the same thing. Social participation would extend its limits as reproductive of the dominant form of social relations. In other words, there is a social participation as a form of *consent* to the political structure and the moral and cultural values that reflect the 'participation'. 'Social' participation is not an option; there cannot be complete estrangement from 'society' in either the form of economic necessity or (paradoxically) *privacy* (as a development of the *self*). Acquiescence and consent is the active legitimating consequence of the 'passive activity' of cultural production in the public domain. (I will argue in Chapter 2, using these terms of reference, that this analysis of 'passive activity' is contradictory in socio-political terms). The acquiescent racist is a social participant of a racist society; similarly, there is the 'private individual' whose defining actions 'participate' in, if it is not too much of an oxymoron, a 'society of private individuals'. The 'passivity' of the action characteristic of developed political systems is simply wrong.

The classical liberal reply to the argument for social (as political) participation is that freedom must necessarily entail the liberty to 'abstain'. There are two responses to this. The first is that the premises of the philosophy of the individual are fundamentally at odds with the

*reality of society*. If one lives within the recognised boundaries of a society, then a contribution is made to the kind of society it will become even if it is in the unrecognisable form of 'opting out'. The second reply to this powerful discourse of the 'freedom of the individual' that predominates the public domains of 'developed (and developing) political systems' is that this individual pursuit of freedom can only be achieved through the (illusory) sphere of 'the private'. It is a more pointed reply given the urgency around the question of democracy, and whether it has any possible future. It is these processes of privatism that provide a far greater threat to the development of democracy than the state-oriented and overtly political (as any form of fundamentalism) anti-democratic forms so readily identified by academic civil society discourse.

The division between political and social participation is only defensible if there is first in place a common-sense of (the implausible sociology of) the confinement of politics to a formal and institutionalised realm, and, by way of corollary, the only conscious political action or 'participation' is then restricted to periodical voting for *politicians*. It remains a 'matter of choice' if the individual exercises his or her right to vote, and whether he or she wants to become a politician<sub>[c1]</sub>.<sup>24</sup> But it may be argued that even the minimal input of the endorsement of politicians through the voting systems of (inappropriately named) representative democracies is motivated by a will to form the conditions of ones own existence. The 'vote' is symbolic, if not the exercise, of this will.

'Public' and 'private' are not separable in civil society discourse, certainly not as with the case of liberal philosophy. Whereas for a liberal political system the private components of moral choice and self-development are an irrelevance as long as they do not impinge upon law, they are crucial to the kind of polity they underwrite in civil society theory. The liberal conception of private (broadly speaking) is one of a sphere that must be protected from

encroachment of the political into the moral domain. This sounds very much like the origins of civil society in the former communist bloc, where it arose as a struggle against the destruction of the private by the public. But the meaning of *privacy* in civil society goes beyond its own self-protection; it connotes an understanding that its role or its exercise is essentially public. The subjectivity of *privacy*, rather than something to be shielded from the political, is the basis of the public or political participation required of a radically democratised civil society.

*Privacy* links to questions of identity, and how full membership of a polity is conceived. Whatever this and self-development entails will be contextually/'publicly' determined. It questions the 'individual' qualification of self-development in the 'theme' of *privacy*; moral choice and self-development are gauged against the dominant culture and 'folkloric philosophy'. Just as we cannot take the moral component as 'given', we cannot accept *prima facie* the 'individual qualification', and that the development of the self is exclusively, or even predominantly, autonomous. We may question: how free am I? Have my objectives and goals in life really been questioned at a fundamental level? And, am I in control over my own self-development? As Conrad Lodz states: 'Autonomous individuals are not born autonomous. Rather the autonomous person is an achievement, it is a product of how we develop'.<sup>25</sup> Autonomy is something to be gained. The autonomous human subject in civil society discourses is the basis of a public life that is not driven by institutions, ideologies, and private interests, because it offers political resistance to the impersonal logic of the system, or the 'institutionalised lie',<sup>26</sup> but is not an individual autonomy.

It may be that the existential security found in privatism is a frustrated reaction to the loss of public spaces in which to offer this resistance. Or, it may be that, because moral choice and self-development are extremely elastic concepts, the effects of specific choices and certain

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<sup>24</sup> This is, of course, only the formal equality to which this 'choice' refers, Presidential/electoral funding requirements make the reality very different.

<sup>25</sup> K.Lodziak *Manipulating Needs: Capitalism and Culture* New York. Pluto Press 1995 p.85



developments are 'autonomous' but incompatible with public or civic participation, but instead parallel the privatism effected by the domination of the public domain by private interest, but this time rather than 'frustratingly embraced' is ideologically chosen. Adoption of either of these two positions does not contradict the argument that there is some domain of moral, and subsequently political, resistance. But when exercised from the particularistic realm of privatism, its greatest perceived clout comes in the form of consumer power.

The 'subject of civil society' is not then a 'private individual' but a 'public subject'. This much is established. But a self that can provide the necessary social bases for furthering democracy must be one that has dispensed with the concept and self-perception of 'autonomous individual being', and (as will be made clear below) certainly with the notion of conscience as its moral rudder. Paradoxically, the 'public subject' embodies the reconsideration of '*privacy*' - as 'self-development and moral choice', the impact of the latter having a considerable bearing on the possibilities of civil society itself, and which is consequential of the former - and is therefore 'the subject of civil society'. The public development of the self is the cultural praxis of the necessary political conditions for civil society to become an effective means of radical democratisation.

The voluntarism, or will, of 'the subject of civil society' is inadequately theorised when left as a kind of hard-wired moral dimension of 'protest' to consciousness or as an innate but little articulated experience of *conscience*. In fact there is little difference between the two approaches; both ultimately rely on a human *essence* that is autonomous from its material and ideological conditions. But neither formulation can be presumed on the basis of a prior human faculty of (specific) moral disposition, although this human 'resource' has become a 'given' in the discourses of the public domains of 'developed political systems'.

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<sup>26</sup> V.Havel 'Power of the Powerless' in *Open Letters* op.cit

There is a tension between individual agency and the requirement of solidarity that must somehow be resolved if civil society is to avoid fragmentation and degeneration into 'bourgeois' society. Havel describes this tension as "the 'cruel paradox' of the dissident ... labelled as something apart from 'other citizens'"<sup>27</sup>. His attempt to get around this paradox is by describing the action of the dissident as an expression of solidarity but only with those whom "his conscience commands him to support".<sup>28</sup> The efforts to distance civil society theory from the philosophy of the individual are concentrated on emphasising the element of *solidarity*. This is true of Cohen and Arato's more analytic treatment, as it is of other writers on civil society.<sup>29</sup> Most notable and influential among these is Vaclav Havel who envisaged a solidaristic 'politics of conscience': "It is becoming evident that truth and morality can provide a starting point for politics and can, even today, have an undeniable political power".<sup>30</sup> The implicit assumption of such a politics is that there is a 'natural solidarity of morality' insofar as others hold, or will adopt, your own moral standpoint.

But before this 'moral convergence' can be accepted, it is necessary to account for it. In other words, the concept of 'conscience', or 'moral resistance', must be given due attention if it is to be identified as the source, or point, of this convergence. I will approach this by first of all outlining some destabilising accounts of conscience. Such an approach is appropriate to the reified and largely unquestioned moral 'given', apparently innate to human being, that 'conscience' has become. As part of the case for a public conception of *privacy*, I will argue that 'conscience' rather than necessarily supporting the Havelian vision of civil society can actually impede a developmental conception of democracy. Cast as the basis of a legitimating political ethic, I will argue that this 'moral resistance', or 'conscience', offers little substance, at

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<sup>27</sup> *ibid.*p.146

<sup>28</sup> *ibid.*

<sup>29</sup> V.Havel; A.Michnik *Letters from Prison and Other Essays* University of California Press 1985; G.M.Tamas op.cit; G.Konrad *Antipolitics: An Essay* San Diego Harcourt 1984; et.al

<sup>30</sup> V.Havel 'Politics and Conscience' in *Open Letters* op.cit p.270

best reflecting a largely guilt motivated action that is, in the language of the philosophy of the individual, 'superogatory'. 'Conscience' in Havel's understanding must be read within its historical context. The connotation of conscience in this discourse reflects a 'wider' or even solidaristic meaning. It is more a politically motivated dissidence than the 'superogatory actions' it is associated with in 'developed political systems' where the ultimate arbiter is the *individual*.

A fitting reference at this point would be Nietzsche, not simply because there are few better sources to provide some philosophical support to unsettle a 'given' (such as 'conscience'), but there are certain comparisons to be made between related aspects of his thought and the notion of 'intellectual and moral reform' (which I shall come to further on in the chapter). With regard to 'conscience', Nietzsche's verdict is damning, maintaining that human being (in the 'unreconstructed sense') has little sense of responsibility - and no conscience at all.<sup>31</sup>

The problematic ambivalence of civil society theories regarding the 'social nature of the individual' is to the fore when 'the subject of civil society' is examined. The moral pre-suppositions made throughout this discourse make it vulnerable to a collapse into a philosophy of the individual. Despite the rhetorical emphasis placed on *solidarity* and society, characteristic of all sympathetic writing on civil society, the source of this social ethic relies ultimately on the beneficence of (an autonomous) individual. There are two basic questions that must be posed if sympathetic writing is to avoid outright apology. The first is: what is *required* of 'the subject' of civil society?; and second: can this subject's 'construction' facilitate the reforms of consciousness that are the cultural preconditions of an assumption of democracy? One basic requirement is that the subject be 'modular'.<sup>32</sup> A self that has a moral willingness and an intellectual ability to separate issues rather than conflate them, is, according to Gellner, the necessary capacity of this 'modular' subject of civil society. This separation, his

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<sup>31</sup> F.W.Nietzsche *Twilight of the Idols. The Antichrist* (R.J.Hollingdale trans) London Penguin 1968 p.86

argument goes on, then leads to a more fluid and less rigid society. This 'modularity' will be considered later in this chapter as a subjective fluidity realised by the processes of intellectual and moral reform. A more explicit reference to the 'moral autonomy' of the subject of civil society comes from Tismaneanu; with specific reference to the states of the former soviet bloc, he says that civil societies "cannot be separated from the existence of autonomous centres of independent thought."<sup>33</sup> It becomes obvious through a reading of 'the subject' in different perspectives of civil society that there is a tension between this independently thinking individual and the strong solidaristic conception of society of which s/he is the subject. Havel, upon whose work I will concentrate for much of the discussion of 'the self' in this part of the chapter, stresses his antipathy toward apathy, and his belief in a strong concept of citizenship: "If everyone doesn't take an interest in politics, it will become the domain of those least suited to it."<sup>34</sup>

To suggest that politics attracts those least suited to it can mean at least two things. Either politics itself (and not just the soviet political system) is unreformable, which roughly corresponds to his position when he championed 'anti-politics'. Or it means that a moral predisposition exists in certain individuals, the lack of which characterises those who 'enter politics'. Havel's own political biography rules out the latter possibility, and suggests that he was right in his original condemnation of political systems including the parliamentary kind. It is noticeable that Havel becomes 'progressively less radical' in his writing on civil society and democracy. In *Open Letters* Havel initially showed little or no faith in parliamentary democracy, he criticised it for its failure to confront the corrupting effects of consumer society.<sup>35</sup> Indeed, at times his criticism was based as much on an ineptitude of the system as it

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<sup>32</sup> E.Gellner 'Modular Man' in J.A.Hall (ed) op.cit p.43

<sup>33</sup> V.Tismaneanu *Reinventing Politics. Eastern Europe from Stalin to Havel* New York. The Free Press. 1992 p.153

<sup>34</sup> V.Havel *Summer Meditations* London. Random House. 1992 p.128

<sup>35</sup> V.Havel *Open Letters* op.cit pp.161&208

was on the insidiousness of its appearance of democracy that masks more subtle forms of domination and control than did the 'ideological lie' of the soviet system.<sup>36</sup> However, in later writing he subscribes to the Western parliamentary democracies.<sup>37</sup> The important point for the argument here, regardless of his positional changes on political institutions, is that Havel sees the 'subject of civil society' as one who in no way fits the description of 'the consumer of inane television series' that generally populate the West.

The 'subject of civil society' is then an imprecise figure of 'mental independence' (Tismaneanu), whose self-perception as social-being, 'finding solidarity with those whom his or her 'conscience' allows for' (Havel), is despite this independence. What becomes evident in unravelling the confusions and contradictions is that the emphasis on the 'public' aspect of 'the self' is an attempt at theoretical departure from the philosophy of the individual but retains many of the assumptions of this philosophy.<sup>38</sup> Central to the workings of Havel is the elusive notion of 'conscience'. But its etymology of being *without (against) knowledge* contributes to the idea of an *essentially human* moral intuition as an unlearned and more or less fixed moral compass. If this is a less than convincing argument then 'conscience', or that aspect of consciousness that 'comes into conflict with law', must be given some sort of materialist explanation. If an action is seen as morally obligatory (or reprehensible) then 'conscience' becomes either an innate sense of justice that can stand apart from the mores of its

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<sup>36</sup> When Havel said that "it is becoming evident that truth and morality can provide a new starting point for politics and can, even today, have an undeniable political power". {Politics and Conscience. P.270} He was not talking about the 'Westernisation of the East'; such a starting point cannot be found on the left-right political spectrum (at least not as has been the practice in the West).

<sup>37</sup> With Vaclav Klaus, his prime minister in the Czech Republic, Havel wrote with regret that "instead of learning from the West about civic and political culture, we have been quick to acquaint ourselves with the empty world of inane commercials and even more inane television series, allowing them to plunder ... our lives and souls." V. Havel and V. Klaus 'Civil society after communism: Rival Visions' in *Journal of Democracy* 7:1 (Jan 1996)

<sup>38</sup> The stress on public participation in 'political matters', lest it they become the exclusive concern of those 'least suited to deal with them', points to the strong strand of republican thinking in civil society theory. But it differs significantly from the participatory democracy of Arendt's republicanism, for instance. Her notion of a commitment to a singular public political sphere contrasts with Havel's vision of a plurality of spheres.

environment or is, conversely, a reflection of the established constraints in society on the one hand, and a highly variable degree of recognition of self as social being on the other.

There are apparently 'negative' and 'positive' aspects to *conscience*; the former representing the 'policeman in our head' which prevents us from *acting* on something, and the latter more subtle restraint of 'the pastor' that prevents us from *not acting* on something. If 'conscience' or 'moral protest' is to provide the critical faculty for a civil society cohered by solidarity, then a materialist account will provide some insight into the obstacles to any politically significant formation, and therefore the obstacles to the development of democracy as conceived by civil society. How (and how much) this critical faculty is expressed is dependent upon the cultural conditions of 'the self'. *Self-development and moral choice* are variables that make this faculty, or expression of 'conscience', subject to external factors - and are not the effects of a 'pure' introspection.

Conscience is either an unsubstantiated inner 'truth' (such as 'the word of god'), or, more likely, it is a reflection of the established constraints that form the bases of norms in any given society. The former conception of conscience, whether theist, pantheist, or humanist, appears to correspond to the Havelian notion of it. The guidance given a seemingly powerless person who dares to cry out the word of truth ...<sup>39</sup> in opposition to the communist system could not have come from the empirically informed ideal-typical observer that is prominent in Adam Smith's moral theory in which it is derived dualistically. Here, on the one hand, there is the 'internal voice' of the agent (the self 'proper') and on the other, the spectator. The former corresponds to the subjective in Havel's notion of it, which proved inadequate as the basis of a 'new order'. However, Smith's 'spectator' is the aspect of conscience which originates

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<sup>39</sup> V.Havel 'The Power of the Powerless' op.cit

externally, that is to say, it is the checking of unsocialised impulses and tendencies by the constraining influences of 'internalised imperatives'.<sup>40</sup>

The caricature of modernity that the soviet system became, in its manipulation of reality to meet the demands of theory, gives the Havelian 'dissident' an apparently atavistic yearning to his discourse. But this would be misleading; Havel was not an anti-modernist or obscurantist. The possibility of the Havelian vision of the politics growing out of civil society could only come out of modernity. What then becomes overlooked to a great extent is that, in its Eastern European cradle, the condensation of 'dissident' discourses of 'conscience' into civil society was essentially a form of praxis.

The origin of conscience as the author of 'dissidence', however, cannot be an inner sensitivity to right and wrong; but the retort of a creative being whose capacities and potential, far from being extended and fulfilled as promised by communism, were denied any developmental space. (i.e. space in the real sense of institutions of a 'public sphere' that optimally facilitates *privacy*) It is more the protest against the retardation of human being, a dis-illusionment that is the source of enquiry and creativity. This does not deny a sense of justice, such a denial would prevent the necessary solidarism, but problematically it could not establish itself as superordinate to the (economic/'self-regarding') demands of a 'developed (or developing) political system' that in its post-communist example lost the creative foundations of its embryonic civil society to another form of 'retardation'.

But the problem of an individual moral intuition still lurks in the background as the catalyst of protestation. Existence can be understood by the individual in grasping it in terms only of subjective experience, according to the philosophical influence on Havel<sup>41</sup>, 'living in truth' can only be comprehended phenomenologically. The 'dissident' is one who realises the compulsion to make choices and take responsibility; but his arrival at this realisation is

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<sup>40</sup> A. Smith *The Theory of Moral Sentiments* London. Prometheus Books 2000

unaccounted for. If existence is then conceived of only in terms of the effect that circumstances have on individual existence then it is very much a subjective category. But Havel's moral and social reconstruction incorporates a strong solidarity: "Time and time again", he has been persuaded that "a huge potential of goodwill is slumbering within our society"<sup>42</sup> and that this "dormant goodwill in people needs to be stirred".<sup>43</sup> The expression of solidarity with others who similarly dissent is motivated still by individual conscience, but importantly, "... he [the dissident] even finds the strength in himself to express solidarity with those whom his conscience allows him to support".<sup>44</sup> But despite the inclusion of 'solidarity' in 'expression of support' for other dissidents, the 'individual conscience' remains the final arbiter in deciding who or what forms of dissidence are worthy of support, and the real obstacles to ethico-political formation are subsequently overlooked.

'Conscience' cannot be some unchanging metaphysical core that 'independently' steers actions; it is an aspect of a socially and culturally constructed consciousness. So if 'conscience' is not fixed, then it is possible that this peculiarly human capacity has developed as a 'felt' or experienced amalgam of internalised norms. In this case, conscience can be described in certain areas as a dogmatised sub-conscious. And it is in this form that it is effectively antipathetic to civil society. It could be applied to personal relationships that can then be extended to social relationships. By way of an example, we might claim that 'infidelity' in marriage would be beyond our scope because our conscience might not allow it. (Whether or not conscience would be overridden in this instance is not the issue at hand). The important point is that the guilt that may arise from our conscience, when involved in such action, is 'constructed' (and can therefore be deconstructed) from unquestioned experiences and values. To hold to the conception of conscience as inherent and unchanging would, in this

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<sup>41</sup> Havel's acknowledged influences include Edmund Husserl, Jan Patočka and Heidegger

<sup>42</sup> V.Havel 'Politics, Morality and Civility' in *Summer Meditations* op.cit p.3

<sup>43</sup> *Ibid.*



instance, suggests that 'fidelity' in the institution of marriage is inviolable according to some law other than institutionalised vows; anything other than monogamy must therefore be 'unnatural' (according to a fixed bearing set by conscience).

To further illustrate the point, the subject of abortion is one among a number that places a big question mark as to the real nature of conscience. If a woman who had an abortion in a society where it was freely available and common then she may 'experience' her conscience much less (if at all) than she might have had she acted so in a society where the subject of abortion had been internalised as a moral stigma. Again, but with respect to the 'sense of justice' rather than primarily guilt, we may experience our conscience when dealing (or rather, not having anything to do with) the 'deserving poor', for example, but feel nothing if we do not assist (where we could) the 'undeserving poor'.<sup>45</sup>

Any 'sense of justice' or 'solidarity' that may, in varying degrees, lie dormant among people would be called up less to arbitrate the more society moves toward the promotion of the individual as the agent of freedom through choices available to him. As the individual in a 'developed political system' of a culture of consumer-capitalism becomes more egocentric, the more he is removed from political concerns that might arouse any empirically acquired conscience. This condition becomes the protection of *privacy* as privatism in the form of the protection of private property, and not, as the normative theme of *privacy* suggests, a property that is both necessarily private and public, and in the sense that it could support a 'politics of conscience'.

The moral assumptions made of *privacy* in civil society theories cannot be taken as 'given', and as such it cannot serve as an unconditional founding normative principle of a society aspiring to the radical extension of democracy. Its misinterpretation directs society

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<sup>44</sup> V.Havel 'The Power of the Powerless' in *Open Letters* op.cit p.146

toward a liberal conception of the private that in its application becomes the kind of 'bourgeois society' that Cohen and Arato optimistically believe to be avoidable. (The social and economic conditions of the former communist states that have festered for more than a decade should tell us to be wary of such unqualified optimism).

The 'obstacles to conscience' or 'moral resistance' in its solidaristic conception cannot be surmounted without the recognition of and action upon the contextual and concrete conditions that create them. In other words, self-perception must be located as essentially a product of these conditions and not as being 'separated from the rest of the world' capable of rationally transcending the contradictions of it. What is required of 'the subject' of civil society is a reform of consciousness so that the contingency of its identity and the totality of its relations can be grasped; then possibilities of re-form, i.e. *actual reform*, may be realised.

The question: 'what is 'the self' (of development)?' goes unasked in civil society theories. The consequence is an assumption of favourable political effects from an assumed ethical dispensation inherent in 'the individual' that is itself very much an effect of public domain discourses over which it then sits in critical judgement. The receptivity to the ethical discourses of the public sphere is the determinant of 'conscience' and its application.

The 'self' must stress those elements of consciousness that are capable of (ethico-political) development, and for which the understanding of *privacy* is recognised as, at the same time, both *self-identification* and *public*. 'The self' must be able to grasp the contingent nature of its own consciousness and become capable of political development. It is important to make clear here the distinction between the self as 'subject' and social movement as *agency*. There is no 'collective subject'; this would trap 'the subject' of civil society within the political confines of 'the economic-corporate). Through the recognition of its own contingency, 'the

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<sup>45</sup> Such phrases are apposite to the discussion in hand, though they may seem anachronistic. Various groups in modern societies could lay unwanted and undeserving claim to the latter category by being, say, HIV positive and homosexual, but would fit more easily into the former if they were HIV positive and haemophilic.

self' does not then anchor its ontology on the basis of 'identity' but is open to the possibility of its own development and progression from it. (The problem of 'identity' is considered further in chapter 3 with regard to social movement).

From writers as diverse as Marx and Havel, the idea of an 'authentic existence' or 'undivided essence' is a recurrent theme in the humanist tradition. They both recognise a fundamental split in 'the self'; a reflection of the self as two incompatible (but neither irredeemable) images. The difference between Marx and Havel on this point of course is that for Marx this schism is an effect of civil society but for Havel civil society represents its reconciliation. Their arrival at the division of the self from very different sources serves to mask a basic point of similarity.

In the Marxian analysis the *political* identity of individuals is severed from their *civil* identity by their role in the system of production; political status as opposed to social status. A politically alienated society comes to be accepted as if not a 'natural' condition then, one that is basically unchangeable. All matters of social and economic enquiry are premised on philosophical, or ideological, 'givens' concerning the individual as a universal abstraction from its environment. The sovereignty of individual rational agency evolves as an illusory (ideological) attribute of the self. The self is therefore estranged from the very (*public*) conditions of its formation and development. In Marx's terms, a dual-identity evolves: the public existence of citizenship, and the private member of society. If the state is separated from the citizen as member of civil society, then "it follows therefore, that the citizen of the state is separated from the citizen as a member of civil society. He must therefore *divide up his own essence*." <sup>46</sup>

From a very different philosophical and literary tradition, Havel sees the fault line between 'authentic' and inauthentic' existence. Fundamentally the problem lies in the

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<sup>46</sup> K.Marx 'Critique of Hegel's Doctrine of the State' in *Early Writings* London. Penguin. 1972 p.143

technological societies that are the product of modernity, but this is not to claim, on the basis of the points made on this subject above, that Havel is 'anti-modernist', as is often his (mis-) representation. The discussion above on the public nature of *privacy* already alludes to this; as civil society is a product of modernity, and an integral part of the 'continuing democratic revolution' it is impossible to place Havel's conception of politics in some obscurantist category. And although Havel accepted the Heideggerian analysis of modern technology imprisoning individuals, he saw their escape through the 'anti-political' institutions of civil society. In this he rejects the fatalistic course of Heidegger's pessimism that there is no political cause capable of resolving it.<sup>47</sup>

The problem of the 'divided essence' is that our own inauthenticity is complicit in our own domination: "The line of distinction between ruler and ruled runs *de facto* through each person".<sup>48</sup> The differences between Marx, on one hand, and Havel on the other, are not so great in that the political emancipation both seek cannot be achieved prior to 'social' emancipation from the external apparatus of state or the 'ideological lie', from the fetishism of commodities and the 'consumption of inanity'.

The question that must be raised is what is 'social emancipation'? It is more than a freedom from 'the social';<sup>49</sup> it is a freedom of 'the social', with the self as contributor and not passive subject to it. How this is to be achieved is of course where Marx and Havel diverge. Social emancipation can only be identified in how the self resists pressures from the social, and develop (publicly) the cultural conditions for (political) resistance. Milosz says that: "The resistance against the new set of values is [ ...] emotional. It survives, but it is beaten back whenever it has to explain itself in rational terms".<sup>50</sup> Within the context of Milosz's wider analysis of 'the captive mind', this resistance is unavoidably read as 'positive' - meaning that

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<sup>47</sup> M.Heidegger *Question Concerning Technology and Other Essays*. New York Harper Torchbooks 1977

<sup>48</sup> V.Havel 'Power of the Powerless' in *Open Letters* op.cit p.144

<sup>49</sup> H.Arendt *Origins of Totalitarianism* London Penguin 1958; J.S.Mill *On Liberty* London Penguin 19778.

the new set of values were authorised by the total rationalisation of society. Such values sought to eliminate (pace Marx. It needs to be reminded) all semblance of what could be reasonably described as humanism. All explanations of human life became subsumed by 'the Method' of dialectical materialism. This dialectical course of history is charted to the extraction of humanism (however construed) out of society and therefore extracts society out of life.

Taken out of its context, the 'emotional' nature of resistance still applies. The subjective protest is still 'emotional' whether the object of protest is rationalist or non-rational in its deployment of power mechanisms. The former dismisses all 'humanist' trace as a moribund legacy of idealist philosophy; the latter characteristically pacifies, and therefore impedes the development of the self, by means of such cultural constructions as 'guilt' and 'shame'. It is not a simple matter of 'emotional', or affective, resistance deploying itself against rationalist subjection.

All resistance is of emotional origin but its development is a cognitive process. The motivation for resistance can be explained in no other way. It is a form of indignation (however received) reducible to a protest by the subject against the impediment of its will to determine its own social conditions/environment (and importantly - not just its position within them/it). It can go no further, and certainly not to 'conscience' as the expression of an inherently moral indignation as the explanation of the motivation of resistance or protest. A caged animal will resist its entrapment. It does not know why, neither has it reasoned that it is in its own interests are better served in resisting (there is another rationale that could dictate the opposite of this conclusion of course). Neither is the protest about the position *within* the entrapment. This is an important point if resistance is to become sufficiently radical for a democratised civil society. (Reflecting the ethico-political characteristics of social movement).

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<sup>50</sup> C.Milosz op.cit. p.201

The notion of 'intellectual and moral reform' is conceptualised by Gramsci with reference to the material base (as the organising principle of society) for the necessary conditions for its effect. He poses the question: "Can there be cultural reform, and can the position of the depressed strata of society be improved culturally, *without a previous economic reform and a change in their position in the social and economic fields?*"<sup>51</sup>. Gramsci was Marxian enough to answer this question in the negative. He describes economic reform as the "... concrete form in which every intellectual and moral reform presents itself".<sup>52</sup> The nature of this reform becomes clearer within the wider Gramscian concepts of 'economic-corporate' and 'ethico-political'; for there to have been a social development from the former to the latter, there must first have been active the processes of *intellectual and moral reform*.

Little or inadequate attention has been paid to the meaning of this reform, however. It refers to more than a mere change in political view or position representing a subjective or corporate (economic) interest. It must be made clear that 'intellectual and moral reform' is not the action of transcendence expected of an exclusively rational agency. Neither is it an assumption of some 'original position' in an abstracted void where individuals, as rational agents, calculate self-interest from an understanding of their own social contingency and an ignorance of their own personal outcome in life (leading to a rationally calculated political framework). Even if the abstraction were possible it would be an exercise in pure thought whose only conceivable conclusion would be the kind of 'soulless reformism' that civil society, according to Cohen and Arato, can surpass. Anything less than a change that is fundamentally attitudinal, and not merely an adjustment of politics, cannot provide for the conditions for a democracy that aspires to retain its core normative values.

The processes of reform come from experiences of cognitive dissonance as points of crises of consciousness; where the contradictions in an unreconstructed world-view become

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<sup>51</sup> A.Gramsci op.cit p.133. My emphasis

glaring. Only then does 'reform' (as re-form) become actual, or 'real' as opposed to an instrumental politics of expedient imagining. Where intellectual and moral reform might be understood as, in part, an introspective fault-finding exercise, it does not entail the self-apportioning of 'blame' for any 'personal defects' as pure introspection, but are recognised as the outcome of a contingent set of circumstances (social/economic/cultural/political) and so whose actions are not determined by a totally and 'freely-willed self'. Insofar as an intellectual and moral reform recognises the contingency of its identity and position in society it cannot be dismissed as an exercise of Nietzsche's idea of 'bad conscience'. Here the 'slave morality', constructed by the priesthood, determines a sense of guilt that declares the self as the absolute bearer of responsibility for such defects. According to Nietzsche this is man's will to power, the aspirational master within, turned inward and forming the self-tyranny of 'bad conscience'. (A mechanism of maintaining the cultural hegemony of 'the individual' as autonomous and moral agency). Nietzsche's philosophy declares 'bad conscience' (in other words 'conscience') as the suppression of 'the will to life itself'. An intellectual reform is the overcoming of 'self-tyranny' - and what is ideologically imposed passivity - through the public action of *privacy*. A receptivity to and engagement with the discourses of the public sphere and social movement, and with the almost imperceptible cultural changes within the subject's environment or more explicitly political social movement that confronts 'political society' as well as society itself.

Intellectual and moral reform follows Gramsci's critique of 'common sense'. He was well aware of the contradictions within this unreflective 'everyday view of the world', and the perception of 'common-sense' as something beyond critical question. But such a rigidity of view precludes critical reflection as a necessary element of praxis. As Gramsci's historicism precludes the idea of absolute truth, a philosophy of praxis must rest upon an immanent

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<sup>52</sup>*Ibid.*

disposition towards question, and not an introduction of 'truth' from some external oracle. An intellectual and moral reform is not, then, a quest for a 'truth' that can withstand 'scientific' rigour, but the arousal and actualisation of a critical faculty. Intellectual and moral reform is intended to question the coherence of a largely dislocated view of the world that is sutured by the traditions of 'common sense'. It refers to a reform that is essentially philosophical; a radical reform that opens to cultural and cognitive scrutiny the very position and identity of the self and its place in a world largely alien to it. It entails a confrontation between critique and the emotionally internalised imperatives (the 'givens') of 'common sense', and recognition of the contingent nature of consciousness. It recognises antagonistic logics and dissociates the internalised non-rational aspects of a particular world-view from the cognitive and intellectual justifications therein, and can consequently no longer accommodate those positions. The de-estrangement of the affective and cognitive aspects of the self is therefore the achievement of this reform; the substitution of 'common sense' with that which makes ('good') sense. If common sense tells you that 'moral' is what 'moral' says what 'moral' is, then 'good' sense points to 'moral' as subject for cultural and critical reflection.

The problem facing this re-form is that at one level there is the 'cognitive-rational' view. That is to say, we may argue with impeccable logic within an abstracted frame of reference that all *ought* to be entitled to exercise their will as freely as possible conditional upon tolerance of those who are tolerant, or some such guiding moral formula (the transcendence of liberal rationalism). But at another, deeper, level there is the 'ideologised' attitude derived from 'non-rational' construction culturally grafted onto the consciousness. For example, the rationally granted concession of *equality* does not necessarily correspond to the more 'emotional' world-view and its appraisal of the *worth of equality*. Such values as national identity, religion, the status of property, patriarchy, the bases of self esteem as 'received' all complicate and effectively prevent any significant political application to the abstracted notion



of equality. We can think one thing and feel another; we may accept the abstracted liberal arguments of universal (political/moral) equality, but it might not be so easy to 'digest' that an Iraqi or Palestinian life, for instance, is of *equal worth* to perhaps a British or American one. Similarly, the liberating of women necessarily involves dispensing with learned patriarchal assumptions and norms (by women as well as men). This (liberation) can be championed by those who stand to 'lose' (men) at the rational-cognitive level, but the ideologised attitude to the same point may be less responsive, making adaptation/reform more difficult. Rather than a 'transcendence of the cognitive-rational', intellectual and moral reform requires that the self 'sinks' itself into the cultural life of 'public' *privacy*.

However, when the self is 'sutured together by different discourses (of identity)'<sup>53</sup> it is the dominant discourses that then construct the self; in the case of 'developed political systems' (particularly) reforms and developments of the self are conducted 'privately'. For the 'reform of the self' to facilitate the degree of (public) development necessary for the civil society vision of democracy, the self must be receptive to the 'ethico-political' discourses of the public sphere; allowing for a greater possibility of the *fundamental* reform required. The diversion of *privacy* into privatism, however is more problematic than a reflective confrontation of the self with its identities. The cognitive and intellectual justifications for property as the key to self-development are more than merely well versed, they are apparently ineluctable. Indeed, the rational utility maximiser would not recognise such a diversion; *privacy*, it would be argued, has become democratic through the greater capacity of individuals in 'developed political systems' to *choose* (i.e. to develop a choice rather than choose to develop). But the utility maximiser's argument is flawed. On its own logical grounding it, i.e. the idea of maximising private accumulation, is a short term expedient in terms of stability (personal/social/political), moreover it is of doubtful use to a 'progressive'

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<sup>53</sup> C.Mouffe op.cit. p.304

development of the self as part of the human condition when that condition is denied any development 'as a whole' through an *assumption* of democracy. But the idea of an 'empirically possible' (and 'normatively necessary') civil society<sup>54</sup> cannot be upheld in a culture of privatism – of which the practice of rational utility maximisation is its logical apogee. To use the terms of rational utility to turn the argument around, it can be said that the most 'rational' form of 'utility maximisation' is not always the most obvious. Critical deliberation would extend beyond the individual 'for itself' as (private) subject to the inclusion of 'ethico-political' matters. Inclusion would come from recognition of political matters as inextricably linked to the social position of the self, however distant a privatised existence may make them appear. The 'common sense' of private accumulation may then be (critically) addressed.

Civil society must be conceived partly as the realisation that any steps toward the emancipation of the self will be taken as social-being, and not with the notion of 'social-being' as diametrically opposed to the emancipation of the individual. The predominant values of 'developed political systems' are the accumulation of wealth and the extension of 'the private', shaping an understanding of *privacy* very different to the theme that civil society discourse presents. Finding some sort of ontological refuge within the confines of small social units and particularist and 'private' concerns denies the development of 'social-being'. Certainly the possibilities of self-development and moral choice are effectively limited.

The paradox of *privacy* in civil society discourses is that it must be construed as an essentially 'public' construction and engagement. The recession from consciousness of the notion of 'the private' is crucial to the development of civil society. There can be no 'ethically disposed' society in the manner of the *idea* of civil society, whilst it is still conceived as a defence of 'the private' against (public) intrusion by the state. The focus on the state as the primary antagonism of democratic development and empowerment of society serves to neglect

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<sup>54</sup> J.L.Cohen & A.Arato op.cit. p. 453

what is as great a threat in the form of the reification of 'the private' in 'developed political systems'. Enhancement and consolidation of the 'private' realm is axiomatic in liberal theory, and it is on this specific point that civil society theory must decisively depart from it.

## Chapter 2

### *Publicity*

#### (Institutions of Culture and Communication)

Without vibrant, receptive and accessible *publicity* there can be no 'democracy' worthy of the name. Here the reference to 'publicity' is as institutions of culture and communication; and not as the vague overall that operates as the necessary antithesis of an obscured and fetishised conception of 'the private'. A well-defined (however arrived at) bifurcation of public/private is one of the defining features of civil society theory. Its political goal of the defence of society against the state is, as far as is possible, through 'mediation' from a self-imposed limitation rather than a wholesale assumption of power in securing the functions of state, or even its absorption into society. But this application is problematic for democracy.

As it stands, the definition of *publicity* (as with the other 'normative given' of *privacy*) is flawed and susceptible to basic criticisms. One is that it degenerates civil society into a version of liberal theory, by not paying adequate attention to the intrinsic relation between what is deemed 'private' and what subsequently becomes all else as 'public'. Objective categories proved unfounded in the previous chapter; and the legitimacy of this argument, grounded in the discussion on 'the self' in chapter 1, will be furthered in this one. Civil society theory is beset with the problem of conceiving of *publicity* in reified vein. Invariably conducted within a framework that accommodates capitalism (by the acceptance of its inevitability), it displays either a naivety, or at least an excessive optimism, regarding the

condition of the public domain; the most politically relevant sphere of society for a normative conception of 'mediated' democracy.<sup>1</sup>

The previous chapter's attempts to establish the necessary 'cultural elimination' of the fetishism of 'the private' (however difficult this may be) with regard to the normative implications of self-development and moral choice, was pivotal in theorising the grounding for the 'normative necessity' of 'civil society'. This chapter reinforces this argument. Recurring reference to the 'agenda' of 'developed political systems' helps to maintain a necessary mindfulness of the link between consciousness and political legitimacy. The arguments that (implicitly) depend on a traditionally conceived notion of the private (pertaining to 'rights of *privacy*' and the correlative understanding of 'self-development and moral choice') were refuted. The radical (but theoretically possible) recession from the (political) consciousness of 'the self', (but not from the state) was first proposed in Chapter 1. I will maintain the argument by first offering a definition of culture as the wider category of *publicity*. Then a theoretical exposition of the socio-political role/function of its sub-categories of political significance to civil society: the public domain; and, in the discursive forms of its ethico-political elements, the 'public sphere'.

The primary task is to make some definitional points of clarification. The first part of the chapter consists of a review of the meanings of *publicity*: a full and extensive enquiry of *publicity* as its widely defined category would require a fairly comprehensive theory of society. For reasons of focus then, it requires certain reductions (that are of direct relevance to civil society). If the normative pillar that *publicity* represents is not to be left as some untheorised 'virtue' (as was *privacy*), then, for a 'politics of influence' to effect itself, mediated by aspects of publicity, the 'public domain' and the 'public sphere' must be theorised as related yet separate concepts. I will propose in this chapter that the public sphere not only requires

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J.Keane; J.Habermas; J.L.Cohen & A.Arato

distinction within its wider category of *publicity* but also a considerable conceptual separation from 'the public domain'. The latter represents asymmetrical discursive contest, whilst the normative implications of the 'public sphere' represent a development from contesting more or less 'private' interests into discourses whose antagonisms are directed toward the perceived threats to society in the 'systems' forms of state and capital. Where the 'public domain' is internally antagonistic, the public *sphere* exhibits a 'solidarity', contesting external forms of domination (of state and capital). The implication of this is that the *content* of culture and communication is decisive as well as is the *mode*. *Publicity* can only serve as a politically normative channel in a radically democratised society once it has been subject, as part of the 'sacred core' of values, to critical attack. It cannot be assumed as the means in itself toward a 'normatively necessary' society that is based on the democratic institutions of civil society (and if it is to avoid the ultimately empty baggage of the vague notion of *privacy*).

'The public domain' refers to a communication (and culture) that suggests a more or less accessible distribution to 'cultural production'. Where *publicity* at its widest incorporates institutions that are beyond the scope of the most elastic and realist conception of a 'public sphere' stripped of any normative pretensions, the public domain concerns the concrete condition of democratic potential outlined below. As a sub-category of *publicity*, the public domain is considered in its actual condition; a condition that mitigates against the optimism that colours the rhetoric that comes from the most unlikely sources.<sup>2</sup> The free-flow of communication to which Murdoch refers, and which would make him redundant, are however optimistically premature. The analysis of his own fate is "attractive but deeply flawed [...]. In the emerging environment, power will lie with those who own the key building blocks of new communications systems, the rights to key pieces of technology. [In] the battle for command over intellectual properties, the media moguls have a sizeable advantage since they already

own a formidable range of the expressive assets that are central to public culture, and this range is steadily increasing through acquisitions, mergers and new partnerships".<sup>3</sup>

I will pay particular regard to developments that are not short of alarming for democracy, even when conceived in its most 'realist' and attenuated forms. The focus will first be on the systems of news media in 'developed political systems', and then on to structural developments of the media and cultural production and their implications for civil society. Developments in the transmission of communication and culture have inspired many and varied optimistic prognoses for democracy.<sup>4</sup> But a look at the conditions these developments have effected shows 'undemocratic' tendencies of monopolisation, or 'convergence' of production and the 'homogenisation of product' ('vertical integration').

It is the further abstraction from the public domain of a normatively identifiable 'public sphere', amid the discursive dominance of competition and acquisition of the wider category that is crucial to the development of civil society. Its establishment is essential if any sympathy for the application of the *idea* of civil society is to be retained. If the 'deconstruction' of 'the private' was the pivotal aim of the first chapter, then the next problem for civil society lies in a normatively acceptable extraction from the public domain. The difficult search for answers to this question points toward the essential subject matter of the next chapter where 'social movement' will be considered as articulated (democratic) struggle that (although not of necessity) could meet the normative demands as idealised below, and provide the necessary sociological root of civil society. Here, as an analytical device, I shall employ the Gramscian categories of 'economic-corporate' and 'ethico-political' to aid the identification and extraction of 'public sphere discourses'.

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P.Golding and G.Murdock 'Culture, Communications and Political Economy' in *Mass Media and Society*. J. Curran & M.Gurevitch (eds) Arnold, London. 2000 p.79 Here they refer to Rupert Murdoch 'writing his own business obituary'.

*Ibid.* pp.79-80

H.Rheingold *The Virtual Community – Surfing the Internet*. London. Secker and Warburg.1994 p.29

The concluding paragraphs of the chapter will summarise the problems posed and questions raised above, and consider the implications for 'civil society democracy' of an uncritical embrace of *publicity*. For greater clarity on what ethico-political discourses sound like in the public domain, and how they can be identified, we must look to civil society itself: its social relations and democratic (ethico-political) discourses as praxis. (In the next chapter I will try to identify these ethico-political elements as 'social movement' in the democratic desertification of the public domain.)

Following the discussions in the previous chapter of 'the subject'/*self* and the question of consciousness, the institutions of *publicity* must be viewed as the corresponding tangible reality that is at the same time cause and effect of this consciousness. Not as a separated 'objective reality' that is above and beyond the human will, and certainly not as an unchallenged facilitator of 'transparent' democracy. By way of illustrating my understanding of *publicity*, and the 'deeper' levels of culture to which its institutions refer, I will use the expressed fundamental differences between *ecologism* and *environmentalism*.<sup>5</sup> These differences, emphatic enough in some of the theoretical discourse on Green politics are at similar level of paradigmatic thought as the instrumental rationality that underpins an economic-corporate consciousness. 'Environmentalism', in the radical green analysis, is a mere managerial reformism that rectifies problems from a perspective of the inevitability or 'certainties' of the very systems that pose them. By adopting a 'perspectival multiculturalist' approach<sup>6</sup> the fundamental differences become more obvious than the similarities, which are sometimes merely political or even coincidental.

The target of radical green attack is the subsequent anthropocentrism of early Enlightenment thought which, largely thanks to Descartes, created a paradigmatic shift in the

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A.Dobson *Green Political Thought* London Routledge 1992. esp.pp.37-9

This is a term Parekh uses to describe a 'plurality of world view' rather than the more 'superficial' levels of multiculturalism. B.Parekh 'Non-Ethnocentric Universalism' in T.Dunne & N.J.Wheeler (eds.) *Human Rights in Global Politics* Cambridge University Press 1999



way of thinking about the world and our place in it. From thereon, the development of the belief that all knowledge and basic truths could be understood, and grasped only by a *rational* mind, became axiomatic.<sup>7</sup> Whether the methodological route taken to these 'certainties' is rationalist or empiricist, the presumption (necessary for the conclusion) is that scientific knowledge can be grounded on an immutable foundation of truths. This position is at odds with the basic principles of *ecologism* (or green radicalism), but not so with *environmentalism*. Indeed, the 'managerial' approach, apart from not recognising *totality* and *linkages*, must retain some faith in the system or paradigm of thought that proclaims that nature can, and for the benefit of 'man' must, be dominated.

The inheritance of an economic-corporate consciousness comes (ultimately?) from later philosophical discourses that ascribed rights to 'rational' minds and effectively set the conditions of their optimal development through property and its acquisition (within 'private' spheres: individual, family, nation, corporation; state). The exercise of these 'rights of freedom' came to be measured accordingly. For any serious claims to a practical development of the *idea* of civil society, the dominant discourses of the public domain must reflect a world-view that has (shifted) from that of current, 'developed' political systems in the same 'perspectival' manner and proportions that *ecologism* both condemns in the early Enlightenment and calls for today.

The fundamental flaw to civil society theories lies in their retention of the highly problematic principle of 'self-limitation'. I will discuss this 'core idea' of civil society in terms of social movement in Chapter 3 and a misplaced 'extra-democratic' embrace of *legality* in chapter 4. However, the 'core-values'<sup>8</sup> that must become subject to critical attack, as well as having their retention considered as necessary etc, requires a radicalism that parallels the 'perspectival' level of attack of *ecologism*, and consequently goes beyond the boundaries of a

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R.Descartes *Discourse on Method: Meditations* F.E.Sutcliffe (trans.) London. Penguin 1968

sustainable principle of 'self-limitation'. Where Baconian proclamations of 'domination and mastery' have become culturally implicit, and are the points of attack for radical green thinkers, so, similarly the commonsensical assumptions surrounding 'rights', property and, by corollary, the modern (legal) state must become the points of critique for civil society discourse if it is to realise a radical democracy.

The conceptually unsustainable category of 'private', and its revised meaning according to civil society's normative intent, effectively dissolves the oppositional division of public/private. Without its antithetical identification of 'private', the defining of 'public' becomes all the more difficult. '*Institutions of Culture and Communication*' is too vast and exhaustive a category to serve much investigative use as it stands. But as a cornerstone of a 'normatively necessary' civil society, the *publicity* that these institutions represent is of crucial importance. Required are normatively acceptable discourses to provide the *publicity* to found civil society. By 'normatively acceptable' I mean communications in the public domain that show a number of characteristics. The two most salient features of these discursive formations are their opposition to the state and their opposition, explicit or otherwise (explain), to capitalism. Other, less obvious, features of this tendency of discourse includes its potentially universal inclusiveness of participation and adoption of its cultural forms, its iconoclasm, and its democratic innovation.

As a methodological device for identifying these institutions, a conceptual division between culture and communication is unworkable. Institutions of culture (that is culture both in the narrow, specific sense where it is "something that pretends to exist for its own sake"<sup>9</sup> and in the broader meaning of Weberian *kultur*) and communication are fused. This has always been the case. The filtration of 'something[s] that pretend[ ] to exist for [their] own sake' into the imagery and narratives of broader culture communicate a basic (political)

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J.L.Cohen & A.Arato op.cit. p.343

morality. Thus for any political theory to make serious claims of application it is important to clarify what is meant by *culture*.

Firstly it must be made clear that this term does not refer to a separated aesthetic realm of society where 'art exists for art's sake'. Such a limited conception is derived from a perspective of society formed of independently existing autopoietic systems. Nor must it be, on the other hand, interpreted as a metaphysical whole that acts as the 'motor' (or perhaps, given the strong German idealist influence on this view, *zeitgeist*) of society independently of any effect of human interaction. A modification of the latter perspective is easier to accept, if a broad view of *culture* includes the complex relations of human volition within the social totality it implies. But the perspective of 'art for art's sake' (one of the 'freest' of human expressions and actions as it may well be) is of limited political function in the development of civil society as the dynamic of 'developmental democracy'. However, the conception of culture as a 'purity of art' is only 'apolitical' in the sense that the 'legal ideal' is 'neutral', i.e. not really. (This is the basic enquiry of Chapter 4). Just as the 'apolitical' footings of *legality* provide the structure for morally tendentious and ideologically maintained social relations, 'pure (or fine) art', in the conditions of 'developed political systems', fulfils an important function of socio-political legitimacy.

An 'objective reality' ascribed to (a hegemonic) culture communicates a web of 'common sense', perceived as truth that is then internalised as subjective reality. The 'givens' of a (hegemonic) culture shape the consciousness of the *self* as a reflection of more or less fixed identity and whose course of development is concordant with this 'truth'. This is an important point of socio-political legitimacy. It is an ineluctable argument to say that in the conditions of 'developed political systems' the 'post-modernist cultural logic of capitalism' undermines specific 'certainties' of consciousness. But this is only part of the inexorable

processes of establishing another (far more insidious to civil society) 'certainty' – that of property being the tangible object of the subjective ideal of freedom. (The correlative, more intangible reifying of 'the private' –discussed in Chapter 1 as an illusory objective reality – is the cohesion of this legitimacy in 'developed political systems').

*Culture* is the underlying recognition of (as 'ideologised' imperatives) boundaries beyond which an action deviates from accustomed and consensual social and political behaviour. It corresponds to the 'morality' that 'coheres' a society, or perhaps more accurately for purposes of general application, *secures* a socio-political system. The most basic element of this morality is *language*. But as the primary institution, language is more than a *lingua franca* of a society, or the common bond of nations, but a communication of values that underpin the relations of a society. Even in the societies of so-called 'developed political systems' (just as was the case in the 'undeveloped political' systems of the former communist states of eastern Europe), the 'morality' remains at the 'economic-corporate' level of consciousness. (And therefore impedes any further development (politically) beyond the extension of a bureaucratised politics - in other words, an extension of the state). The language of 'developed political systems' communicates a morality whose vocabulary derives from concepts such as 'rights' and 'contract'. Its political agenda is legitimately structured accordingly, and the 'very conditions of privatism' then become part of the 'cultural certainties' that cannot be accommodate the *idea* of civil society.

The culture of the conjunction of 'development' and 'economic wealth' has long been established as an indistinguishable 'given', and the failure of the progression of consciousness to the 'ethico-political' applies to economic performance at governmental level (state) as well as at individual. The seemingly unshakeable union between 'development' (from such as post-colonial state building to personal) and material accumulation is shored up,

not so much by a proliferation of rights (in their actuality), but by an expansion of rights discourse and its contradictory overlap with democratic discourse. This contradiction has been all but concealed by the political rhetoric of economic-corporate interests in the public domain.

One of the primary institutions of *publicity* is 'the family'. Within the reference of a private/public divide, the inclusion of the family within *publicity* might be said to be simply wrong, and little represents 'the private' better than does 'the family'. Within the frames of reference of this thesis, less explanation is perhaps required regarding 'the publicity of the family' than its inclusion here rather than in Chapter 3 on *Plurality* where it is an identified 'form of association'. As the emphasis of chapter 3 is on the social relations of civil society as 'free association', 'the family', or rather the effect of it on the proposition of a civil society, is better understood as a conduit for cultural norms of behaviour rather than an institution of '*plurality*' as free (political) association.

However, the intimate sphere is regarded as the most important source of the ethical disposition that will secure the social relations of a democratised civil society. Following Habermas, for whom "The public's understanding of the use of reason was guided specifically by such experiences as grew out of the audience-oriented subjectivity of the conjugal family's intimate domain".<sup>10</sup> Cohen and Arato place great importance on the family (or intimate sphere). Their adoption of discourse-ethics as a legitimating political ethic requires that they emphasise the importance of the family (or intimate sphere) as a fundamental part of the *lifeworld* and as such integral to the structure of their civil society. The origins of the principle of ethical discourse are to be found in this intimate sphere, the ideal of which allows for "interaction free of domination and external social constraint".<sup>11</sup> In this, his earlier reflections on the family, Habermas sees within this formation the ideal of

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*Ibid.* p.28

generating “the development of all capacities that signify cultivated persons as ends in themselves”.<sup>12</sup> Moreover, this latent ideal, identified as such within the relations of the traditional nuclear family, is not merely ideological; Habermas recognises the reality of patriarchal domination and economic functions, and concedes that this reality is a threat to the potentially real. But it is not an illusory projection. The potential of the relations within the intimate sphere is the deference of inter-subjective human experiences in the face of external and inhuman forces. Furthermore, these relations are capable of becoming institutionalised as forms other than the ‘bourgeois’, or traditional nuclear unit.

However, this intimate sphere is still problematic even if it is formed from a rational development of the bourgeois family. Whilst it may be, in an idealised fashion, a sphere of relations where domination and hierarchy are surpassed by reciprocity and symmetry, and ‘givens’ are replaced by inquiry and reasons, it is not in itself, and in its traditional form cannot be, the optimal condition for self-development and moral choice that is the ‘domain of *privacy*’. In its traditional form identities are more or less fixed in the consequential roles of the dominant discourses germane to this formation. Neither in a reformulated framework, that had managed to detach itself from the legacy of tradition and hierarchy left behind by patriarchal domination, can this sphere best fashion the domain of *privacy* in its reconstructed sense. This was shown in the last chapter to be a necessarily public process for logical reasons of self-development, and for political reasons of an expanded and deepened democracy. The political argument challenges the ‘intimate sphere’/(family) as the conceived ethical source or as the cultural origin of the public sphere as a *mode*. It maintains that if the public sphere represents a means of critical debate and political involvement then its generation and reproduction is to be found elsewhere (in the discursive forms of the public sphere and its praxis as social movement). I will propose, in the next chapter, that the critical development

of consciousness and ethico-political perspective is derived from the *public* discourses of civil society, and the institutionalising processes of social movement as the praxis of those discourses.

This intimate sphere is pivotal to Habermas's account: "The public's understanding of the use of reason was guided specifically by such private experiences as grew out of the audience-oriented subjectivity of the conjugal family's intimate domain".<sup>13</sup> This use of reason, the dynamism of Habermas's critically edged public sphere is impelled from the intimate sphere, for which we can read 'the family', to the 'literary sphere' to the 'political public sphere' where it is consolidated. Even if these categories could hold up to this differentiation, the line of projection is wrong. It may have provided the explanation for the failure of the ideal of 'the public sphere' to realise itself in what was a specific, historical constellation of the development of a 'bourgeois' public space or means of discursive political activity, as a development of 'early' capitalism. But far from being the necessary outcome of such a progression, a critical-rational consciousness (without which the 'public sphere' loses all its evaluative underpinnings) becomes limited by the fusion of these categories that are characteristic of 'later' capitalism. Moreover, rational criticism, one of *the* defining features of the public sphere, is given easier rein when its object is viewed furthest from the intimate sphere. To take perhaps an obvious example like patriarchy, as an abstracted concept it is more easily criticised for its mode of domination than are immediate members of the intimate sphere who sustain it. Even if indeed there is first of all the recognition that a mode of domination is at work in such relations.

The obvious criticism to make of the family as an integral, and so ethical, part of civil society is that it is not usually chosen or voluntarily entered into (this point will be returned to in ch.3 on *Plurality*). But even this compulsion is not the main impediment to the

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*Ibid.* pp.53-5

critical role of a 'politically aware' self. It may be that, in rare instances, the intimate sphere has become independent of economic necessity and material reproduction, but even here critical or rational appraisal is either distorted or subdued altogether by 'affective considerations' and constraint. Intellectual and moral reform requires compatibility between the affective and the cognitive. Because of strong ties based on the former, the intimate sphere/family is not readily amenable to this reform, and cannot therefore provide the initial impetus for a critical dimension to (an 'ethico-political' level of) consciousness in its wider vision.

The 'givens' of consciousness, transmitted by *publicity*, are historical contingencies. An economic-corporate consciousness is an historical contingency; its cultural forms assuming widely varying discourses on traditional institutions like the contradictory relations between the liberal ideal of freedom of the individual and 'family values', and between the former and national identity. But this apparent variety masks the economic-corporate category of these cultural forms, from the 'ethno-centric' politics of 'undeveloped systems' to the 'consumer-centric' politics of developed systems. Just as they can promote and support a vibrant democracy, in the manner that a 'post-traditional civil society' suggests, the institutions of *publicity* can also ossify into oppressive tradition.

*Publicity* used as freely as it is by civil society theory as a normative concept of institutions overlooks the negative aspects that comprise some of its 'core values'. Consequently the dominant core institutions of *publicity* itself, such as property, *legality*, tradition, the discursive forms on freedom and rights that project the free market as the sphere of exercise of that freedom are overlooked. *Publicity*, in other words is, in the generalised condition of 'developed political systems', a threat to the development of civil society. *Publicity* then is far from the guarantor of a transparent politics; it is the generator of



contradictory discourses, yet manages to contrive a certainty to these institutions despite these contradictions. It is in this sense that institutions of culture and communication, predominantly, are the promulgators of a 'false' consciousness that asserts permanency and inevitability rather than contingency and possibility. It is an irony that the logical conclusion of the bewildering array and amalgam of discourses, that *publicity* represents, leads to as privatised an existence as is possible through the accumulation of property/wealth; (private education, health insurance, and for some of those whose 'self-development' has proceeded accordingly, private 'gated communities'. The social and political effects of this cultural condition on democracy is to reduce it to a realist and attenuated model of a rubber stamp legitimating process in 'developed political systems', and to confuse it with the freedom of market principles in 'undeveloped political systems'.

In light of these analyses, far from being the mutually reinforcing principles that Cohen and Arato claim of their synthesis, the expansion of *rights discourses* is in truth extremely problematic for the democratisation of civil society. If 'discourse' is to be understood in the Foucauldian sense of "curious entities which one believes one can recognise at first glance, but whose limits one would have some difficulty in defining",<sup>14</sup> then it is possible to conceive of the language of rights as reinforcing the particularism of a privatised society. Indeed, the continued ascendance of rights as inviolable and private in their relation to the individual, and interpretation as the core values of 'democracy' adds a legal dimension to morality. (This question of *legality* as moral resource is taken up at length in Chapter 4).

No action, if it contravenes the contextual rationale of this particular discourse, can be deemed 'a development' if it is in any way economically self-abrogating. This applies to states as well as the individuals who are subject to them. By using Schopflin's division as a conceptual tool of convenience here (however generalised and problematic the geographical

application may be) a political system acquires its prefix of 'developed' if it has prioritised its agenda to matters of private economic concern. The modern constitutional governments of 'capitalist democracies' that are Schopflin's idea of 'developed' political systems operate at the level of 'economic-corporate' concerns, which reflect the levels of concern that preoccupy those who are subject to them. The 'economic-corporate' level of morality, in 'developed political systems' can be identified by, among other things, the judgement of a government on perceived economic performance rather than, say, the conduct of its foreign policy. Arguments to the contrary that may use the 'Falklands Factor', as an example of how a politically cynical war returned a victory for a government whose appalling economic record ought to have kept them far from power is evidence that foreign policy, for instance, overriding domestic economic policies equates to the economic-corporate becoming subordinate would be wrong. The economic-corporate entity in this case was 'national-identity' (a 'given' which served a particularist cause), a boundary beyond which the socio-political system as a whole could not step (however 'developed' it may have been according to Schopflin's criteria). It is the institutions of culture and communication (*publicity*) that maintain a traditionalist aspect to consciousness that has consistently failed the development of an (ethico-) political consciousness that is the 'idea' of civil society.

To make it possible to define the democratic potential that civil society theorists and liberals alike assume from *publicity* (synonymous with a transparent and democratic polity) it is necessary to conceptually reduce the term to apply to the 'public domain'. It is in the rapid structural and technological developments of communication and information that can be found striking ambiguities regarding this potential. The task of theorising the public domain, crucial to a radical theory of democracy is made conceptually the more problematic by the overlap with terms usually employed within an understanding of the (Habermasian)

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M.Foucault 'Politics and the study of discourse' in *The Foucault Effect* (eds) G.Burchell, C.Gordon, and P.Miller.

'public sphere'. Conceptual clarification requires the abstraction of a defined aspect of *publicity* whose institutions of culture and communication reflect a disposal of economic-corporate interest and a development of ethico-political discourse.

In *Between Facts and Norms*, Habermas explains what the public sphere is not: an institution ("and certainly not [ ] an organisation"<sup>15</sup>) neither a framework of norms consisting of roles and membership regulations nor a system. Rather it is better, described as a communicative *process* that 'filters and synthesises' *public* opinions; understood as a peripherally derived sluicing mechanism of the 'core area' of institutional complexes of administration and judicial system, and characterised by "permeable and shifting horizons".<sup>16</sup> It is communicatively structured not just in relation to the *mode* (i.e. the *function* and *content* of everyday communication) but also *socio-graphically*, forming a relatively tangible social space.<sup>17</sup> An important point is that the extension of the sphere is coterminous with its abstraction; that is, from the identifiably 'local' and 'physical' to the broader and a 'virtual' comprised of "scattered readers, listeners, or viewers linked by the public media ...".<sup>18</sup> The implications are numerous and will be examined below, but it is important to point out the salient feature that the 'links' of this broader sphere are all consumers of information, the 'common strands of identity'<sup>19</sup> in otherwise societies that are culturally specific.

Objections to Habermas's theory of the public sphere are numerous. I will refer here to Nancy Fraser's criticisms of Habermas's 'public sphere', for two principal reasons. The first is that the four assumptions that she claims have to be made in Habermas's theory refer to the most salient points of its criticism. And secondly that this criticism itself is constructed from economic-corporate reference points, confusing the public sphere with the economic-corporate

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University of Chicago Press. 1991 p.54

<sup>15</sup> J.Habermas *Between Facts and Norms; Contributions to a Discourse Theory of Law and Democracy* Cambridge. Polity Press. 1997 p.360

<sup>16</sup> *Ibid.* p.356

<sup>17</sup> *Ibid.* p.360

<sup>18</sup> *Ibid.* p.361

discourses of the public *domain*. The normative emphasis that is required of a theory of the public sphere is consequently minimised.

The first of the four assumptions that are inherent and problematic, according to Fraser, in Habermas's theory is that there is the tacit liberal acceptance that 'social' equality is not a necessary condition for political democracy. As a corollary, her criticism is that 'discursive malpractice' within the bourgeois public sphere itself is overlooked in the emphasis on formal inclusion, and that participatory politics cannot be achieved in an overarching public (which 'denies' what she (Fraser) describes as 'subaltern publics' which then, consequently, denies 'open access') where there must theoretically be a "zero degree of culture".<sup>20</sup> The question of social equality is addressed below, but if its vagueness can be accepted here for brevity's sake then we cannot but accept that this must be the structural condition for genuine democracy, but equally it would be absurd to suggest that it is sufficient.

The problem of focusing on 'access' (which again is elaborated on below by way of a critical assessment of prognostic views on democracy vis-à-vis developments in information and communication technology) is that it reduces the problem of 'participatory democracy' to the material access to hardware and the 'cultural products' of the public domain. But the public sphere, it cannot be emphasised enough, is not a domain of discourses that can by virtue of its own *publicity* secure the democratic base to a civil society even if 'universal access' to these products is achieved. To varying degrees access to a public forum already exists in some political systems, but it is significant that the greater the expansion of this domain and access to it, which is one of the hallmarks of a 'developed political system', the less critical becomes its content. This is the logical progression of cultural development under capitalist expansion; the maintenance of economic-corporate categories and identities then precludes, or at least impedes, the development of a 'public sphere'. The quest for universal, or equally distributed, access to

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<sup>19</sup> N.Fraser *Unruly Practices* Cambridge. Polity Press 1990 p.120

the public domain translates democracy into the expansion of consumption of 'cultural products' The public sphere, on the other hand, articulates the discourses of civil society, and represents the praxis of social movement. It is not an 'original position'; it is democratically sourced creativity that is a living cultural hybrid with sociological roots, not a sphere of 'zero degree of culture'.

Fraser is right to raise the question of access and social inequality as preconditions for a participatory democracy. It is a valid criticism from the point of view of the redistribution of wealth. But she is conceptually wrong in her criticism of the public sphere for this assumption of a "zero degree of culture".<sup>21</sup> To conceive of the 'public sphere' as a rational debate shrouded in some 'veil of ignorance' would be a gross misinterpretation and would deny any effective political application. Rather than an assumption of a zero degree of culture, there must be a presumption of a *certain kind of culture*; the necessary political culture for a 'public sphere' worthy of the name. An important facet then of the 'public sphere', is as a mode of discourse which can invigorate the privatised self into becoming 'politically aware'; that is, aware of the 'public self' and its conditions of development.

Fraser's attack on the desirability of a 'singular public sphere' is another instance of the thrust of attack on Habermas's public sphere coming from a conceptual framework that can only deny theoretical development. Her argument that the idea of a 'political nation' identifying itself and concerning itself with set agendas within sovereign borders is vulnerable on two counts. Firstly, she underestimates the still powerful ideological forces behind the continued predominance of 'political nation' as one of numerous economic-corporate identities. Having said this, the cultural globalisation processes support her argument insofar as it is pointing in the right direction. Secondly, and more importantly, her argument can only conceive of 'the public sphere' as being the domain of political resolution to conflicting economic-corporate demands,

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<sup>20</sup> *ibid.*

and the subsequent dilution and compromise of these demands as 'common' interest of economic-corporate entities like 'political nation'.

Certain developing institutions of *publicity* may not necessarily derive from reflexive and post-traditional discursive overlap, and so may be devoid of any ethico-political convergence. However, it is also true to say (as Fraser does) that if a specific sphere of social relations become a public cultural entity then it is by definition opening itself to the probability of rational scrutiny from other public discourses. These relations are more likely then to *become*, for instance, egalitarian and inclusive (if these characteristics of public sphere discourses were not found to be intrinsic to a particular 'public'). But within this argument of discursive contest and exposure between publics is an assumption of a trans-cultural communication which, according to Fraser's language, "requires multicultural literacy [that] can be acquired through practice".<sup>22</sup> So if it is accepted that "communication across cultural lines is not in principle impossible"<sup>23</sup> then it must also be recognised that the public sphere (whose normative realisation is as a *mode* rather than *site*) represents a singularity of aim. If these cultural lines are to be crossed it represents the 'normatively necessary' deconstruction and reconstruction of specifically oriented cultures that form the basis of 'applied' civil society.

The third point of criticism made of Habermas by Fraser concerns the boundaries of what is deemed of 'public concern'. Discourse should be restricted to a 'common good', and the public sphere can be no place for particularist interest. But if the public sphere is to include particularist interest then there would be no point in trying to theorise it as an ethically specific aspect of communication in civil society.

A sharp division between state and civil society is untenable. It is an unrealistic separation in an analysis of civil society as a category of political sociology devoid of any ethical ideal. Fraser is therefore right to criticise this when a tangible realm outside the state's intrusion in

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<sup>21</sup> *ibid.* p.121

some form and to some degree, whether this intrusion be legal or communicative, doesn't exist in 'developed political systems'. But civil society is well defined as a sphere conceptually differentiated from the state at a normative level, and as 'actually' separated in practical social movement insofar as it is 'detached' from 'the state').

The problems that inhere in Habermas's public sphere model can only be fully grasped when the distinction between the communicative logics of the lifeworld and 'systems' is established. But in circular fashion, for the public sphere to retain its potential of political influence, certain conditions must be in place prior to the communicative process that is its distinction. There must be a priori agreements and recognition of 'validity norms' for discourse-ethics to proceed. There must be, first of all, an initial acceptance that one's own argument may be flawed, an acceptance that is a condition of its validity claim. There must already exist a communicative rationality prior to the actual public space and which is independent of the instrumental rationality of 'systems'.

But the reality is that those 'in', or seeking, political power do not act on such premises. This is an important point. Civil society theory insists that its agents and their objectives, democratisation included, must be 'self-limiting'. Without this principle, civil society would lose its defining *strategy*, but its retention has the equally undesirable effect of sacrificing the achievability of its normative objectives. It also has the peculiarly undemocratic effect of setting boundaries on the agency of civil society by subordinating it to the demands of systems efficiency.<sup>24</sup>

The importance of Habermas here is despite the coupling of the ideal to the historicism of its *near* development; "[his] linking of his study of the development of the liberal-bourgeois public sphere to a specific historical pattern of development should not lead us to neglect his

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<sup>22</sup> N.Fraser *ibid.* p.127

<sup>23</sup> *Ibid.*

<sup>24</sup> J.L.Cohen & A.Arato *op.cit.* p.328

theoretical model of this sphere, however ideal-typical or even composite it may appear".<sup>25</sup> I agree with them. However, there adaptation of the public sphere does not resolve analytical problems (it remains the public *domain*), and consequently lacks the ethical composition that a democracy conceived in the *idea* of civil society requires.

There are two key areas of concern. The first is the origin or source of a critical dimension to public debate or, put another way, 'ethico-political' involvement; and the second is the problem of '*crises of conscience* at the periphery' facing the core-periphery model of democracy that Habermas adopts. Any model of democracy that attempts to retain its normative elements by relying on a participatory notion of the public sphere cannot avoid these two questions.

Important in the understanding of 'the public sphere' is its conception as a 'norm' or ideal rather than a fact of contemporary societies. In other words, it must be identified not as a 'site' (or sites) or, exclusively as a mode (as in the practice of discourse-ethics) but by the discursive content or tendency that distinguishes this sphere from the public domain described above. The credibility of the 'public sphere' as a viable means of democratic politics has never been assured, and its use in any political theory invokes cynicism from the realist school of democracy and the political left who still view it in terms of Habermas's flawed construction. Aside from the flaw that Habermas himself identifies in his earlier conception of the public sphere, there is also the problem which assumes the 'authentic ontology' of individuals to be fundamentally *private*. But the conception of 'private' so understood, its questionable continued legitimacy notwithstanding, carries with it a corresponding striving for ontological security.

Defences of the public sphere as being of contemporary relevance and socio-political potential include revisions of Habermas's conception. The public sphere, however much it needs to be revised and adapted under perpetually changing conditions, of necessity, invokes the normative values of rational-critical debate, which was the historical legacy bestowed upon

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<sup>25</sup> *Ibid.* p.219



subsequent generations by the original bourgeois version with all its well-documented faults.<sup>26</sup> What may be missed in the necessary adaptations pointed to by McGuigan here is the required extent and depth of this revision. Hill and Montag take a bit further, saying that: “It is necessary to go further to ask what is the function of the concept of the public sphere today politically, as well as in historical analysis and philosophical reflection”.<sup>27</sup> Its function may fulfil the normative levels of rational-critical debate and discursive formations whose tendencies point toward an ethico-political consciousness, or, on the other hand, the ‘political function’ of what Hill and Montag are describing (which is essentially the wider public domain) serves the interests of state and capital at a ‘commonsensical’ level. Warner’s contribution to the theory of the ‘the public sphere’ is that it is this sphere that incorporates the public aspect of consciousness, or ‘public subjectivity’. The relation between the ‘public self’ and ‘the self’ must be one of unity; as a participatory democracy demands (and as *privacy* in its reconstructed sense depends upon). If a discourse can develop in any given public space, then its capacity of rising above the economic-corporate levels of *publicity* to a level of ethico-political apprehension, or consciousness can reflect the normative domain of the public sphere.

The (virtual) disappearance of the public sphere into the commercialised public domain has dire implications for both the *qualitative* and *quantitative* aspects of communicative or deliberative democracy. ‘Crises of conscience’ (at the periphery); political apathy; alienation; marginalisation; individualism: are all causal factors in what can amount to a dangerous democratic deficit.

The defining boundary of ‘the public sphere’ requires re-drawing, and clarification must be made concerning the differentiation between ‘public sphere’ and *publicity*; the two concepts are neither identical nor coterminous. The latter, it might be reminded, alludes to institutions of

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<sup>26</sup> J.M.McGuigan. *Culture and the Public Sphere*. London. Routledge. 1996. p.176 Habermas did not mean that the public sphere was intrinsically bourgeois. Rather it was society that was bourgeois that produced a bourgeois public sphere.

<sup>27</sup> M.Hill & W.Montag (eds.) *Masses, Classes and the Public Sphere* Verso 2000 p.6

culture and communication in a broader sense than the narrower notion of 'political *publicness*'. But importantly it represents something more abstract (and complex). It incorporates the public aspect of consciousness, or 'public subjectivity'. The relation between the 'public self' and 'the self' must be one of unity; as a participatory democracy demands (and as *privacy* in its reconstructed sense depends upon). If a discourse can develop in any given public space, then its capacity for inspiring a reflexive introspection (in other words the 'public self' apprehending the 'private self' and being held to rational account by it) is a measure of its capability of rising above the economic-corporate levels of publicity, that dominate Western societies and political systems, to a level of 'ethico-political' apprehension, or consciousness. We may consider how the economic-corporate levels of publicity affect our self-identity; as 'nationals' for instance, and the corresponding status ascribed us depending on our subsequent (nominal) roles in international relations. An awareness of our own contingency may be raised, that is to say, a realisation of the illusory necessity and inevitability of who we are and in what kind of society. Discourse that has ethico-political communicative potential as part of 'the public sphere' may highlight some of the despotic effects of publicity itself. Thus *Publicity* does not represent the antithesis of *privacy*, but includes institutions and relations which could not be incorporated into a sphere declared 'public' simply because of their *mode*; that is, they neither facilitate nor revolve around a communicative rationality, or put another way perhaps, cannot attain an ethico-political status. For the normative purposes of civil society, the public sphere as a *mode* must be emphasised more than the problematic distinction of it as a *site*. So for clarity of abstraction, 'the public sphere' is situated in 'publicity', but the former distinguishes itself through its capacity to maintain an 'ethico-political' level of discourse.<sup>28</sup> The ethico-political tendencies of discourses in the public domain, the framework of a reconsidered version of the public sphere, erode social

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<sup>28</sup> J.Habermas *Between Facts and Norms* op.cit p.361

context insofar as they transcend culturally specific 'traditional' structures of power and authority.

The deliberative form of democracy that Habermas counsels requires a structural model around which it can establish its politics of influence. It requires a model that can retain the core normative elements of democracy, too many of which have been lost in models like 'systems-theory' and the 'economic theory of democracy' according to Habermas. Resolving the defects of these models is the effect of the more normatively favourable model of 'core-periphery' which he proposes. Of the two defective models, the former "cuts the last remaining ties with normative models, essentially limits itself to the self-referential problems of an autopoietic political system. ... the latter, in a contrasting but equally defective presupposition of a methodological individualism focuses on *legitimation*".<sup>29</sup> The deliberative form of democracy that Habermas counsels requires a structural model around which it can establish its politics of influence. Given that systems logic has become an 'irreversible fact' (a 'given') of modern life according to Habermas, he turns to a model of 'radical democracy' as a means to *ameliorate* the effects of the market and of state intrusion. The question that he then addresses is "whether and how a constitutionally regulated circulation of power might be established".<sup>30</sup> He offers a deliberative model of democracy to try and accommodate this *procedural sovereignty* (sovereignty inheres in the procedure, rather than in the people themselves). It is in: "those subjectless forms of communication that regulate the flow of the discursive opinion and will-formation in such a way that their fallible outcomes have the presumption of practical reason on their side". His claim is that it can retain the core normative elements of democracy, too many of which have been lost in models like 'systems-theory' and the 'economic theory of democracy'. The former of these two defective models "cuts the last remaining ties with normative models, essentially limits itself to the self-referential problems of an autopoietic political system ... The

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<sup>29</sup> *Ibid.* p.333

latter, in a contrasting but equally defective presupposition of a methodological individualism focuses on legitimization".<sup>31</sup>

The application of the theory of the public sphere to politics requires at least these two things: a certain degree of *quality* to the 'debate'; and a *significant* and socially broad-based input. The first condition was, problematically, undermined by the actual and historical development of, what (theoretically) should have been the supportive, structures of the second condition. In *Structural Transformation*, Habermas charts the degeneration of the public sphere as causally directed by the development of mass media and of corporatism. Private organisations accrued political power while the private realm was penetrated by the state. The public and private realms blurred, consequentially breaking down the intimate sphere and ultimately substituting rational-critical debate with the consumption of culture. (If the content and presentation of newspapers, for example, in consumer-capitalist society can be used as fairly reliable yardsticks to 'measure the quality of the debate' then there are implications for the analysis of 'privatism'. (It would have to be considered as a 'loss of *publicity*' to private concerns and consequently the deformation of *privacy* as an objective reaction to the loss). The second condition is neither without difficulty. Technological developments in communication would, logically one would think, point to greater participation. This may ultimately prove to be the case in an as yet inconceivable way. However the more sceptical view, which is well grounded in a number of disciplinary fields, tells us to be more cautious of the possibilities of some advanced form of 'cyber-democracy'.<sup>32</sup>

The question of whether greater participation in a polity will follow technological developments in communications is neither necessarily correlative nor new. In the first instance,

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<sup>30</sup> *Ibid* p.354

<sup>31</sup> *Ibid.* p.333 Habermas has lowered the expectations he has of democracy by reconfiguring it within the capitalist system rather than as a more radical self-governance. See J.Habermas. 'Conversations about Questions of Political Theory' in his '*A Berlin Republic: Writings on Germany*'. Trans. Steven Randall. Lincoln University of Nebraska Press. 1997

<sup>32</sup> M.Poster *The Second Media Age* Cambridge Polity Press 1995



if anything the correlation appears to be negative. In a relatively short historical period rapid developments in technology, and particularly information technology, have mirrored a decline in the same period in the faith (and subsequently participation) in politics. However much voting is now considered ineffective and more a stamp of legitimation than a democratic exercise, its value, given weight by past democratic struggles for basic political freedoms, still makes its levels a reliable indicator of the depth of political disillusionment in 'developed political systems'. The second instance echoes past arguments concerning the relation between technological development and the prospects for democracy. The subject of the subsequent cultural impact on politics is nothing new. Arguments stretch back to Adorno, Horkheimer, Williams, Brecht, and Benjamin. Contemporary arguments parallel those that dominated critical theory for much of the 20<sup>th</sup> century. In much the same way as the 'cruder' media of cinema and television before it, the technological advances in the field of information and communication in the contemporary public domain suggests optimism, pessimism, and, more reasonable in theoretical terms, ambivalence.<sup>33</sup> The potential of this form of communication is examined by Rheingold in his assessment of a revitalisation of 'citizen-based democracy'. He theorises 'virtual communities' that develop in cyberspace: "*virtual communities*" are social aggregations that emerge from the Net when enough people carry on public discussions long enough, with sufficient human feeling, to turn webs of personal relationships in cyberspace".<sup>34</sup> But problematically he tries to apply the terms and conditions of Habermas's theory of the public sphere to these 'virtual communities'. There are three identifiable and fundamental problems, all of which can be sourced at the structure of cultural production, *access*, *commodification*, and *homogenisation*. Rheingold's 'updating' may have some kernel of the ideal of Habermas's public sphere in certain discourses that are *symmetrical*, *reciprocal*, and *reflexive*,<sup>35</sup> but the

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<sup>33</sup> M.Poster op.cit.;Rheingold op.cit.

<sup>34</sup> H.Rheingold.op.cit p.5

<sup>35</sup> These terms refer to the conditions of discourse – ethics in Habermas's communicative theory.

'autonomy' that is ascribed to the 'cyberdemocrat' is problematic for reasons already established in Chapter 1.

What challenges the notion of autonomy here is, despite the claim that the spheres of exchange are *relatively* free of external power and authority (although this should not be taken without a considerable measure of circumspection), they are subject to ideological factors of consciousness. The absence of extraneous power and authority does not maintain, by virtue of its absence, the normative dimension of the 'public sphere'. For this, the contents and 'tendencies' of discourses must ethically qualify as a component of a public (sphere) dialogue of creative exchange undistorted by the instrumental rationality (and its complementary economic-corporate consciousness) that steers the media of the 'systems' that steer society.

The phrase 'the political application of the public sphere', it could be said, is something of a misnomer that misemploys the term 'public sphere'. The public sphere is already political by definition according to the terms of reference in this thesis. What is required of the public sphere for a democratised civil society is that it becomes the dominant, or rather hegemonic, 'political sphere'. Its application *to* the political sphere makes apparent the inherent reformism of civil society theories that require only that the public sphere mediates between society and the state. The principle of 'self-limitation' that is central to theories of civil society limits their own radicalism and they become trapped in an economic-corporate framework. (This restraint mirrors the points raised earlier concerning the differences between ecologism and environmentalism). The managerial approach of the latter is no more than 'mediation' between society and the state, amounting to tinkering and ineffective reforms when at its most optimal application.

However, the focus here on Habermas's adoption of the 'core-periphery' model does two things that are pertinent and contributory to this thesis. Firstly there is the question of democracy itself, and the imperative of retaining its core normative values to underpin civil society, bringing into political relief the problem of *privatism*. Secondly, and perhaps more

fundamentally defective, is the lack of reconsideration of the public sphere. The question that must be asked is what political role this 'sphere' of discourse that transcends the 'commonsense' of 'tradition' etc has in the development of civil society *as* the (hegemonic) political sphere and as opposed to a sphere of critical political '*influence*' .

Habermas is fairly explicit about the limitations of democracy in 'complex societies', and so, implicitly about the prospects for retaining its core values.

We have to let go of interpretations that have become dear to us, including the idea that radical democracy is a form of self-administering socialism. Only a democracy that is understood in terms of communication theory is feasible communication in a civil society, which grows out of an intact private sphere, along with the communicative stream of a vital public sphere embedded in a under the conditions of complex societies. In this instance, the relationship of centre and periphery must be reversed: in my model the forms of liberal political culture, are what chiefly bear the burden of normative expectations.<sup>36</sup>

The model relies on a 'conscience at the periphery'. The concept of 'conscience', as individually motivated/sourced 'good will' loosely based on the bourgeois idea of charity or some liberal moral principle to be applied when individual rational agency permits, was shown, in Chapter 1, to be unfounded. Certainly as a legitimating political ethic it is hopelessly inadequate, as Vaclav Havel's political sojourn has shown. Without this 'ethic' at the 'periphery', in other words at the democratic base (and what should therefore be situated at the centre of any model of democracy that attempts to retain its normative values) the 'communicative stream' of democracy will remain just that. The 'periphery' then becomes an apt description of the democratic base in its marginalisation and alienation, and of the attenuation of democracy in the mere *legitimation* of the system that this base subsequently becomes. (The mechanical ritual of voting in developed political systems etc).

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<sup>36</sup> J.Habermas: 'The New Obscurity. The Crisis of the Welfare State and the Exhaustion of Utopian Energies' in *The New Conservatism: Cultural Criticism and the Historians' Debate* (ed. and trans. by Shierry Weber Nichelsen. (Cambridge, MA: MIT Press 1989. p.68 }

For a model of democracy that relies on a 'communicative stream' of *influence* there must be the two elements in place universal, or at least an extensive *quantity* of participation in, and a critical *quality* to the debate. The second condition was, problematically, undermined by the actual and historical development of, what (theoretically) should have been the supportive structures of the first. In *Structural Transformation*, Habermas charts the degeneration of the public sphere as causally directed by the development of mass media and the encroachment of the state into what he (later) calls 'the lifeworld': "In reality ... the occupation of the political public sphere by the unprotected masses led to an interlocking of state and society which removed from the public sphere its former basis without supplying a new one. The integration of the public and private realms entailed a corresponding disorganisation of the public sphere that once was the go-between linking the state and society".<sup>37</sup> Private organisations accrued political power while the 'private realm' was penetrated by the state. The public and private realms blurred, consequentially breaking down the intimate sphere and ultimately substituting critical debate with the consumption of culture.

Although these impediments to democracy are well documented and broadly accepted with fatalistic resignation to the limits of its understanding, becoming less a concept of self-governance and more a stamp of legitimation, little attention is given to the cultural processes that deny political development. The manifold processes of privatism are the sociological effects of the practical implementation of the philosophy of the individual. The structural loss of public spaces/institutions/movements of critical disposition and discourse (in part) accounts for privatism. As a complement to the 'ideological perspective' of this problem offered in Chapter 1, privatism can be seen as an objective reaction to this loss. Arguments among those on the left about whether 'privatism' is this or that detract from the immediate threat to democracy, and miss the symbiosis of the two apparently different perspectives. Nothing less than a reversal of

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<sup>37</sup> J.Habermas *Structural Transformation*. op.cit p.177



these trends is pre-requisite for a democracy with any retention of normative values like self-governance. For *publicity* to serve as an ethical pillar of a democratic civil society, its institutions have to be measured in terms of their contribution (or otherwise) to the furtherance of that democracy and its commitment to an egalitarian society based on *self-development* and *moral choice*; rather than the consumption which is passive and complicit but is increasingly, and misguidedly, seen to command political leverage.

Distinguished from the normative category of the 'public sphere', whose reformulated conception demands stringent criteria that the public domain does not (but not to say it theoretically could not) meet, the public domain is one of discursive contestation (not conducted on the symmetrical, reciprocal, or reflexive terms that are required for ethical-discourse). The dominant culture of the developed political systems supports a public domain that disseminates the folkloric philosophy of 'the private' in commonsensical terms. Little development in terms of consciousness, or 'perspectival view', can be expected from this dominance. The perception of the world that is presented by this 'postmodernist cultural logic of capitalism', is one of 'disconnection' and fragmentation.

The cultural forms and norms created in these 'developed' public domains are generally aesthetically and intellectually accessible, demanding little reflection. The participatory elements of this domain, access allowing, are predominantly (and paradoxically) processes that nurture the conception of *privacy* as privatism. The political consequences for civil society then are far-reaching. The cultural flow of economic power as a means of securing 'freedom' through the privatisation of material needs, aspiration, and ultimately life itself (in all its facets) is the dominant current, and flows contra to the kind of 'cultural hegemony' required for the socio-political base of civil society. Any theory of democracy that constructs itself around the idea of the public domain as a mechanism of the furtherance of democracy as a 'mediator' between society and state is flawed by the traditional assumptions of: a (at least relatively) neutral state,

and (a relatively) uncritical acceptance of parliamentary political representation as the boundary of democracy. A conception of the public domain as the 'public sphere', in other words a conception of 'free association' that does not meet the criteria for any effective dialogue or discourse of ethico-political tendency, cannot uphold a normatively emphasised democracy. Such a reduction requires an analysis of discourses that can 'cross-fertilise' into ethico-political formations/tendencies, and a look at the structural/institutional possibilities of the development of this process.

Toward a theoretical analysis of 'the public domain' in 'developed political systems', perspectives in media studies provide two important and relevant points of criticism.<sup>38</sup> The first of these concerns the set of assumptions that found the analyses of media in 'democratic' systems: freedom of press, speech, assembly etc. In other words, it is the assumption that freedom from political intervention is sufficient condition for freedom of expression. The second concerns the generalised media systems of 'developed political systems' (i.e. the division between the 'commercial' model and the 'public service' model) and with specific regard to the ascendance of the former over the latter in all 'developed political systems'.

There are two characteristics generally ascribed to models of 'democratic' systems that are of specific interest here. The first is that the media provides constitutional guarantees (or at least institutionalised norms and conventions of *legality*) of public access to political information, which then fabricates a transparency to democracy. The second is that this access provides the basis of a well-informed public to furnish its democracy with some semblance of meaning beyond choosing whom to vote for. Where 'media pluralism', that is privately owned production of 'objective news' and 'cultural production', is established, it is assumed that

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<sup>38</sup> In the post-war years, reflecting the black and white divisions perceived through Cold War rhetoric, macro-level studies of the media centred around the distinction between 'democratic' (i.e. American and Western European) and 'non-democratic' regimes (predominantly the 'totalitarian' systems of the former Soviet bloc, but also the authoritarian regimes of right wing dictatorships). The division is, as is invariably the case in social theory, too clear-cut. Some of the characteristics of the 'non-democratic' media systems could, without too much difficulty, apply to the 'public service' models of some 'democratic' regimes.

cultural pluralism, and the reproduction of democracy, is maintained. However, as will be discussed below, the 'media pluralism', which translates as the 'commercial' model of 'developed political systems', has not (and cannot) reproduce a sufficiently politicised society to act as a democratic check. Where 'the media' that is correspondent with 'democracies', and particularly those whose it is commercially based, is considered from such premises, its theorising can only contribute to a limited conception of democracy. Even in the conditions of a 'pluralism' that actually politically informed its audiences, the conception of democracy implied only allows for a representative system that falls far short of democracy as the institutionalising of the *idea* of civil society. Problematically these normative bases for a system of media, detached from government control, are assumed to be defensible by politically and legally enshrined means. That this is emphatically not the case is supported by the second point of concern; the conceptual generalisations made of comparative studies of 'the media' and politics in 'democratic' systems: the 'public service' model and the 'commercial' model.

Developments (technical, political, social, economic) in the last two decades or so reveals that the demise of the former has been as steady as the expansion of the latter has been rapid. Philosophically, the two different models are grounded as the problematic question of the role of the state in the media, and historically on American and European systems. From the perspective of civil society, as a means of a 'developmental democracy' that is characteristically 'ethico-political, the 'public service' model has an inherent weakness. The problem is that its public is 'captured' in that it relays a culture and communication that reinforces categories of exclusion – the nation-state. It unavoidably presents a world-view that is a limitation of the (national) identity it subliminally as well as explicitly communicates. This exclusionary feature of the 'public service' model is a basic paralogism of the claims of its proponents (at least aspirational) impartiality. A system of communication and information deeply embedded in the *publicity* of a nation-state can only present 'facts' within the context of its own interpretation.

Any political neutrality and objectivity of communicating information can only be substantiated once the political agenda and institutionalised norms have been set.

Media manipulated 'depoliticisation' is an essential process for the reproduction of the commercial system. Public service systems, on the other hand, in its communication of the political order emphasised more substantive political concerns rather than the personalisation of politics. But although 'depoliticisation' may not have been so apparent, in communicating a sense of 'political identity' from the party system it effectively 'depoliticised' its public by restricting its perspective on what constitutes 'political'.

A transparency to the politics of its state may (theoretically) be maintained by a 'public service' model. But this still holds when the political agenda is written around the self-interest of the economic-corporate categories: of 'nation' down to the lawful, and rightful, accumulation of property and wealth by the 'private individual'. The public service model may serve as the means by which governments are held to account, but it cannot, without undermining its own *raison d'etre*, convey the same protest against the undemocratic nature of its political system and the exclusivity of it that it represents. In other words, the legitimacy of the nation-state and all the undemocratic institutions it must necessarily entail.

The 'public service' model, if not altogether defunct, is moribund. Its commercial variation has, by means of globalisation processes, become the dominant mode of communication. Propelled by technical advancement, the sharply defined boundaries of polity that are necessary to maintain a 'public service' model of communication have been eroded. Cultural consumption has become evermore trans-national and the public service model, as a system of 'national communication', cannot maintain itself as the dominant producer for this consumption. The dominance of nation-bonding exercises in the media, through the consumption of sporting events and cultural institutions, has long been overtaken by commercial forms of communication that are supposedly without any ideology or 'substantive' interest. The public

service model has, moreover, taken on certain characteristics of commercial models. Common presentation of political news from the B.B.C. is a technique of reporting that mirrors the 'the Game', analysed as part of the American system, where, for instance, for every one minute an American presidential candidate speaks on television, a reporter/commentator will speak for six.<sup>39</sup>

The ascendance of the commercial model in global terms has colonised 'culture' as private interest. In contrast to state controlled media, including the 'detached' public service models of 'democracies', it has no obvious political message or notion of a common or public good. It is nevertheless, the historical outcome of a political philosophy it serves to reproduce, the philosophy of the individual. It may fit the description of a model of 'the media' that is one that is free from government control. But this does not mean that it is free from political control. The assumption is that the threat to freedom is directed exclusively by the state. For any theoretical advance to democracy, and certainly for any practical assumption of it, freedom of (public) expression must be recognised as being stifled primarily by the private interests of the public domain.

The negation of this freedom in a 'free-flow of communication' is far more insidious in commercial models of media than those otherwise described. It is an exaggeration to suggest that government control over the media was as decisive as the generalisations of 'non-democratic' systems suggest, the censorship of state *diktat*, according to comparative studies of the media in different political systems, had varying impact but showed an historical independence of thought that belied the 'totality' of these regime's control. Indeed 'fear' was and is the key to this domination. Whereas the 'commercial' model, as in so many other facets of communicating information, is far more effective in establishing its basic principles as 'common sense'.

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<sup>39</sup> T.E.Patterson 'The United States: News in a Free-Market Society' in R. Gunther and A. Mughan (eds) *Democracy*

A discussion of the 'commercial' model must refer to the media in the U.S. The immediate relevance to civil society is that a study of the 'commercial' model is really only an abstracted discussion of the American system regardless of which 'developed (or 'undeveloped') political system' there may be a specific focus. The reality is: " ... roughly 1,600 daily newspapers, 7,500 weeklies, 11,000 radio stations, 4 national television broadcast networks, 20-odd national radio networks, 1,000 local television stations, and 6,000 cable television systems. The vast majority of these organisations are privately owned. The business of news gathering and dissemination is almost entirely controlled by profit-seeking entities".<sup>40</sup> Such statistics, ever unreliable, point towards a thriving *plurality* of public spheres reflecting a public-oriented expression in a free-flow of communication. But when the news (as the base of democratic accountability, content of these 'spheres of expression' is examined, it reflects more a multiple choice of political consumption. Left as a matter of *choice*, the public domain of this model could not support the political culture of a well-informed *demos*. Patterson describes this inadequacy as a reflection of 'media logic' rather than political values.<sup>41</sup> He pinpoints 'interpretative reporting' as the cause of the media's inability to 'present itself as a suitable basis for political choice'.<sup>42</sup> Although 'the media', as with all other forms production, develops its own *modus operandi*, but an analytical division 'media logic' and 'political values' is an error. This media logic, as cultural production cannot help reflect and promote the broad political values of the system of which it is an integral part.

The history of the American press as a whole shows that as far back as the 1880s it was "a shrieking, gaudy, sensation-loving, devil-may-care kind of journalism which lured the reader by any means possible".<sup>43</sup> Where this 'tabloidization' of the news may be seen to be a relatively recent development of media presentation in 'developed political systems' with public

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*and the Media. A Comparative Perspective* Cambridge University Press 2000 p246

<sup>40</sup> *Ibid* p.244

<sup>41</sup> *Ibid* p.264

<sup>42</sup> *Ibid*

service models, more than a long established feature of the American system of communicating information, this 'depoliticising' of politics is intrinsic to the commercial model. In terms of political coverage, "the significance of issues and events is defined less by their importance to society than their recency".<sup>44</sup> There must also be added to this the factor of proximity - or direct implication - in the importance of news communication. The 'proximity' (not just in geographical terms) of the event to the nation-state determines its level of importance and degree of 'newsworthiness'.

The orientation towards consumption, rather than the presentation of 'facts' for further reflection, is evident in the remarks of the president of N.B.C. News that: "Every news story should, without any sacrifice of probity or responsibility display the attributes of fiction, of drama. It should have structure and conflict, a problem and denouement, rising action and falling action, a beginning, a middle and an end".<sup>45</sup> The indistinction between information and entertainment reflects the prioritising of greater audience numbers and advertising revenue, and a decreasingly important 'objective presentation of facts'. The presentation of politics in the commercial model cultivates a political culture of drama rather than one of critical and reflective debate. The protagonists of the formal political sphere become the substance of politics, in contemporary adaptations of a Machiavellian narrative. Murray Edelman identifies a "... tendency in news coverage for dramatic incidents involving prominent individuals to displace issues".<sup>46</sup>

In the first chapter, the argument was put forward that the culture of privatism is the more or less logical consequence of certain ideological 'givens' and 'common sense'. It was concluded that for '*privacy*' to mean anything, and certainly as a normative concept, then pre-requisite is a public domain of critical reflection. However, *privacy* in developed political

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<sup>43</sup> E.Emery *The Press and America: An Interpretive history of the Mass Media* Englewood Cliffs Prentice-Hall 1977

<sup>44</sup> M.Edelman *Constructing the Political Spectacle* University of Chicago Press 1988 p.255

<sup>45</sup> Robinson and Sheehan cited in Patterson op.cit p.520

<sup>46</sup> Edelman op.cit p.225

systems can be seen to have deformed into privatism from structural factors. These can be identified by examining the sources of privatism in 'cultural production' and the effect this has of denuding the public domain of the institutional development of (public) spheres of critical discourse. The need to extricate the public sphere, if it is to retain any theoretical worth, is underlined by the condition of a public domain dominated by institutions of economic/commercial interest.

The processes by which the institutions of *publicity* as the public domain have developed over the last two decades or so have not produced a 'levelling out' of accessibility to a wider market.<sup>47</sup> The democratic reach of the 'sovereignty of the consumer'<sup>48</sup> is curtailed by the speed at which these developments have taken, and are taking, place. For those (like Rheingold) who forecast a more technologically expanded democracy, the current social reality does not justify much their optimism.

Golding and Murdock in their 'critical political economy of cultural production' identify two factors (material and cultural) to consider concerning the contraction of 'access' rather than its expansion: monetary barriers and social location.<sup>49</sup> The first of these is perhaps so obvious that its reference seems otiose. However, this barrier is often overlooked by those who herald the technological strides in communications as also the steps toward some 'cyber-democratic' future. Perhaps the most important contribution of Golding and Murdock's essay is that it acts as a reminder of the wider context of a society beset with inequalities that dampen the optimism fired by the technical possibilities of furthering democracy.

This form of 'cyber-democratic' discourse conducted within the frames of reference concerning the media itself is at best premature, and at worst as deceptive as the discourse of political equality as a fact of 'developed political systems'. I will go on to consider whether

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<sup>47</sup> Here the focus is specifically on the technological developments in communication and technology and the developments in political economy of cultural production

<sup>48</sup> P.Golding and G.Murdock op.cit p.85

<sup>49</sup> *ibid.*



leaving it at this point of *access* is a radical enough perspective for theorising the radical democracy that civil society promises. Without further analysis the whole question of *access* is left to the material or physical access to the public domain. That is, access to ‘cultural production’. A reasonably equal distribution of ‘access’ would then become conducive to the democracy of Habermas’s ‘liberal political culture’, or to Cohen and Arato’s ‘rights bearing civil society’. But not necessarily to, nor indeed likely to be to, a society that assumes democracy as political power through the development of its own institutions. Or one that only aspires to a limited ‘influence’ over the state and capital.

Consumer sovereignty is in any total sense clearly impossible, as Golding and Murdock correctly point out.<sup>50</sup> The task of political economy as they see it then is to examine the barriers that limit such freedom (i.e. based on unlimited access to a ‘complete range of cultural goods’).<sup>51</sup> I would not argue with the egalitarian objectives of this. The fundamental task of political economy is to examine the broader systemic disparities of socio-economic status, as well as focusing on this specific access. Where this perspective, important though it is, is limited, is that it becomes concerned with matters of distributive justice and the focus on *democracy* is minimised. More damagingly, it equates an expansion of *access* with the expansion of ‘democratic freedoms’. The whole problem is looked at from the implicit premise that access to ‘cultural goods’, and its expansion, is likewise to freedom (thus ‘democracy’) itself. An important point to consider here is whether ‘civil society’ can afford to restrict its conception of democracy to the material accumulation that has become an ‘additional’ core value or (‘politically developed’) contemporary interpretation, or to digital referenda whose agendas are already set. The answer is obviously not. A primary element of the ‘idea’ of civil society democracy is the (political) power to set its own agenda, its needs, priorities, behavioural norms etc., neither is the material means that this access implies the logical direction of an *assumption*

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<sup>50</sup> *ibid.* p.86

*of democracy*. The problems for the radical democratisation of society that aspires to its own 'normative necessity' would be seen to continue in the same vein once the necessary material access had been 'levelled'. But even if civil society had the latitude to accommodate a more realist oriented conception of democracy such as a 'cyber-democracy' then the democracy that reflected the access to participation would show a contraction rather than an expansion.

Questions that concern themselves with material access to cultural goods can effect a reduction of the idea of democracy to the sovereignty of the consumer. But even in its own terms this sovereignty is highly unevenly distributed. According to Golding and Murdock: "The disposable spending required for communication and information goods and services is tilted radically and increasingly towards more affluent groups".<sup>52</sup> This will always be the case whilst they remain market commodities and not, what would effectively be the institutions of civil society as, 'services of the public sphere'.<sup>53</sup>

Compounding the problem within the wider context of social and economic inequalities is the nature of the development itself. The speed at which the technology of communications and information is developing requires near constant updating of software and periodical replacement of the hardware. This updating and upgrading puts it beyond the means of the majority of subjects within 'developed political systems' (outside these systems the question is perhaps the least pressing) and prevents a similar 'levelling out' process that followed 'other' consumer goods (to a degree that it would have to be described as an *expansion* rather than a *contraction*). The uneven distribution of 'cultural consumption', far from showing signs of levelling out (or 'becoming democratic'), is growing.

If we are to contemplate a society that is radically democratised, and thus radically different to a bourgeois society based on the philosophy of the individual, then questions that go beyond egalitarianism regarding 'access' and how this relates to democracy must be addressed.

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<sup>51</sup> *ibid.*

Firstly, it needs to be asked: *access* to what? Or, put another way, (to assess the nature of this *access*) how is it deployed? Is it necessarily a politically participatory access (as it would have to be even for the 'self-limitation' of the proposed politics of influence through mediation between state and society)? Or is any 'participation' motivated by, and confined to, privatistic and accumulative frames of reference? A public *domain* dominated by commercially driven 'participation' makes the contemplation of democracy, as anything beyond its bourgeois confusion with 'rights' and consumption, futile.

It is critical for any theory of radically democratised civil society to grasp the 'content' of this access to the public domain as the cultural lifeblood of its political reproduction. Required are analyses of discursive forms that predominate, and an assessment of their contribution to the expansion (or contraction) of democracy. This anticipates the discussion below on the more *contributory* elements. I will identify these elements as the discursive practice of social movement in Chapter 3. That is, elements within the public domain which distinguish themselves from the hegemonic economic-corporate discourses of wealth accumulation and self-development etc., what they have as a common link, and the potential for their development. For the remainder of this chapter, however, I will concentrate more on the 'downside' of this domain regarding any development or expansion of democracy.

The threat to *privacy* and democracy is perhaps most effectively outlined, ironically and at the same time appropriately, against the paradoxical backdrop of the undermining of a right by its exercise. Article 19 of the 1948 Universal Declaration of Human Rights, and the public sphere of its unimpeded exercise which it presupposes, states that: 'Everyone has the right ... to hold opinions without interference and to seek, receive and impart information and ideas through the media regardless of frontiers'. However, the last two decades have been witness to an unprecedented development that has serious implications for the freedom of communication and

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<sup>52</sup> *ibid*

expression codified in Article 19 and, consequently, for a communicatively grounded democratised civil society; the emergence of the global communications cartel. Communication has become the narrowing concern of a small number of economic-corporate bodies involved in the production of culture. The question that seems most pertinent to ask is how a civil society whose associational principle is cohered by critical reflection is to develop the kind of 'normative democracy' that can survive amid such a commercial milieu.

If Article 19 represents in shorthand the basic precondition and freedom of expression for democratised civil society, then its institution requires a protection from the corporate threat that is not adequately dealt with in civil society theories. (*Legality*, as will be shown in Chapter 4, is not merely an insufficient defence but is 'philosophically' and fundamentally at odds with the discourses of civil society that reflect the *idea* as an assumption of democracy). Herbert Schiller makes the point that the threat to individual expression is conceived of as coming exclusively from the state. In the American case, to which he refers, this myopic view is reflected in law: stemming from a century old Supreme Court ruling, of 'extravagant interpretation', of the corporation as an individual.<sup>54</sup> Given such a (legal) equation, and more importantly a 'cultural identification', the corporate threat to self-expression is overlooked. Certainly the relation between corporations and law is an unbalanced one, they can use the law as would an individual (call on police protection of property; sue for libel; take out legal injunctions – against their own employees or other antagonists) but in many respects, unlike an individual, they are not subject to it. Neither are they subject, unlike states, to international human rights law. Indeed, since the precedent was set at The Hague, individuals are now accountable for any violation of this law, but companies still are not.

'The Corporation' has developed in law an almost impenetrable screen, a discipline known (or more generally unknown) as 'corporate law', behind which it can hide from what is

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<sup>53</sup> *ibid*

minimal scrutiny from legal and public inquiry. Deregulation has allowed for corporate expansion and avoidance of this scrutiny, whilst cultural (ethico-political) opposition, such as environmental or 'moral', is subdued by privatism and kept to a relatively small amorphous mass. Optimal conditions, for the effective exercise of such a right as laid down in the U.N. charter, are sketched in Habermas's ideal of what the public sphere *should* look something like: "The mass media must be kept free from the pressure of the political and other functional elites; they must be capable of raising and maintaining the discursive level of public opinion-formation without constraining the communicative freedom of critical audiences".<sup>55</sup> But what sociological or political justification can be made in modern conditions for the defence of such a free communicative possibility?

Developments over the last two decades in 'the media' are characterised not only by the fast developing technology but also the 'structural convergence' of corporate ownership and 'cultural production'. Both have serious implications for this freedom of communication and for democracy. The ambivalence that a debate on the rapidity of the technological developments inevitably raises underlines this as the more difficult of the two developments to assess in cost-benefit terms for democracy. The emergence of the global communications cartel, on the other hand, poses a threat far easier to recognise. I will draw attention to these two converging processes by charting the developments in the ownership of production followed by a critical discussion of the 'vertical integration' of 'cultural production'. I will then go on to consider the effects of these two parallel developments on the public domain, on the conception and exercise of democracy, and (ultimately) on the problems for civil society.

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<sup>54</sup> H.Schiller *Invisible Crises: What Conglomerate Control of Media Means for America and the World* Westview Press. Boulder. Colorado 1996

<sup>55</sup> J.Habermas *Between Facts and Norms* op.cit pp442-6

The flow of information, and cultural production, is controlled by an ever-shrinking number of transnational media corporations, led by seven major players.<sup>56</sup> The effect is a convergence of cultural production, that is the *control* of the production, and 'vertical integration', the marketing of the same cultural product in different form. The cultural product of a film, for instance, can be and is marketed as its promotional form in various guises, even food.

To understand these processes that characterise a culture of privatism, it is necessary to extend the parameters of civil society theory to include, as a main point of its discussion, the *reception* of 'cultural products'. This takes democratic theory beyond the point of access; within which, the tendency is to identify its distribution with democracy and lay sovereignty at the consumer's spending power. Concepts of democracy that remain within these parameters cannot sustain a society that is committed to its own democratisation.

One theoretical position to this question is that 'reception' (of culture and communication) must be seen as an activity, and, moreover, a *situated* activity.<sup>57</sup> The individual subject can *recreate* these cultural products into forms that are 'alien' to the intentions of the producers. It also suggests an implicit autonomy, or independence from the 'logic' of the producers, but does not identify its source (other than to emphasise a specific culture as the 'language' of this re-creation). I will draw together what are the directly relevant implications for the idea of democracy (as outlined in this thesis so far) as an interrogative conclusion to the perspective on *reception* that dismisses passive consumption as a 'myth'.<sup>58</sup> I will look at the two basic points of 'reception', *activity* and *situated activity* that underpin the position outlined immediately above.

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<sup>56</sup> These are Disney; Time-Warner; Bertelsmann; Viacom; Tele-Communications Inc.; General Electric; and Murdoch. Time-Warner 1989 merger with Time (magazine publisher) and Warner film studios. Bertelsmann merged with News International. Murdoch ... Grown from Australian and British press holdings to ... 20<sup>th</sup> Century Fox; Fox T.V. Network (U.S.); Latin Sky Broadcasting (joint venture with AT&T); and two major broadcasting conglomerates in Mexico and Brazil. Viacom ... controls 13 US t.v. stations. Owns Paramount Studios. see : Anthony Smith, *The Age of Behemoths: The Globalisation of Mass Media Films*. New York: Priority Press 1991 }

<sup>57</sup> J.B.Thompson & D.Held (eds.) *Habermas: Critical Debates* London. Macmillan. 1982 p.39

<sup>58</sup> *Ibid* p.38

When 'reception' is given such autonomy, the possibility of 'activity' as a form of 'passivity' is overlooked. Perhaps the most obvious critical point to make first concerns 'reception' and its supposed (culturally specific) *active re-creation* of cultural products. It is a misleading account if this analysis is translated into political sociology. It suggests an exaggerated cultural resistance to the homogenisation of (specific) culture through consumption. The second point is the assumption that this resistance, or recreation, is not passive because it is an *activity*. But where *activity* may be 'passive', *recreation*, or resistance may not be. The term 'passive resistance' is an oxymoron.

For any reformulation, or re-creation, of cultural product that is 'alien to the aims and intentions its producer', it has to become something that does not follow the logical development of economic-corporate interests. In other words, this resistance (recreation) must a fundamental objection to, rather than mere adaptation of the product. The argument of recreating cultural products through *situated activity* is a distorting mirror image of the *reality* of resistance becoming a cultural product through most pointedly the commercialisation of protest; rather than a 'democratic reinterpretation' of the basic 'commonsense' of the philosophy of the individual/economic-corporate entity.

One of the primary means by which the homogenisation and commercialisation of culture as a product is effected is the process of 'vertical integration'. One of the cultural effects of the structural convergence and concentration of power in communications industries is this commercial process of 'vertical integration'. The cultural 'mainstream' is fed by corporations in a system of production that commodifies an idea at any given point in the consumer market. Thus a book or a film, for instance, can become a soundtrack, 'fast food', or any other product retailed by its subsidiaries.

The importance of social context, and the implicit normative-democratic inference is undermined by the commercial processes that effect both 'developed' and 'undeveloped'

political systems. The political consequence of this process is the 'clogging up' of any potential spheres of *publicity* that might run democratically counter to the *actual* course of its institutional development, as set by communications cartels and states. As the 'social imagination' of 'developed' political systems becomes limited in its de-politicised privatisation, it becomes clearer why the idea of 'activity' and 'passivity' as opposed must be rejected. The intrusion of the state on the 'social imagination' sharpens the critical nature of 'literary public spheres' and amplifies its expression. This may be due to the absence of a (Habermasian) 'public sphere wedged against the state', and may go some way in explaining the dissidence of the former Soviet bloc and elsewhere. Where the intrusion is by capitalist 'cultural production', the opposite is the case; the critical edge is blunted. The conjunction of 'activity' and 'passivity' can be identified by looking at the nature of this activity in the public domain. It is here that the passivity, that has been declared 'mythical'<sup>59</sup> expresses itself through participation in the wider public domain and consumption of its cultural products. 'Passive activity' derives from the powerful cultural norms of the philosophy of the individual/corporate entity, and therefore very much in accordance with the aims and intentions of 'the producers', or perhaps more accurately with the aims of cultural production.

The system of (cultural) production that imposes a commercial integration and homogenisation run counter to the factor of *situated* activity. The social context, whilst crucial to consciousness in terms of culturally specific variations on what constitutes 'commonsense', is being eroded by a convergence of a culture of material gain. In other words, the dominant 'privatised' cultures of 'developed political systems' have been and are being globally imposed on political systems as yet 'undeveloped'. In the guise of 'democratic freedom' access to cultural production will inevitably undermine the importance of the social context; an effect not in itself undesirable. Indeed the destabilising of culturally specific 'norms' is to be welcomed by

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<sup>59</sup> *Ibid*



proponents of 'radical democracy'. Whether these norms be the 'givens' of the philosophy of the individual as translated into the commonsense of *developed* political systems, or the 'bloody certainties' associated with political systems as yet undeveloped in its adoption of the liberal 'common sense', their 'demise' is a condition of the *idea* of civil society.

For *publicity* to serve as an ethical pillar of a democratic civil society, its institutions have to be measured in terms of their contribution (or otherwise) to the furtherance of that democracy. It must also lend itself to an egalitarian society based on self-*development* and moral choice; rather than the consumption which is passive and complicit that it promotes, but is increasingly, and misguidedly, seen to command political leverage. The notion of *publicity* defined as a generic category of institutions, and then left at this definition without any reduction or evaluation, can only refer to unambiguous and politically desirable conditions for democracy. But as this chapter has shown, such conditions are not a logical corollary or conceptually indivisible from even the most realist conception of democracy. *Publicity* is a neutral concept, and must not be approached from the implicit premises of it being inherently contributory toward the development of democracy. What has been established in this chapter is that civil society *requires* this contribution from its 'institutions of culture and communication'.

The public sphere as a network or web of ethico-political discourse is also the coordination of its practice. The freedom of expression that is bound up with the normative concerns of *publicity*, is not identical with *access* to a public domain dominated by commercial interest and discourses of accumulation of 'the private'. This freedom is a *democratic* expression in its origin that *recreates* its own language, values, institutions etc. It cannot therefore be properly considered without its practical aspect being similarly identified through an analysis of 'freedom of association'. It is this question that is taken up in the following chapter.

## Chapter 3

### *Plurality*

**(families, informal groups, and voluntary associations whose *plurality* and autonomy allows for a variety of forms of life)**

This chapter investigates the feasibility of the idea of civil society by looking for its sociological root and the possibility of maintaining social relations that reflect the ethically disposed discourses of the public sphere (as defined in chapter 2). Where the last chapter's chief concern was with freedom of expression, this one is about the closely related freedom of *association*. This association, reflecting the ethico-political expression of the public sphere, would necessarily entail a form of social relations that constructs a form of democracy that *becomes* 'free association', *pace* the severely attenuated liberal democracy that merely *permits* a 'free association' among the categories of *plurality*. In the context of the democratic demands of civil society in the death throes of the communist states in eastern Europe, these categories of 'informal groups' and 'voluntary associations' allowing for a 'variety of forms of life' made political sense. The demands were directly and explicitly political in their antipathy toward the explicit social engineering of the soviet experiment. However, as these categories are more or less in place in 'developed political systems', adaptation of the civil society idea through the institutions of *plurality* raises two important and problematic points. Firstly, these demands pose little or no threat to the established political order. Indeed they are an important point of

legitimacy of the political system as a whole and perceived as the apolitical fruit of 'private morality'. The 'free association' that develops does not support the furtherance of democracy as an 'ethico-political assumption'. Free association must be considered as *political* if democracy is to be assumed by society. 'Free association' must act as the dynamo of the political order, and not 'outside it'. The second point then is how we define this 'freedom of association'; it is the association (or social relation) itself that must be considered as the indicator of 'freedom', and not just the 'freedom to associate' exercised by individual choice.

Following a critical analysis of the categories of *plurality*, I will consider the 'freedom' ascribed to them. A discussion of autonomy is in some respects a recap of the discussions of 'the self/subject' in chapter 1, and the economic-corporate culture of the public domain in chapter 2. The *autonomous and varied forms of life* are, implicitly assumed to be, wholly facilitated by the 'withdrawal' of the state. It is overlooked that the institutions of *publicity* pose as great a, if not greater, threat to this *plurality* than does the encroachment of state *diktat*. I will look at the nature of these groups and try to establish a differentiation between 'political autonomy' (i.e. democratic) and an autonomy of private moral judgment.

Having established this form of 'free association' as the necessary basis of social relations for a normatively inspired form of democracy constructed from 'civil society', I will focus on 'social movement' (and its contemporary formations) as a possible paradigm for this free association and regeneration of democracy within society. The reference to social movement in the singular is deliberate. A substantial part of the chapter will be devoted to abstracting from the linkages of social movements, and here they will be discussed in terms critical of Cohen and Arato's paradigm of the new social movement (N.S.M.), a common potential of (ethico-political) democratic struggle.

The description of 'new' is something of a misemployment. It is useful in the comparisons made with 'old' movements to highlight similarities as well as differences, but the term refers to the now dated characteristics of some of the movements spawned in the 1960s and 1970s. Social movement today cannot fit so easily into categories of 'feminist' or 'green', or indeed 'labour'. The movement that does occur, and which occasionally becomes the subject of distorted media coverage in the public domain, is far more fluid in its object of protest and is characterized as much by its *lack* of identity as were the 'New social Movements' were by their strong (economic-corporate) identity.<sup>1</sup>

I will criticise the conceptual separation of 'new' from social movement in terms of a qualitative separation from 'old' movements, and in terms of Cohen and Arato's theoretical framework of the 'thematization' of this 'newness'. In the first case, following Craig Calhoun<sup>2</sup>, I will try to establish that there is an essential continuity to social movement that is ultimately reduced to a collective disillusionment. (In other words democratic and progressive). But this continuity is dismissed by theorists of the N.S.M. paradigm<sup>3</sup> and the important point that social movement becomes consolidated into social movements *before* the point when they face the 'Michelsian dilemma' of hierarchy in the political realm is then overlooked.<sup>4</sup> The second case refers to the model of stage theory that Cohen and Arato critique and try to develop away from with a dualistic analysis of strategy. This theory focuses on the metamorphosis of 'movement into party' at this formal point of representation. The problem with this is that any progression of freedom of association that might be made by social movement is stymied by the

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<sup>1</sup> This fluidity is characterised by the I.S.M., active in movements against capitalist corporations and active on the West Bank. [www.internationalsoolidaritymovement.org](http://www.internationalsoolidaritymovement.org)

<sup>2</sup> C.Calhoun "'New Social Movements' of the Early Nineteenth Century" in K.Nash (ed) *Contemporary Readings in Political Sociology* Oxford Blackwell 2000

<sup>3</sup> A.Touraine *The Voice and the Eye* Cambridge University Press 1981

<sup>4</sup> R.Michels *Political Parties; A Sociological Study of the Oligarchical Tendencies of Modern Democracy* New Jersey Transaction Publishers 1999

consolidation of its economic-corporate phase of development; frozen by its respective recognition and inclusion. The fundamental characteristics of N.S.M., according to Cohen and Arato's analysis, is their 'conscious refusal' to accept the formal politicisation of a movement that is rooted in civil society and *cannot* cross the boundaries of the lifeworld. This is more than a strategy for them, it is a (political) philosophy. Their dualistic social theory prevents them from coming to any other conclusion on the agencies of civil society. Moreover, their application of 'mediation', to overcome the dilemma that stage theory resigns itself to as irresolvable, also misses the important point of inquiry, and in any case offers little by way of institutional or political innovation even within its own analytical framework.

But an important development occurs in social movement before political representation is achieved. 'Recognition' is in itself a consolidation of movement into an economic-corporate entity that renders invisible the links they have with other movements defined by the continuity of democratic struggle. What begins as collective disillusionment and struggle against a system of inter-connected forms of domination becomes fragmented into corporate entities whose interests are now consolidated within this framework and furthered by 'goal-oriented reasoning'. If civil society theory is to find the necessary rootedness in the real whilst retaining its normative underpinnings and aspiration then social movement has to be theorized in ethico-political terms and universal/fluid tendencies and discourses must be identified.

The paradigm of *new* social movements, as considered by Cohen and Arato, is flawed on two counts. The retention of strong corporate identity (not seen in itself as a problem for the development of democracy) such as that which they attach to new social movements, inhibits their developmental potential. This potential is set in terms of the progression of political

consciousness that rises above the 'identity' of the movement. It is also defective in its analysis of the degeneration of social movement arising from its 'formalisation' and official inclusion. But the consolidation of movement identity is the initial moment of its decline. I will begin by looking at the defined categories that are the identified supports for the freedom of association (in a 'post-traditional civil society').

At first reading it may seem that this category requires a good deal more unpicking than those of *privacy* and *publicity*. A simplified reduction of it however, is the form of social relations that maintain and reproduce the institutions of society (whether it be bourgeois, traditional, post-traditional, or whatever). But, like the categories of *privacy* and *publicity*, a significant degree of conceptual adjustment is required to satisfy, on the one hand, the normative principles of civil society theory and to provide, on the other, an accommodating framework for theorising elements of *contemporary* social movement. I will first assess these forms of social relations in terms of their place in and reproduction of civil society.

The first of these categories - the family - has occupied a central and vexed role in political and social theory. Its critique comprises a vast canon: undermining the family unit as an ethical social formation of modernity; as a product of ideological and historical construction; as a shielded sphere of power relations; and as a source of ethical dispensation.<sup>5</sup> I have little to add to this other than a focus on Cohen and Arato's ambivalent but ultimately optimistic analysis of this sphere of relations. For them, the family provides an ethical root whose optimal route is into the social relations of the paradigm of N.S.M.s and their political objectives.

The complexity of 'the family' in the context of democratic expansion of civil society is reflected by the ambiguity that Cohen and Arato reveal in their own assessments. They stress

the differentiation that they claim feminist writers (Nancy Fraser) overlook. That is, between the organised relations of the sub-systems steered by power and money which neutralise any normative validity claims to action, and those relations which arise from a modernised lifeworld and the rationally steered to a more communicatively grounded egalitarianism. But they also recognise that families can be functionalised by the imperatives of the sub-systems; "strategic actions within them [...] exchanges of services of labour and money or support"<sup>6</sup> are intrinsic to any economic system, yet "families are not ... economic sub-systems".<sup>7</sup>

There is certainly a resonance to the term 'the family' that goes beyond a definitional term of social formation. From the perspective of theorising the normative project of civil society, the problems facing it are writ large as 'the family'. The view of it that unfolds here is that the family is a social (i.e. public) institution, despite all its ideologically constructed characteristics and appearances of being 'private'. This illusion of 'the private' as a conjunction of 'the family' is maintained through the (largely commercial) processes of privatism. I will keep the discussion focused on the normative implications of this; specifically the social relations it institutionalises and the aspirations and values that are engendered in the subject/self.

As proponents of discourse-ethics, Cohen and Arato follow Habermas in identifying the source of communicative action as the family, firmly situated in the lifeworld, and ascribe it the potential for establishing egalitarian principles. But it reads, in their thesis, as a qualified and restrained potential. They measure it against the potential of the economic and state sub-systems for establishing these principles, where they have little or no expectation of democratic extension apart from mediated influence. In their view, "it is precisely because the family is a

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<sup>5</sup> Hegel; Marxist; feminist; Habermas, Cohen and Arato.

<sup>6</sup> J.L.Cohen and A.Arato op.cit p.536

core institution in and of civil society (and neither a natural presupposition of civil society nor just one more component of an economic subsystem) that egalitarian principles can be applied to it to a far greater extent than to a firm or a bureaucracy".<sup>8</sup> However, this identification is problematic. Given this link, the social relations of the intimate sphere -or the family, widening into the kind of relations that *define* the informal groups and voluntary associations, is of critical importance to civil society. I will try to establish that this 'intimate sphere', which itself escapes critical enough attention in civil society theory, is not just an unreliable ethical source for a post-traditional society but an impossible one. Even if we could attach some independence to this sphere of relations from the rest of society, the morality that is engendered within a unit such as the family - or any other form of intimate relations -is an essentially self-regarding one. This self-regard may not be established so conclusively *within* the relations themselves (although Nietzsche and the feminists have a good go as I shall come to shortly) but is an essential facet of membership vis-à-vis other spheres of relations, or other corporate units of the same sphere. This self-regard is then expanded to wider social relations of identity (and membership).

Any potential that the family (or whatever formation of intimate relations) may have in instilling a disposition toward 'ethical life' becomes lost in its self-identification as 'private'. The folkloric dictum 'charity begins at home' is extended to other corporate entities and identities - nation, race, sex, and class. The detriment is not just to the development of 'the self', in the form of social alienation effected by personalising the human condition, but also to the establishment of a 'post-traditional' society that leaves no tradition untouched by critical social scrutiny.

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<sup>7</sup> *Ibid*

<sup>8</sup> J.L.Cohen and A.Arato op.cit p.724 n.81



Although the terms 'family' and 'intimate sphere' are largely interchangeable in the context of civil society, it is the family as the recognisable bourgeois unit that comes under critical attack from Cohen and Arato. But little regard is paid to the actual relations of this sphere. There is a tendency to valorize it, but in a 'post-traditional society' nothing can be seen as unalterable as conceptual practice. Along with security (of various kinds), perhaps the most fundamental bond of the intimate sphere is *love* (although given some of the arguments on this matter, perhaps it would be inaccurate to so easily differentiate the two). However, among the questions raised about love (biological device; voluntary or involuntary?) the most pertinent surrounds the question of whether it reflects a desire for power or for self-sacrifice and whether it is motivated by a need to share or to possess.

The best articulated cynical account of 'love' comes from the feminist critique. It is attacked as a mechanism for presenting putative benefits for women under male domination. When this illusion is stripped away, the reality bears little resemblance to what we would *want* to understand love to be. Indeed, "love, perhaps even more than childbearing, is the pivot of women's oppression today".<sup>9</sup> The oppressive mechanism of love, according to this view, functions as the substitution of violence and coercion in a power relation that claims to meet the needs, or at least the desires, of the subordinate party. The ideological illusion is summed up by Simone de Beauvoir: "[the woman] ... chooses to desire her enslavement so ardently that it will seem to her the expression of her liberty".<sup>10</sup> Once the illusion becomes transparent, the sense of self-worth derived from being attractive to just one other can be seen to be a gross over-evaluation; the submission of one's will for 'security' is a form of paralysis of this will.

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<sup>9</sup> J. Mitchell *Women's Estate* Harmondsworth Middx Penguin 1971 p.103

<sup>10</sup> S. de Beauvoir *The Second Sex* Harmondsworth Middx 1972 p.116

It would be an error of over-generalisation to apply these, or any other accounts, universally to every sphere of intimate relations, but we can make reasonable speculations about the basic commonsense engendered and absorbed at this point of social integration. In other words, we can ask whether it fosters an 'other-regarding' ethic of *sharing* or a self-regarding preparation of *possession* for life in society as a whole. A corollary to this question concerns those aspects of society that are the greatest informants of this socialisation. In chapter 1 it was shown to be the cultural practices of the philosophy of the individual, and in chapter 2 the convergence of cultural production and communication flow were looked at as the economic and cultural consolidation of these practices. Despite the improbable ethical trajectory of the intimate sphere of relations, 'the family' is considered (by Cohen and Arato) to be the primary source of ethical disposition that will secure the required social relations of a radically democratised society. Following Habermas, for whom "the public's understanding of the use of reason was guided specifically by such experiences as grew out of the audience-oriented subjectivity of the conjugal family's intimate domain".<sup>11</sup> Their adoption of discourse-ethics as a legitimating political ethic, requires that they identify a sphere of relations that allow for what Habermas describes as "interaction free of domination and external constraint".<sup>12</sup> In his earlier reflections on the family, Habermas sees within this formation the ideal of generating "the development of all capacities that signify cultivated persons as ends in themselves".<sup>13</sup> This latent ideal, identified within the relations of the traditional nuclear family, is not merely ideological; Habermas recognises the reality of patriarchal domination and economic functions, and concedes that this reality is a threat to the potentially real. But it is not an illusory projection. The potential of the relations within this sphere is the deference of inter-

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<sup>11</sup> J.Habermas *The Structural Transformation of the Public Sphere* op.cit p.28

<sup>12</sup> *Ibid* p.213

subjective human experiences in the face of external and inhuman forces. They are capable of becoming institutionalised as forms other than the 'bourgeois' or traditional nuclear unit. But it is still problematic even if it is formed from a critical development of the bourgeois family. Whilst it may be, in an idealised fashion, a sphere of relations where domination and hierarchy are surpassed by reciprocity and symmetry, and 'givens' are replaced by inquiry and critique, it is not in itself, and in its traditional form cannot be, the optimal condition for self-development and moral choice; much less as a sphere that can provide an ethic of legitimacy for a 'post-traditional' democracy. In its traditional form, identities are more or less fixed in the consequential roles of the dominant discourses germane to this formation. Neither in a reformulated framework, that had managed to detach itself from the legacy of tradition and hierarchy left behind by patriarchal domination, can this sphere best fashion the domain of *privacy* in its reconstructed sense. This was shown in the first chapter to be a necessarily public ("audience-oriented") process for reasons of self-development, and for political purposes toward an expanded and deepened democracy.

The importance of the family to Cohen and Arato's model is underlined further in their criticism of Hegel on this matter. As we have seen, they have no problem with it being the 'primary ethical root' of an ethically disposed society (for Hegel, embodied in the state), but disagree with him on two counts. The first is a straightforward criticism of what they term an ideological assumption; that the bourgeois formation has a 'naturalness' about it.<sup>14</sup> But Cohen and Arato do not wish to dismiss the family as an ethical source of social interaction, just point out that the bourgeois formation is a historical construct that obstructs the egalitarian principles that are realizable in this sphere under different forms of intimate relations. The second point

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<sup>13</sup> *Ibid* pp53-5

they raise with Hegel concerns the *continuity* between the family and corporation or, in their system, social movements. (It is this that is of particular interest here) Cohen and Arato argue that Hegel's identification of the corporations as the point of social integration is as a result of his, in their view, incorrect analysis of the negation of the family's ethical role by civil society ('the system of needs').<sup>15</sup> They deny that there is a rupture in this continuity of 'solidarity' between the family and their agents of 'ethico-political' persuasion and tendency: social movements. In their schema this ethical strand of solidarity is maintained. But Hegel is talking of an ethic based upon a specific formation that will produce a specific morality (a patriarchal morality): "Women are capable of education, but they are not made for activities which demand a universal faculty such as the more advanced sciences, philosophy, and certain forms of artistic production. Women may have happy ideas, taste, and elegance, but they cannot attain the ideal".<sup>16</sup>

Leaving aside the most obvious criticism to make of Hegel on this matter (which by itself takes away the foundation of his concept of 'ethical life'), the point I wish to consider for purposes of examining Cohen and Arato is the *specificity* of the basic moral education received in the family - or the intimate sphere. Hegel is implicitly prescribing this morality by explicitly prescribing the social formation - the patriarchal family. The problem for Cohen and Arato is that they require (implicitly) the same kind of 'moral specification'. But this cannot be met; a sphere of social relations, however intimate, cannot be severed from the institutions of *publicity* sufficiently to warrant an attachment of some dubious (moral) autonomy. As the

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<sup>14</sup> This is linked with Hegel's doctrine of property (discussed in ch.1). The relation between the family and property is inextricable in Hegel's system.

<sup>15</sup> J.L.Cohen & A.Arato op.cit p.106

<sup>16</sup> G.W.F.Hegel *Philosophy of Right* op.cit.p.166

family is a transmitter and not a 'producer' of morality, the specificity that they dismiss as ideological in Hegel is in fact a glaring omission from their own work.

What Cohen and Arato's theory does not tackle is the attachment of 'private' to these more or less 'closed' social relations. Although firmly entrenched in reality, and which informs (or even inspires as its antithesis) almost every conceivable 'social relation', *patriarchy* is not a problem of theory for Cohen and Arato's realizable ideal of a more egalitarian space. It is not the false consciousness of patriarchy that blocks the normative claims of Cohen and Arato's proposed democratisation, rather it is the consciousness of the economic-corporate - whose social formation with historically the most resonant moral claims is 'the family'.

Cohen and Arato are of course right to criticise Hegel for the 'naturalness' he ascribes to the patriarchal/bourgeois unit, but their analysis of the family also commands a 'naturalness' to it insofar as they attribute to it a significant and qualitative (communicative) difference to wider social relations. But there is no ethical imperative inherent in intimate relations. The family, rather than a well-spring of the desired ethic, is a conduit for the dominant discourses of the public domain. It can only reflect these discourses (not alter them) and represents the unholy union between the philosophy of the individual and a fetishised conception of 'private' as its most functional(ist) form. The moral standing of the family is dependent on preserving the illusion of 'the private', and the 'private' is essential to the philosophy of the individual. For the family to function in the ethically disposed manner that Cohen and Arato require for the normative foundation of their political legitimacy, and for it to establish egalitarian principles 'hidden within', there must be a reflection of ethico-political discourses that characterise the normatively designated domain of the public sphere. It can only reproduce the society that

informs it; much less, as a fragmented and privatised corporate formation, can it change it in any way.

The idea of 'free association' is critically important; and for civil society it must connote more than a capacity for freedom to choose one association over another. 'Free association' must indicate the capacity for social movement (or democratic struggle) to morph itself into (democratic) struggles that may be apparently, against disconnected authority and systems domination. 'Free Association' must, logically and for reasons of the democratization of civil society, escape the bounds of economic-corporate constraint. For a better understanding of 'free association', I will take it as literally as possible to criticize the stated categories of *plurality* and to reinforce the argument that the freedom of association required to support a civil society can only be found in the radicalized understanding of social *movement*.

An apolitical *plurality* that produces a 'variety of forms of life', as within developed political systems, does not produce the *association* (necessary for civil society) that develop into critical forms; that is, forms of relations/association that are of *greater* freedom. Strictly speaking there can be no absolute freedom of association; if there is no constraint, however coded or minimal, there can be no association. However, it is perfectly legitimate to talk in terms of degrees of freedom of social relations. This may seem obvious, but its application to social movement(s) can illustrate the conceptual division required between a 'freedom *to* associate' and 'freedom *of* association'.

The importance of this difference can be illustrated when applied to the American feminist movement, as Cohen and Arato's model of a new social movement, and the labour movement, the general referent for analyses of 'old' social movements. The feminist movement provides a good example of the progression of this freedom *of* association; a

progression crucial to a normative conception of democracy. Presumably the association (the social relations) of the women in the van of the feminist movement at Seneca Falls was of greater freedom than that which prevailed back in the trailer. But it would be wrong to presume that this *association of common identity* was the 'ethical terminus' of association; that social movement in this form was the limit to the development of movement and (ethico-) political application. The nomination of the 'New' Social Movement as the paradigm of association that wields limited mediated political influence leaves any development inconceivable. Certainly under the constitution of the United States the women were exercising their right of freedom to associate. But the association itself can develop an 'identity fixation' when any political progression is halted by the pre-occupation with (economic-)corporate interests. This analysis can also be applied uncomplicatedly to the labour movement. With regard to the *right* to freedom to associate, not all labour movements had (or have) it; that is a right to *associate* (or develop social relations) at a level of identity and organisation that threatened politically. When the social movement is a fight for this right, (to *politically* associate in the first place) then it is a political struggle. This was so in the case of the Polish movement Solidarity. But when this right is achieved, with some exceptions, the struggles have been, historically, economic. Any trade union activity concerned with its own interests (pay, conditions) can only be discussed in economic-corporate terms. It only becomes (ethico-)political when interests are expanded in the breaking down of *identity* (and, therefore, *exclusion*) and discursive interaction with other forms of social movement. When any part of the labour movement becomes trapped in its own identity, 'fixed' as a *labour* movement, its (ethico-) *political* development stalls. By 'political development', I don't mean an increased representation and influence in the formal political sphere; this may be the measure of development for a 'developed political

system', but the *idea* of civil society could not be actualised in such economic-corporate structures.

Freedom of association must be read in terms of the association as *subject*, and not *object*. The association itself must be free, not only from state interference but the cultural baggage of the philosophy of the individual from which the concept of freedom of association stems. But the privatised culture of this philosophy de-politicises society as a whole and impedes the (ethico-)politicisation of social movement. Freedom of association must mean the freedom from the rationality of strategic and material gain. In other words, *association* must be detached from a culture of economic-corporate identity and social exclusion, and must be unencumbered by misconceived notions about being 'private'. Clubs and associations of an 'apolitical' nature are of little or no use to an expanded democratic civil society - indeed, they can serve as the institutions of 'passive activity' that represent the consent of society to its form of governance.

It is evident that a reconsideration of the term 'freedom of association' is required. It must be clearly distinguished from the liberal conception of 'freedom to associate'; instead it must be understood in 'ethico-political' terms. Without any (ethico-) political development, 'freedom of association' merely characterises a society of competing power blocks that does not provide us with an image any different to the 'actually existing democracies' of 'developed political systems'. The essential ingredient of solidarity dissolves when the continuities and linkages of social movement itself become fragmented into categorised groupings of political protest.

Social movement is the agency of civil society, and I give qualified support to Cohen and Arato's thesis "... that social movements constitute the dynamic element in processes that



might realise the positive potentials of modern civil societies".<sup>17</sup> Qualification comes with two points with which I would take issue. The first concerns the reconsidered understanding of civil society as first and last a *public* phenomenon antithetical to aspects of 'the private', and certainly with little connection to the intimate sphere as a source of its values. The second point concerns directly the nature of 'social movement', which will be addressed in the rest of this chapter. It is difficult to envisage this realisation, within their terms, as anything more than a liberal democracy that accommodates the 'soulless reformism' that they have hopes of developing beyond with this 'politics of influence'. However, the realisation of a radical democracy constructed from civil society stands or falls on the question of 'social movement'. Before elaborating the necessarily wider conception, I will first critically examine the position that Cohen and Arato take on social movements, with specific attention paid to their identification of a 'thematisation of newness' as the outstanding characteristic of new Social Movements.

The analysis of social movement as the agency of a radical conception of democracy is flawed. It assumes that the paradigm of the N.S.M. overcomes the fatalism of stage theory by adopting a 'dual-strategy'. But this misses the problems of consolidation by identity in social movement before formal inclusion takes place. The problem appears to be wholly with the 'Michelsian dilemma'. Cohen and Arato's claim is that the inevitable bureaucratisation and hierarchical transformation of social movement (when included formally into political society) can be avoided if the model and historical course of the *new* social movement is followed. However, apart from merely reconceptualising the problem in the theoretical complexities of *mediation* and representation, their model of agency (specifically the American feminist movement) restricts the "developmental possibilities of collective actors", and the 'societal

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<sup>17</sup> J.L.Cohen and Arato op.cit p.49

types in which these movements occur' (to specifically the American 'developed political system'); two questions that Cohen and Arato raise themselves.<sup>18</sup> The developmental possibilities available to collective actors are held back by the constraints of a corporate movement and its implicit objectives of particularist political and economic gain. This precludes the forms of association that might underpin the normative emphasis they think they place on their conception of democracy. But even if this course is accepted as 'normatively sufficient', their propositions around 'mediation' are obscured by their emphatic stipulation that 'movements cannot survive the crossover from 'lifeworld' to 'systems'. The initial stage of social movement development, according to stage theory involves the formation of loosely articulated demands made by loosely connected groups and associations before congealing into bureaucracy and hierarchy.

It is the second stage of development that is problematic. Here stage theory offers little by way of developmental possibilities available to collective actors. Indeed it provides an impasse for any democratic development; movements inevitably succumbing to 'the iron law of oligarchy'. But it is one Cohen and Arato's thesis fails to redress clearly in their proposals of 'mediation'. More importantly its point of address, like that of stage theory, misses the problem of identity and consolidation and the implications of limiting democracy. Where stage theory is inadequate, according to Cohen and Arato, is in its inability "to account for the *new* social movements that [they] find most interesting".<sup>19</sup> Their work attempts to rectify this oversight. The linear development of stage theory i.e. the bureaucratized and ultimately undemocratic end of democratic movement does not accommodate or reflect the development of Cohen and Arato's case in point, the American feminist movement. Here, this linear development was

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<sup>18</sup> *ibid.* p.494

<sup>19</sup> *ibid.* p.557

avoided. The politics of influence that they see as being established by the 'dual-strategy' of this movement does not conclude with self-bureaucratisation: "These movements are aimed at the intermediate structures of political society ... ." <sup>20</sup> Whilst Cohen and Arato criticise stage theory for not being able to accommodate the potential democratic developments of this 'new' strategy of social movement, they acknowledge its identification of civil society being the target for critical social movement. But the trajectory taken by the American feminist movement belies the stark alternatives of stage theory that fix it to linear progression towards its own bureaucratisation. Cohen and Arato stress that the two faces of the movement have not merged: "The division of labour between the two segments of the movement shifts over time".<sup>21</sup> They continue their criticism of stage theory in its *overly simple conception of learning*; a fundamental error in its assumption that 'cultural politics' cannot achieve strategic/political goals. In this incorrect or inadequate analysis, the inevitable course is one toward the hierarchical organisation of formal political society. For Cohen and Arato, this is a myopic view that implies a lack of reflection on the "rootedness of actors of political society in civil society".<sup>22</sup> It is only possible to conceive of strategic and political goals being achieved by 'actors of political society' as *agencies* of civil society in two ways. The first can be dismissed as an inadequate theory of civil society itself. It is inadequate to the demands of its own 'normative necessity' insofar as it remains within the theoretical framework of private power and interest factions in society little different to the 'actually existing democracies' of 'developed political systems'. The other way, which accommodates the theoretical conditions of these demands, is by conceiving *political society* as inextricable from civil society, and that

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<sup>20</sup> *ibid.*

<sup>21</sup> *ibid.* p.558

<sup>22</sup> *ibid.*

the latter, by the processes involved in the democratic development of social movement, becomes the former.

However, history does at least *prima facie* seem to support stage theory's thesis of linear development, and Cohen and Arato's argument, drawing on the experiences of the American feminist movement, that the normative core of democracy can be retained by 'representation by mediation' looks indeed flimsy. But, they argue, the empirical evidence for the failures of social movements to retain their identity as 'ambiguous', and that the "criterion of success needs to be redefined".<sup>23</sup> If this is meant to say that a continuity among social movements has been maintained despite the estrangement of its political representation, then Cohen and Arato are right to criticise stage theory in this fashion. But if it means (as it does) that, based on some equally ambiguous empirical evidence drawn from the 'American feminist experience' and its political development, that 'movement identity' can effect the normative elements of democracy on its system of representation then it must be rejected. A system of representative democracy necessarily extracts these elements and replaces them as points of validation with the procedure itself. Cohen and Arato have not distanced themselves from the 'realist' school of democratic theory as much as they thought.<sup>24</sup>

The second major flaw in stage theory identified by Cohen and Arato is the 'poverty of the model's political conception'.<sup>25</sup> In other words it denies the action of civil society on political society, recognising only that civil society acts upon itself. For purposes of clarification here on what is an over simplification of an already deceptively simple point, it is necessary to establish at least two things. What the extent of this action is, and, for purposes of

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<sup>23</sup> *ibid.* p559 Retention of identity here means 'social movement identity' as opposed to its loss to formal institutionalising, and not 'identity' as criticised in this thesis as an obstacle to the democratic development of social movement itself.

<sup>24</sup> *Ibid*

a strict understanding of civil society, what the nature of the action is. But in Cohen and Arato's schema of a 'politics of influence', this *action* is limited not only in the dilution of aims and objectives of specific movements, but more importantly limited *to* these objectives once identity building is more complete and consolidated. This 'politics of influence' is only a form of representation of civil society actors (apparently shifting back and forth between civil and political societies) now mired in the economic-corporate category of an 'identity'; by the processes of (identity) consolidation, recognition, inclusion, and bureaucratisation (categorisation).

Where stage theory is limited is in its theoretical vision insofar as it does not allow for any normative-democratic progression; only the completion of the second stage, when full institutionalisation and representation is established. The outcome of this at best is an attenuated 'realist' conception of democracy already established in 'developed political systems'. But there is little Cohen and Arato's thesis to suggest that this will in any way be enhanced or deepened by their reliance on what they conceive of as the mediating structures of the public sphere. Their example of the American feminist movement 'shifting back and forth in a fluid division of labour' in a strategy of dual-logic is first of all a questionable sociological foundation upon which to frame a theoretical (ethical) expansion for, presumably, the societies of 'developed political systems' as a whole. But more fundamentally, it shares with stage theory a limited theoretical vision. The problem that Cohen and Arato have with stage theory is that it does not allow for the actors of civil society, engaged in the 'politics of identity', to act upon those of political society and ultimately the state. This is a contentious enough point within their own set conceptual limitations. But the crucial point overlooked here is the problem of the identity becoming fixed and bureaucratised in a way that denies the fluidity that is lifeblood to

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<sup>25</sup> *Ibid* p.560

a radical conception of democracy based on the *idea* of civil society. Although identity formation is vitally important in the initial stages of collective agency, 'identity politics' can crystallise into more or less fixed lines of demarcation among the competing economic-corporate interests of society. The political effect, if there is no development beyond this identity, is disproportionate representation in political society of various (economic-corporate) power blocks in (civil) society. Whether the channels of mediation are developed to the democratic point of Cohen and Arato's optimism, or non-existent in the movement fundamentalist's analysis of social movement, or collective action, the movement itself remains trapped within an economic-corporate perspective whose concern is furthered by goal-oriented logic and political bargaining. Neither theory (that of Cohen and Arato or stage theory) considers the potential development of social movement beyond these boundaries of identity. Within such limited frameworks, social movement as the foundation of a radical democracy cannot be theorised in ethico-political terms. This limitation is much less excusable in Cohen and Arato's thesis than it is in stage theories given the normative project of a democratised civil society.

For a society founded on the principle of 'solidarity', the question of its realisation should not be framed so that the problem is reduced to one of representational competition of interest in political society but, rather, with how the democratic potential of social movement can develop beyond the particularism to which it invariably succumbs. Any ethico-political tendencies of social movement in its initial formation are undermined by the retention of the strong emphasis on identity, and are ultimately lost when this 'politics of identity' becomes institutionalised as a 'politics of influence'.

The politicising effect of social movement/collective action must, if it is to retain its promise as (ethico-political) agency in society, instill a 'democratic inclusivity' in the collective consciousness of society *before* any formal representation in political society emasculates it. If this is not achieved through the cultural politics of civil society first then the politics of influence that Cohen and Arato advocate is not under threat (it would be if this movement were to continue its democratic development). Nor even is the 'identity' of the movement in society, but the radical (and "normatively necessary and empirically possible") conception of democracy based on civil society is.

Following the rise of social movements in the 1960s and 1970s in developed political systems - notably France and the U.S. - a number of theorists identified distinct and 'new' features to social movement(s). The tendency toward the classification of strategic factors as grounds for claiming a 'newness' to social movement follows, by theoretical corollary, an almost unanimous insistence on theoretical/conceptual split with 'old' social movement. One writer whose study of social movement goes against this current is Craig Calhoun.<sup>26</sup> He claims that a conceptual division derived from historical application of 'old' and 'new' is "specious" and that "[a]bandoning the false historical claim enables us to understand better the whole modern history of social movements".<sup>27</sup> The important point, and it is the basis of his argument, is that all movements begin with attributes that are considered peculiar to social movements of the 1960s onward.

The comparisons made between 'old' and 'new' include the limited but non-negotiable demands, allegedly peculiar to the new movements, rather than the objective of the 'total' revolution, peculiar to 'old' movements. Calhoun questions the assumption of the 'new

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<sup>26</sup> C.Calhoun op.cit

<sup>27</sup> *Ibid* p.130

concerns of *identity*, *autonomy*, and *self-realisation*. His historical analysis effectively opposes this assumption, but because its aim is to debunk the division, and although it alludes to movement *development*, it does not extend to an analysis of social movement as having developed beyond an economic-corporate identity. He does however say that any analysis of social movement will be more productive, or more usefully contributory to a wider debate, if it focuses on the inherent *plurality* of forms, contents and social bases rather than "in terms of a single model defined by labour or revolutionary movements, or a single set of instrumental questions about mobilisation".<sup>28</sup>

As his first and main example, Calhoun takes the social movement that Cohen and Arato consider to be the New Social Movement *par excellence*: the American feminist movement, and the broader women's movement. He traces the roots back to the late 18<sup>th</sup> and early 19<sup>th</sup> centuries. Feminist discourse has its genealogical roots in Mary Wollstonecraft (although it can be traced much further than this (to Sappho), and the broader women's movement has its practical roots in Owenite socialism (although again this can be traced back further). But Calhoun's historical argument focuses on the "rapid increase in public life of the American citizenry"<sup>29</sup> in the period between 1830 and 1860. He recognises that this public life was male-dominated, but also notes that "gender relations were directly a focus of concern".<sup>30</sup> This undermines any claim to originality to N.S.M.s based on 'identity concerns' arising out of the politically charged/primed conditions of the 1960s. 'Identity', in its political context, is not a new phenomenon; it is an integral part of the development of any notion of democracy, but it also negates this development to an ethico-political level. This negation is readily identifiable in the form of nationalism. Its development has a violent history and its basis of

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<sup>28</sup> *Ibid*

<sup>29</sup> *Ibid* p.134



exclusion/inclusion is now exhausted (with some exceptions, most saliently the stateless (with Palestinians and the Kurds) as the momentum for social movement, and furthering the cause of democracy. But there is no reason to exclude 'nationality' from the N.S.M. on the basis of 'identity'. As Calhoun asks: "What was the focus of early nineteenth century nationalism if not identity?"<sup>31</sup>

Given the imperative of civil society theories of dissociating themselves from socialism, Calhoun's argument for inclusion of the labour movement in the same paradigm may seem even more contentious than that other old ideology (based on identity) of nationalism. Given some thought, however, the claims of 'identity' as the central feature of 'labour' is little different at an abstracted level to those of nationalism. What is overlooked again though is that the very question of 'identity' has an ambiguous relationship to democracy. Its detriment toward democracy is its crystallisation. The democratic opportunity of the Russian Revolution, for instance, became the political mutation of 'identity fetishism'. The disastrous soviet (democratic) experiment never got beyond this fixation of 'identity'. Although no social movements other than the labour movement in its Marxist form has laid claim to exclusive (political) agency as the appointee of history, a strong sense of its own identity mitigates against the 'cross-fertilisation' (Chantal Mouffe<sup>32</sup>) necessary for any progression to an ethico-political stage.

The politicisation of society as a whole is a second shared characteristic of 'old' and 'new'. But the danger of collapsing the concept into an implausible degree of voluntarism must be borne in mind. It is as accurate to say that social movements *are produced by* politicisation. (I will come to the 'historical conditions' further on this chapter). But leaving aside objective

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<sup>30</sup> *Ibid*

<sup>31</sup> *Ibid*

factors, social movement politicises society in two important and related ways. The first is as the articulation of disillusionment into movement, to attack (formal) political society democratically by 'extra-parliamentary' means' etc).

The second way that social movement politicises society is by way of attack on society itself. It refers to consciousness and the social imaginary. 'Politicisation' here means reflection upon or engagement with the 'wider concerns' of existence. Where the defining characteristic of a 'developed political system', in Schopflin's definition, is the narrow concern of aspects of 'the private' (authorising a political agenda of private material gain), *politicisation* includes priorities and values not determined by exclusive categories whose priority *must be* its own interest.

Whichever way politicisation is looked at, it cannot be sustained as dividing factor between 'old' and 'new', in Calhoun's words: "... the modern era is shaped by a certain oscillation between politicisation and depoliticisation of everyday life. In the late nineteenth and early twentieth centuries, as well as in the early nineteenth century, social movements brought a range of new phenomena into the public (if not always the political) realm. Indeed, the early labour movements themselves aimed crucially to politicise aspects of everyday life formerly (and by their opponents) not considered properly political".<sup>33</sup>

The question of 'identity' points to a fundamental change in its origins when Calhoun states that "political economic identities have lost their salience [and have been] replaced by ascriptive identities".<sup>34</sup> He points out that before the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, 'class' seldom self-applied or was basis of workers' mobilisation, and asks whether Chartism was strictly a class movement. Its demands included issues with appeal to those excluded from

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<sup>32</sup> C.Mouffe op.cit p.389

<sup>33</sup> C.Calhoun op.cit p.137

suffrage and effective citizenship rights in early 19<sup>th</sup> century Britain. Other historical examples of social movement he applies this question to includes the attack of barricades in Paris in 1848. A class-based analysis of this fails to account for it. He recalls the 'republicanism central to the political and economic struggle of the Cincinnati Workers - only to give way to an alternative, more class-based form of struggles in the 1840s'. What can be seen most obviously from these three examples of social movement in different instances is that the ethico-political elements that accommodate democratic development are not something that can be theorised properly by dividing 'old' from 'new'. This division overlooks the developmental point that should be of interest to democratic theory, and then goes on to theorise 'new social movements' in an unavoidably restrictive framework.

'Class' in Marxian terms is a strategy. As class was intended to abolish itself (and with it the forms of domination in society reduced to their class base) the labour movement can claim a universalist dimension as the ultimate objective went beyond its own economic-corporate interest. But the assimilation of the movement into institutionalized politics rendered this dimension obsolete, and the movement became trapped in its econ-corporate level of development by its own representation in the political system (a system which could not accommodate the 'perspectival radicalism' so therefore subsumed it). Moreover, many social movements of the 1960s were recognised and motivated by the problem of 'class'.

The adoption of a principle of *self-exemplification* is one area where Calhoun concedes some ground to the N.S.M. paradigm. He makes the point that historically socialist and especially communist parties built internal structures that were at odds with the axiom that 'movements are ends in themselves'. Such structures ran counter to the non-hierarchical objective of the movement itself. This may have been the direction taken by the labour

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<sup>34</sup> *Ibid* p.138

movements of the 19<sup>th</sup> and 20<sup>th</sup> centuries, but its course was not inevitable. Calhoun's criticism is aimed at a different, and in the overall context of the comparison between 'old' and 'new', incorrect target. He does not mention syndicalist movements to which the principle of self-exemplification would apply, but more than this it is really a criticism of the formal inclusion of the movement rather than of the movement itself. The instrumental lines taken by political parties, now estranged from their origins of social movement, ruptured the possibility of any significant self-exemplification of the labour movement historically. There is nothing inherent to N.S.M.s, that was absent in 'old' movements, that can prevent the social movement's democratic degeneration in this manner. The German Green movement is a more contemporary example of the abandonment of the principle of self-exemplification. Calhoun's criticism is therefore not one that can be made of the social movement of labour itself, which is really the case in point, but is better targeted at representative democracy. N.S.M.s have been given exception on account of a non-hierarchical organization that is intended to prefigure the desired social conditions. (On the basis of this criterion alone, the organization of the International Brigades in the Spanish Civil War could make its way into the category (*new*) social movement).

The question of *self-exemplification* however must be looked at from a different but equally as important a perspective as a comparison between old/new. For a society based on the projection of values as exemplified by organisational forms and styles of movement must itself be considered contingent and developmental. This point is still problematic for a non-hierarchical understanding of social movements. Although the organisational forms and relations within the practices of a social movement may be a democratic development, the retention of 'identity' upon which these forms are constructed impedes a (radical) development

of democracy that can extend its normative basis. A strong retention of 'identity' is an actual problem for any democratic project inspired by the 'idea' of civil society; the importance of the comparison between old and new is bringing into relief the 'identity trap' that stalls, or prevents altogether, self-exemplification by its own representation and submission to the politics of the economic-corporate.

A further, and for purposes here final, characteristic of N.S.M.s is the adoption of non-conventional methods. This distinction is perhaps the most difficult to maintain. It is (logically) impossible for any social movement to disengage from these methods because of its exclusion from formal politics (at the very least in the initial stages of its development). 'Non-conventional political method', with certain qualification, could be an acceptable translation of 'social movement'.

Where the *forms* of domination, that are the object of social movement attack, may be determined by historical context, and so too therefore the characteristics of the movement, the movement itself, the democratic struggle, may not. The peculiarities of the *new* social movement paradigm, are really historically determining factors of strategy and obscure the essential similarities with 'old' movements.

Opposed to this view however, *new* social movement is conceived of by Cohen and Arato as substantially and significantly different from movements past. This difference is located in the 'thematization' of the 'newness' as point of principle, rather than as more superficial characteristics of organisation, tactic, and strategy. They point out that the achievements and continuities of labour movements have been due (in part) to their capacity to 'combine course', that is, a straddling of both civil and political spheres. The 'newness' of social movements then "lies not so much in their dualism as in their more emphatic thematisation of

this dualism".<sup>35</sup> What this means is a conscious "refusal to instrumentalise cultural politics and identity building for the sake of narrowly conceived political success".<sup>36</sup> They fail to see that narrowly conceived political success can only be the outcome of (econ-)corporate social movement.

It is the 'politics of influence', the key element as Cohen and Arato see it, that is missing from social movement theories. For an adequate theory, social movement analysis must consider whether it can satisfy four fundamental inquiries. It is necessary to understand the processes of identity formations and the extent of the solidarity they defend. The relations between social adversaries and the stakes of these conflicts must be assessed. It is also necessary to analyse 'the politics of influence' exercised by actors in civil society on those in political society. Finally, there must be an analysis of the structural and cultural developments that contribute to the heightened self-reflection of actors.<sup>37</sup> It is the view of Cohen and Arato that, with certain amendments, the 'new social movement paradigm' can accommodate all these questions. Before considering them under the conceptual terms I have employed thus far, I would add another question: Can the N.S.M. paradigm, however amended and modified from a 'formal-political' perspective, accurately reflect and accommodate contemporary social movement. The increasingly 'global nature' of movement is the perhaps most obvious feature of contemporary civil society agency that cannot be accommodated by this paradigm. Its political attachment to the 'democratic institutions' of 'developed political systems' looks to be increasingly conservative in its political vision and possibly redundant as a useful concept. With this point in mind, I will pre-empt the conclusions of the discussions that follow and claim here that the answer to the fifth question is that it cannot.

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<sup>35</sup> J.L.Cohen and A.Arato op.cit p.559

<sup>36</sup> *ibid*

The first inquiry is of crucial importance. It includes processes of identity formation and the subsequent problem of solidarity extension that are ignored by the N.S.M. model. The paradigm of the social relations generated by a 'new' social movement could not achieve the necessary extension of solidarity in part because of the formal inclusion of this identity. The extension of solidarity means more than expanding spheres of responsibilities diminishing in importance the further away from the intimate sphere they are located (which in the privatised cultures of 'developed political systems' is generally somewhere over the horizon). Solidarity must refer to the linkage of social movement that crosses the boundaries of economic-corporate divisions. Without an understanding of solidarity deeper than that which coheres 'corporate' social movement, we cannot conceive of its extension as a political progression of consciousness to its 'ethico-political' stage. A consideration of the conflictual nature of the relations of these movements is primarily one of the relations *between* these movements, rather than *of* them.

If social movements are not driven by the logic of profit (or *power*) then the conflict between 'identifiable movements' must originate in the degeneration of the conception of democracy into economic-corporate procedure. It occurs in the obvious clash, and seemingly irreconcilable interests between, for instance, a labour movement and the environmental movement. It may be the case that the former aims to keep open a shit-producing factory for obvious reasons of employment, but the latter for different but equally obvious reasons want it closed down; a conflict between 'labourism' and 'environmentalism'. The clash of interests is brought into relief in the processes of *mediation* with and inclusion within the very systems of logic that are antithetical to the *democratic development* of social movement. This development involves the recognition and articulation of linkage with other social movement,

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<sup>37</sup> *ibid* p.509

between movement and movement, and not between movement and its political representation as the N.S.M. model presents it. The N.S.M. model may support a 'politics of influence', but it is democracy in limited form only. The influence exercised by actors in civil society (as normatively redefined) on those in 'political society' (corresponding to developed political systems) is negligible.

To exert any influence in the formal political sphere social movement must be in a condition strong enough to threaten something - aspects of state, corporations/global capitalism, tradition. However, when this threat becomes muted by mediation, it is difficult to determine what is left of the normative elements of democracy in the political outcome of 'influence' in this sense. The paradigm of the N.S.M. cannot 'contain' the necessary theoretical and *actual* democratic development of social movement as an ethico-political agency.

No social movement as an economic-corporate entity can expand democracy, beyond perhaps furthering its own interests through political bargaining and compromise. This includes the labour movement. The model of the October Revolution (that is a revolution conducted in the *name* of a movement whose ultimate objective is the eradication of its own identity) has long been obsolete. Part of the embrace of the prefix 'new' comes from the abandonment of 'revolutionary rhetoric' by social movements (since the 1960s and 1970s). It persuades Cohen and Arato to abandon *class*.<sup>38</sup> Not only is it rejected, rightly, as the 'sole' or even 'privileged' agency of 'social movement' but is also, wrongly, rejected as a vital source of disillusionment that generates into social movement. It is worth pausing briefly on the question of revolution; the 'war of movement' may no longer be a feasible course but *revolution* (of the

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<sup>38</sup> J.L.Cohen *Class and Civil Society* Cambridge, Mass. The MIT Press 1983; J.Keane *Democracy and Civil Society* London. Verso. 1981



Copernican variety) is still a vital process of democratic development, and therefore to civil society.

The fourth point to be considered by the N.S.M. paradigm is the: 'structural and cultural developments that contribute to the heightened self-reflection of others'.<sup>39</sup> In other words, it must be sensitive to all social movement whose self-reflection progresses beyond the limits of 'identity' and corporate boundaries. But it is obvious without further investigation that the N.S.M. model cannot account for this; the whole conception of it is based on 'identity'. The politics that Cohen and Arato conceive as arising out of the agency of the new social movements is dependant upon a certain 'fixed' relation with itself and subsequently limitation; there is logically a degree of exclusion, however fluid they perceive themselves to be. If it is not an exclusion of individuals then it is an exclusion of a wider, more democratic political agenda.

The essential feature of *new* social movements, according to Cohen and Arato, is the thematisation of their own 'newness'. Put into effect this 'thematisation' is the practice of the *principle of self-limitation*; a 'restraint' that has been a defining feature of civil society action, and a tenet of its theory since Michnik's elaboration of 'new evolutionism'.<sup>40</sup> But this elaboration misses the unlimited horizons of democratic development through the institutions of civil society. The state (and economy) become the horizons when the notion of self-limitation is taken as a principle to be applied to the limits of democracy. A modified Gramscian interpretation of the relation between 'new evolutionism' and self-limitation is provided by Pelczynski in his interpretation of events in Poland in the decades before the end

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<sup>39</sup> J.L.Cohen and A.Arato op.cit p.509

<sup>40</sup> A.Michnik op.cit

of the Polish communist state.<sup>41</sup> The understanding of self-limitation that lends itself to this analysis of Solidarity is that its application was *strategic* and not *principled*. The gradual grounding of cultural conditions (for the 'actuality of the idea') was a 'war of position'.

As a principle, 'self-limitation' is extremely problematic. As an axiom of *privacy*, it makes little sense to hold the development of the *self* and moral 'choice' to it. As a guiding boundary line, between what is permissible political activity and what is not, it is vague, but more problematically it stems the (revolutionary) energy of social movement. If it is understood then as a guiding *principle* then it is formed from a narrow conception of revolution (one still based on the 'war of manoeuvre'). Self-limitation cannot be understood merely as an antonym of revolution. To live by a principle of self-limitation (in any facet of life) is inevitably going to put a break on the development of democracy as something to be *assumed*. Far from being mutually supporting principles, 'self-limitation' and 'post-traditional relations to tradition' veer towards contradiction.

How the relation between 'self-limitation' and 'revolution' is understood is crucial to understanding the nature of civil society and the social movement that struggles to establish its ethical foundations. As a general speculation on various models of civil society, the more instant, and principled, the dismissal of *revolution* its vocabulary, the less is its democratic potential. Self-limitation as strategy can accommodate 'revolutionary' change. However, as a principle (of self-impediment) that 'respects the integrity of the political and economic systems'<sup>42</sup> (i.e liberal representative democracy and capitalism as here we are talking about 'developed political systems') it cannot. The obvious democratic restrictions to an application of a principle based upon a demarcation line between state and civil society (or state, economy

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<sup>41</sup> Z.A.Pelzcynski op.cit

<sup>42</sup> Cohen and Arato op.cit

and civil society), obscure the more fundamental problem of an institutionalised cultural ethic of 'self-limitation' developed from discursive practice. The (formal) political effects of an adherence to a principle of self-limitation, as defined fairly explicitly with regard to its relation to the 'sub-systems' by Cohen and Arato, are a self-evident limit to the expansion of democracy. The danger of the application of 'self-limitation' as a normatively self-validating ethic for the politics of social movement is its development into a broader discourse of self-restraint. There are important and obvious implications for the proposed fluidity, or 'modularity' as Gellner describes it<sup>43</sup>, of the subject of civil society and the processes of intellectual and moral reform referred to in Chapter 1.

A *principle* of self-limitation becomes, in political terms, a *strategy* of reform. The theoretical parameters imposed by a rigid reading of self-limitation as a 'core' principle, perhaps beyond 'post-traditional scrutiny', rather than *effecting* 'the idea' of civil society actually inhibits it. The democratic movements of civil society in communist east-central Europe had, rather than dispensed with the idea of revolution, dispensed with the idea of reform; the system was 'unreformable'. Self-limitation was an externally imposed necessity, and for Solidarity in Poland most notably, *not* a self-imposed principle of restraint.

The 'thematisation' of 'newness' that is Cohen and Arato's modified contribution to social movement theory implies a greater freewill to social movement than is the case in reality. 'Dual-logic' is not derived from expansion and empowering of social movement itself, but from response to historical context. In the same manner as was determined the strategy of the European Democratic Opposition (i.e. externally imposed by systems amenable to democracy in name and presentation only), 'new' social movements of the West were similarly determined by the prevailing political conditions. The political directions that the American

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<sup>43</sup> E.Gellner in J.A.Hall op.cit

feminist movement, or any other movement for that matter, took were for reasons determined by the antithesis provided by the values of patriarchy, racism, and class - factors not *logically* intrinsic or exclusive to the *idea* of the state. Such values emanate from society itself even if they are conventionally and institutionally entrenched by the state. It was not the idea of political power *as such* that was anathema to social movement (such as the American feminist movement) that emphasised the 'extra-parliamentary' aspect of its 'dual-strategy', more that it was just unattainable in the 'developed political system' that provided its initial disillusionment and collective will.

The communist system could not facilitate a graduation toward a democratic society whose solidarity could reproduce the necessary normative political ethic for the realisation of 'the idea' of civil society, and it seems neither can the 'actually existing democracies of the West'. It is important to bear in mind that the inability of the communist system to reform itself was considered in this discursive vein by civil society movements, and emphatically not as an inability to accommodate capitalism.<sup>44</sup> And neither can 'actually existing politically developed' systems.<sup>45</sup> However unrealisable to the thinker whose political-conceptual universe extends as far as *realpolitik* the (at least gradual) application of 'the idea' of civil society might be, the democratic opposition in the former communist states represented a certain descent from (the socio-political implausibility of) idealism to a theoretical possibility. Whilst Solidarity maintained the application of self-limitation as a strategy (not as 'principle') the cultural, and therefore gradual, transformations necessary were maintained as the grounding conditions for

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<sup>44</sup> V.Havel; A.Michnik; G.Konrad; G.M.Tamas. None of these authors of civil society were sympathetic to capitalism.

<sup>45</sup> The claim of 'development' here could be forcefully argued to be legitimate, as Havel did in different terms. It refers to the less obviously brutal threats to democracy and social movement that 'developed political systems' pose through more sophisticated and insidious techniques and mechanisms of control. See *Summer Meditations* op.cit

the (gradual) 'actuality of the idea'. The subsequent collapse, or rather 'dispersal', of the democratic opposition after the collapse of the *communist* system was partly as a result of the change in its application of self-limitation; it became effectively a 'principle'. In political terms democracy, as conceived in civil society theory and discourse, was by-passed; it then became something closer to the 'actually existing democracy' of 'developed political systems'. Political 'self-limitation' became institutionalised in the consciousness/social imaginary as a democracy conceived as 'rights', and no more was 'freedom to be found through solidarity' but in the market.<sup>46</sup>

The discussion of social movement has thus far focused on the economic-corporate limits of democracy, and specifically obstacles like 'identity' that traps social movement democracy conception of the within a politics of the economic-corporate. The remainder of the chapter will offer an outline of the 'ethico-political'. There are three related areas to which the notion of the ethico-political should be applied. The first to be considered is social *movement*, and its characteristics of a lack of exclusive identity, and the subsequent development of its consciousness through its own receptivity to the possibility of contingency. The second area of relevance concerns the structural conditions of this movement. The third important relation is that with the 'state'. The first echoes the arguments in Chapter1 concerning the development of consciousness; the structural conditions have been discussed in terms of the public sphere, in Chapter2, as the discursive forms of the ethico-political; and the third raises the questions that are discussed in the next Chapter on *Legality*. I will therefore leave the question of the state vis-à-vis the 'ethico-political' until then.

Where the concept of the economic -corporate might be applied to any collective organisation or private concern whose objective is it its own recognised (self) interest, the term

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<sup>46</sup> Lech Walesa cited in Introductory Chapter of this thesis.

'ethico-political' is more elusive. However, it does encapsulate 'the idea' of civil society, as an elevated democratic plane. One obvious way of giving it some definition is to declare that all that cannot be classified as 'economic-corporate' must then be 'ethico-political'. But this would be inaccurate. The economic-corporate social categories correspond to a well-defined set of interests based on 'identity'. However, not all such categories so defined can be understood as 'economic-corporate' in the sense of furthering the interests of that category. The most obvious example of this is historical slave revolts. It would be absurd to classify the slaves as a trapped economic-corporate entity. The objective of the slaves was to free themselves from being slaves *and not furthering their interests as slaves*. We might add that the servitude of the slave is a caricatured projection of the systems of domination that bear upon the subjects of 'developed political systems'. In the same manner that the rejection of the identity of 'slave' and its total abolition is the total rejection of that form of domination, the forms of domination that cohere developed political systems must be rejected totally if a radically democratised civil society is to develop.

The argument put forward so far in this chapter is that where the concept of 'social movement' is deployed as a more or less singular movement opposed to specific forms of domination, civil society theory generally traps democracy as an economic-corporate procedure. There is no room for any conceptual development of democracy beyond perhaps increased representation whose practice, or procedure, would become a "soulless" reformism. It is a perspective of political entrapment that is "unable to transcend the limitations of 'problem solving theory'<sup>47</sup> Habermas is partly right about the particularism of social movements, but rather than *becoming* so they *remain* so. The strong self-identity of social movements works against a developmental conception of democracy through the agencies of

civil society. Any agency of radical democracy is lost or at least extensively moderated when the energy of collective disillusionment is transformed into a specifically (self-)defined, (formally) recognised movement, and 'identity', but not necessarily formal political inclusion is established.

Ethico-political movement is thwarted by a collective action deriving its identity (and *raison d'etre*) from its specific object of attack and institutions of domination. Here it might help to recap on a couple of points already made. In chapter 2 an analogy was made between *ecologism* and *environmentalism*. It is possible to identify fundamental philosophical differences between them that correspond to the categories of 'ethico-political' and 'economic-corporate'. The former is the perspective of the ecologist who sees the object of attack as part of a systemic problem and which cannot be isolated from the whole and then reformed. The latter, the environmentalist would be content with piece-meal, and ultimately ineffective, reforms. To remain in the economic-corporate perspective, as here the environmentalist, is to miss the linkages of the objects of protest, and importantly, misses the links between the agencies of protest - *social movement*.

This brings us to the second point of recap. The opposition between *labourism* and *environmentalism* still applies when the points of attack are seen as separable. The ecologist is aware of such linkage as deregulation allowing companies both to pollute and destroy the environment and to dismiss workers without consultation. The antagonism between *environmentalism* and *labourism* is inapplicable if the perspective is wider, and objects of protest formerly 'singular' (or isolatable) are recognised to be converging interests of the same agencies and processes of exploitation and domination. An ethico-political consciousness allows for the radical agency of social movement to develop a democratic oppositional unity

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<sup>47</sup> R.W.Cox and T.J.Sinclair *Approaches to World Order* Cambridge University Press 1996 p.89

(in the example above, against the destructive effects of the logic of capitalism - human and environmental).

Ethico-political social movement involves a periscopic perspective that overlooks the sphere of diminishing identity, inclusion, and importance, and focuses a wider angle that identifies with common democratic struggles against common forms of domination. It is the collective recognition of the contingency of identity. To reproduce the radically democratised society envisioned by Cohen and Arato, social movement must constitute a democratic struggle that can morph itself into an opposition against different forms of domination. These forms are basically the regimenting bureaucracy and coercion of the state, and the depoliticising effects of privatisation on society. Social movement actively opposes the state violence on the West Bank whilst simultaneously engaging in protests against the W.T.O.<sup>48</sup> It pits itself against the most implacable of cultural mores and traditions, 'realism' etc within society itself, as well as its more overt anti-democratic elements like fascism in all its (economic-corporate) guises. The movement's self-exemplification is vitally important to the fluidity required of the civil society it aspires to cultivate. The problem of 'self-limitation' again surfaces. It has already been noted how this understood as a *strategy* allows for a (theoretically limitless) developmental conception of democracy but as a *principle* it precludes it. As a strategy it allows for social movement to exemplify a more radical democracy, whose forms of association reflect a gradual process of the outward expansion of human being through the discourses of the public sphere and ethical movement, rather than the static spheres of diminishing responsibility. This culturally imposed hierarchical formation of economic-corporate entities - family, nationality, gender, in whichever sequence of priority - retains aspects of false consciousness (as defined in

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<sup>48</sup> The International Solidarity Movement exemplifies this fluidity and 'lack of identity'.



Chapter 2) that cannot *assume* democracy in that they deny the conditions for living the life espoused by humanist philosophy; the *actuality* of the *idea*.

For the *theoretical* possibility of an ethical trajectory to social movement to become *actual*, however insignificant and remote it may seem, there must be in place (or in the process of development) certain historical and structural conditions. The processes of globalisation are of course complex and not unanimously definitive in their conception, as the disparate views of its extent and substance show. But no political or social theory can afford to by-pass the problematic points globalisation raises. There are no processes of globalisation irrelevant to a theory of civil society, but what is of particular interest here is the claim that "from the 'globalisation of economies, universalisation of cultures, and the proliferation of institutions' there are emerging 'principled ideas' adopted as international norms (and then become socialised into domestic understanding)".<sup>49</sup> That there is a proliferation of transnational movement forming should not be in dispute. What is more difficult but necessary to identify, however, is the 'ethico-political' nature (the 'principled ideas') of the politics and institutions that emerge from these formations. But it is an important point of identification because it is on these formations that a radical (developmental) conception of democracy must be constructed.

In view of some of the processes of globalisation discussed in chapter 2 - specifically the corporatisation of communications and information, and cultural production - the *actuality* of the *idea* through the formation of ethic-political social movement does indeed appear to be far removed from its political potential to be an impossible prospect. But the more optimistic flip-side to the dominance of neo-liberalism and its culture of *privatisation* is the use to which these developments have been (and are being) put by a web of democratic/social movement and activism which show ethico-political tendencies in their linkages with other movement and

activism, and which carry no ideological baggage of 'identity' to impede it. These structural developments in global communications that are almost instantaneous have provided certain of the conditions for social movement to articulate/mobilise itself both politically and theoretically. It is important to make clear, at this point, the difference between this 'democratic assumption' and the idea of 'cyber-democracy' referred to in chapter 2. Common problems of access to the hardware aside, the former represents the *practice* of democracy, whereas the implications of the latter is that it becomes a mere extension of representative democracy taking on illusory dimensions of 'direct democracy', reducing democracy to a more quantitative involvement by a separated, private individual as the 'unit of democracy', and not as a public action.

Another of the few positive effects of globalisation that run against the current of its more dominant and destructive course is the weakening of the nation-state; although still *the* major political actor, (arguably albeit in name effectively) its moribund condition is already underway. This is disputed by some as part of wider disagreement on 'globalisation'. Rather than 'globalisation' there is only an 'internationalisation'; that is the economy of a given nation-state may no longer be under the control of that nation-state, but the (nation-)state itself is more resilient to these processes. This is undoubtedly true insofar as the 'nation-state' is as intricately woven into the consciousness of its subject as it is dependent upon the objective criteria of sovereignty within a territorial boundary. The speed at which the demise of the nation-state will occur is easily exaggerated. There is unlikely to be anything like the dramatic domino collapse of the communist states in Europe re-enacted at nation-state level. Even as its 'economic sovereignty' is progressively undermined by 'economic internationalism', the strong affiliation of 'identity' remains intact.

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<sup>49</sup> S.Tarrow 'Transnational Social Movement' in K.Nash op.cit p.183

It is important not to confuse the 'nation-state' with 'the state'; this latter more abstracted concept does not necessarily follow any decline of the former, its visibility may be less in evidence, but its rationalising effect of identity construction through the norm of *legality* is a less obvious state intrusion. This has obvious implications for movement in civil society.

The form of association required of ethico-political social movement, must meet certain criteria. It must go beyond the 'apolitical' institutions that are characteristic of 'developed political systems', and beloved of civil society theorists. For reasons of reproduction of a post-traditional civil society, this 'free association' must constitute a democratic struggle that direct itself against the state, the atomizing and alienating processes of privatism, inequalities of capitalist economy, and against the reactionary and non-(or anti-) democratic movement within society (that denies the contingency of its own identity and consciousness which in turn preserves forms of 'tradition-domination', conservatism and fascism).

The only means by which the possibility of such association can be gauged is the phenomenon of *social movement*; movement that aspires to principles that are beyond the particular and corresponds to the discourses of the public sphere. The simultaneous extension of the concept, to incorporate a social movement that would not be recognized as *a* social movement, and the narrowing of its focus, to an abstracted point of hermeneutic *understanding*, makes it more usable. Conceiving social movement in this way maintains the focus on its ethico-political form and its democratic praxis.

In its origin all social movement must have arisen from exclusion of the political apparatus, and lack of representation. A developmental complication for social movement is its eventual subordination, and perhaps its extinction, to political mobilization, thus limiting its

radical objectives, once representation is achieved. But even before this point is arrived at the progressive potential is vulnerable to stalling by its own identity consolidation and to the limited political demands it makes. The problem for social movement then is not exclusively or even primarily the inevitable conclusion that stage theory sets. The movement conception of democracy is narrowed by focus on itself and then all but lost to the demands of 'realism' and the political process. For examples of how the normative core of movement democracy as 'free association' becomes attenuated to the point of non-existence we need look no further than the British labour movement; German Greens; others. The objectives of the movement, for purposes of political process, become condensed and subsequently lost in their own disfigurement. They can only remain sectional interests whilst conducting their cause within the political process; entry into which depends upon identity and an already stylized and hierarchical representation of that identity.

Strategy is a contingent instrumental expedient determined in large part by the object of its attack (state) in its historical condition. 'Dual-logic' cannot therefore be accounted for by an inherent logic to a form of social movement that differentiates itself from others. However, social movement theory has a tendency toward the classification of characteristics like (self-limiting) 'strategy' to determine a uniqueness of NSMs and, by theoretical corollary, the almost unanimous insistence on the division between them and 'old' movements. The 'self-limitation' of new social movements, is not an indication of the elevated consciousness of movement that is ethico-political. On the contrary, it is the logical strategy of reformism to take for an (economic-corporate) movement that 'respects the integrity of the system' to which it is opposed.

But when the principle of 'self-limitation' is viewed from the more radical position of social *movement*, and the forms of domination that are the objects of attack from civil society are recognized to be, far from disconnected but, varyingly applied means of authority it becomes a principle that is effectively a restraint on democracy. The splintering of social *movement* into social *movements* restricts the movement to an economic-corporate level; as the 'compromise' may be to the detriment of a 'different' social *movement*. The closing down of some shit producing factory may be the goal of the 'green *movement*'. The 'labour *movement*' may want to keep it open. Both are for obvious reasons of economic-corporate interests. An ethico-political status is achieved only when recognition of a convergence, rather than a clash, of interests is achieved.

For this there must be the adoption of a more radical 'multiculturalist perspectival',<sup>50</sup> position which cannot accommodate certain institutions that the adherence to an ultimately self-defeating principle of self-limitation would leave untouched. An abandonment of the principle could, on the other hand, facilitate democracy as 'free association' and an assumption of *political* power (not just the political weapon of cultural power). By imposing a principle of restraint, even if it is not 'ideologically derived' (in the same manner as environmentalists may be accused of this by ecologists, see Chapter 2), the social movement theorist contributes to the 'ideological hallmarks' of labelled and pigeon-holed social movements.

These (self-limiting) demands are only limited by their (right or wrong) recognition of an unbeatable opponent. They do not represent a limited vision of social *movement*. Indeed they tell us more about the prevailing forms of domination that historically determine the strategy of social movements than they do about the movements themselves. The politicisation of society as a whole is a second shared characteristic between 'old' and 'new'. This could

include a whole manner of evils however, and greater specificity is needed to understand the meaning of it in relation to social movement, and as part of the cultural condition of a 'post-traditional' civil society. Social movement politicizes society in two ways. The first is as 'democratic attack' on society itself. Cohen and Arato claim that identifying 'society' as opposed to 'formal political society' as a potential target itself is characteristic of New Social Movements only. But this exclusion of 'old' movements, as Calhoun's arguments show, is simply incorrect. What this theoretical division does is provide the support for the principle of self-limitation. If the old/new division cannot be sustained then the foundations of the self-limiting principle are undermined by a link effected by deeper processes than strategy. The second meaning of politicizing society can only refer to consciousness and the social imaginary. Politicisation here means reflection upon or engagement with the 'wider concerns' of existence. It is a politicization that is antithetical to the cultural reification of 'the private', culturally induced political apathy, and acceptance of a politics of the economic-corporate.

Where the *forms* of domination, that are the object of social movement attack, may be determined by historical context (and so too the characteristics of the movement – its strategy etc) the movement itself may not. To illustrate this we can look at an example of democratic struggle or movement, which would be difficult if not impossible to include in the common understanding of 'social movements'. In the war in Spain in 1936, the International Brigades fought for principles which managed to transcend the powerful economic-corporate grip of 'nation' on its collective consciousness in their failed attempt to supplant that (nationality) system of governance with radical conceptions of self-governance. A similar progression to 'internationalism' is the fundamental characteristic of contemporary social movement. In its latest concerted effort (2002) toward the destruction of the Palestinian people, the Israeli state

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<sup>50</sup> B.Parekh op.cit

is the object of protest for the International Solidarity Movement, elements of which are active on the West Bank. The more destructive processes of globalisation identified as the effects of capitalist expansion is also the object of attack. The connection between the violence of the Israeli state and capitalist interests is recognised. The I.S.M. captures the possibility of fluidity in social movement that has historically been stifled by the political representation of its economic-corporate interest within institutions of state. The forms of domination that gave rise to specific movements (patriarchy/feminist; capital/labour etc) then became the limited object of attack; a holistic view of power structures and authority is then missed. This is the effect of self-limitation. Where social movement (e.g. I.S.M.) differs from the more or less fixed lines of demarcation that have conceptualised social movements is in its ability to evade this 'single domination issue movement' by changing itself into something apparently very different.

The unimpeded development of civil society based on a developmental view of social movement (and a 'publicly oriented *self*') is logically 'global' in its progression. A *plurality* of association that is itself without the incumbrance of fixed identity differentiates itself from association that is legally, traditionally, or commercially derived. The *plurality* of civil society is the subject of freedom inextricably bound to the *self* (and an awareness of the contingency of the *self*), whereas a conception of *plurality* based on a freedom *to* associate shifts the problematic of 'autonomy' and agency to the individual making a moral *choice*. Just as societies, in the broader sense are not prior to an individual rational agency, 'associations' are not prior or separated from their 'associates' in their constitution.

## Chapter 4

### *Legality*

**(Structure of general laws needed to demarcate *plurality*, *privacy*, and *publicity* from at least the state and, tendentially, the economy.)**

Thus far, it has only been possible to sustain the broad normative foundations of *privacy*, *publicity*, and *plurality* after some substantial revision and more specific foci. As the proposed defence of these bases, *legality*, I shall argue in this chapter, is no less ideologically problematic than the concept of ‘the private’ with which it is intimately linked (not least as a source of moral justification for action). Before it can be assumed that *legality* can support and maintain the normative structure of an ethico-political society, a radical critique and (possible) revision to which the preceding three chapters were subject must be similarly extended. Unlike the other three categories, however, the method of immanent critique may prove to be unyielding. Whereas normative extraction, that can maintain links with ‘the actual’, was possible for *privacy*, *publicity*, and *plurality*, *legality* shows no obviously redemptive facet.

We must move away from the idea, in ‘developed political systems’, that ‘law’ is (or can act as) a defence against the expansion of the state into social life, and instead focus attention on it as the implementation of the discourses of *legality* with which the state seals its own legitimacy. Indeed it appears to be something of a nonsense to suggest that the expansion of something can be prevented by a means which is at the same time the exercise of a coercive arm of that expansion and a more



cerebral source of its legitimacy. It is by means of law, and the legitimating discourses of *legality*, that the rationalisation processes of the state cut their edge.

The method of the chapter will follow the same initial steps as the first three. It is concerned with two main lines of enquiry: the 'material' instances of Law; and the discursive norms of *legality*. I will examine the concept of *legality* from a critical perspective with two aims in mind: examining the role that *legality* plays in legitimising the modern (legal) state, and itself as 'Law'; and exploring elements to its discourses that lend themselves to civil society as a form of public authority or power. But an ethically stringent definition of civil society requires a process not readily identified with the economic-corporate framework of law as understood in the 'developed political systems' of the modern (legal) state.

There is the important matter of how we understand 'law', and how it should, if it can, be understood to differentiate itself from *rules*. The 'law', I shall argue, contains no *essence* to it that can differentiate it from *rules*, only that 'law' takes precedent over *rules* by virtue of it being applicable to the largest conceivable political entity. The rules issued by the state are 'law' because they supersede those of organisations within it. In the same progression, state law is can be *overruled* by international law. In order to identify an *essence* to 'law', one of two limiting perspectives must be taken. Either the materialist analysis of a coercive power that is instrumental in the subjection of one class over another is accepted, or the view that law is a neutral, and by implication *objective*, self-sustaining order. This formalistic view of law is of less use than the crude materialist analysis in setting about an examination of the role of law in social relations. Neither broad perspective offers much insight into the effect of 'law' as a powerful cultural force on the consciousness of the (human) subject of 'law' in 'developed political systems'. The parenthesis here is important. The initial concern of

this chapter will be the 'subject of law'. However, this is considered as a generic legal category which *includes* the human *self* as a 'legal subject'.

The narrow understanding of 'law' that concerns itself exclusively with the police and the judiciary are specialised and compartmentalised disciplines. The broader discourses of *legality*, or 'the law', represents the moral cohesion of all aspects of 'developed political systems', from politics to (a conditioned) morality. The 'law' refers to factors of *legitimacy* and, within the discourses of *legality*, a *universality* that is far more conceptually elusive than the easily identifiable institutions of judiciary and police.

A basic proposition of this chapter is that far from being the object with which morality necessarily comes into conflict,<sup>1</sup> law in the modern (legal) state is one of its principal authors. The moral question itself has become, in 'developed political systems', a matter of *legality*. This is at its most obvious and explicit when it is asked of the deployment of state violence. The 'court' of the U.N. is quasi-legal, but it is an institution of *legality par excellence*. Shrouded in the abstract certainties of law, moral justification is sought for action through securing the legal resolution of the U.N. by such means as bribery, threats, economic sanction and political expediency. Through these processes, legally justified actions become morally charged. It is therefore necessary to 'receive' the term *legality* with much circumspection and examine the implications for (ethico-) *political development*.<sup>2</sup>

Law, in the modern (legal) state provides the conditions for the development of 'purposive-rational' agency that furthers the culture of privatism as the affliction of *self*, and subsequently, *political development* in supposedly 'developed' political

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<sup>1</sup> J.L.Cohen and A.Arato op.cit p.52

<sup>2</sup> This kind of cynical political horse-trading was at its most naked in the U.S.'s attempts to 'persuade' target nation-states to support, and ultimately morally underwrite, the 2003 war on Iraq. (Economic-

systems. Problematically - for the development of civil society - the framework of the institutions of law in the modern (legal) state not only accommodate the development of private interests, it is their codification and categorised certainty that impedes the political consciousness from developing beyond an economic-corporate imagination.

If law, in the modern (legal) state, is to be understood as something more complex than a 'command' theory of law, then the relation between the 'subject of law' and 'the law' must be addressed by way of examining the possibility of something approaching a legal *essence*. This could only be, however, a defining characteristic that separates it from 'rules'. From this we can then determine the relation between this subject and what *it* recognises to be superordinate to 'rules'. I will first engage in an extensive discussion of the principal question of who or what constitutes the 'subject of law', and the important and unavoidable correlative enquiry of how they are 'constructed' (Hirst). I will then compare Hirst's idea of 'public law' (public power) as the only feasible identification of what he believes to be a vain search for a legal *essential*.<sup>3</sup> This thesis more or less concurs with this view, but his materialist emphasis does not fully support his concept of 'public power'. For this a more balanced enquiry is required, which would include the aspect of the 'legal consciousness' and the *reception* of the norms of 'law' that is essential to its own legitimacy.

The question of the 'construction' of the 'legal subject' is pivotal. A thorough analysis of this will provide some of the answer to the question of whether 'law' in the modern (legal) state can provide the structure of an ethico-political (civil) society understood to be founded on social relations that defy economic-corporate restraint. The agency of civil society, so defined in chapter 3 as ethico-political movement

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corporate self-interest overrode any semblance of 'moral positioning'; Russia, for instance, demanded higher commercial costs to the U.S. for its support (oil deals in post-war Iraq).

rather than a sphere that incorporates privatised actions, does not readily fit into the *processes* (for this is how it shall be defined in this Chapter) of *legality* and the 'rationality' (whose nuances of meaning will be discussed also in this Chapter) of the form of law upon which the modern (legal) state is founded.

However, this 'construction' is more complex than the purely legal creation that the word suggests. It is perhaps more broadly described as the *formalisation* of social formations into an economic-corporate (legal) category. The legal inclusion of the institutions of the labour movement, for instance, was not a straightforward process of legal construction, but a (legal) recognition and problematically, for reasons discussed in Chapter 3, *consolidation* of subjectivity or *identity*. 'Legal construction' involves a consolidation of a prior social formation (not yet agency) into a legal subject. Or as Hirst puts it, 'differentiated agencies of decision', but not a legal 'creation'.<sup>4</sup> Much less is the law in developed political systems the necessary regulation of prior social *agency*. Although there may be prior 'social formations', they only become 'agencies' through the processes of categorisation that must precede legal endowment. The question that must be kept in mind, as the question that drives all these enquiries, remains: can the Law, by way of recognition, categorisation, and inclusion ('construction'), contribute to an *assumption* of democracy that is characteristic of an ethico-political (civil) society?

The Chapter will then go on to examine the ideological/discursive norms of *legality*, transmitted through the varying institutions of *publicity*. I will outline an historical development of law and the principal contributors to the discourses of *legality*; from the legitimacy of the modern (legal) state to human rights - to establish the broader origins of *legality*. The understanding of law and its relation to this wider

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<sup>3</sup> P.Q.Hirst *Law Socialism and Democracy* London Allen and Unwin 1986

<sup>4</sup> *Ibid* p.24

concept established, the discussion will move on to the proposition of *ideological legality*. The foundational norms of *legality* - justice, rights, neutrality etc - will be considered in their different (and contradictory) levels of discourse in the public domain, and as conceptually problematic to a *politically developed* civil society. It is they that provide for the foundations of a 'privatised' society; shape the nature of *privacy*; determine the condition of the public domain, and inhibit the freedom of association that characterises ethico-political social movement within it.

Dominant approaches to a theory of 'law' are inadequate to the task of examining law as an historical and cultural force, whose effect is directly on social relations in a society and not merely as a 'detached' framework of due processes and prohibitions. A formalistic approach to law conceives it as *external, independent, and neutral* it completely misses the importance of 'law' as "a constituent way in which social relations are lived and experienced".<sup>5</sup> As an approach to 'law', formalism has the tendency to limit the reach of its principles, pushing law to the periphery of social life. This paradigm proposes a conceptual unity to society derived from a surrendered individual autonomy.<sup>6</sup> The problematic assumption of the autonomy of the subject aside, 'consent' theories tend to analyse the position of subjects in terms of equivalency that obscures important asymmetrical power relations among those subject to the same law. It also equalises the relation between the governed and the governors, consequently minimising the coercive aspect to 'law'. This formalistic approach serves to perpetuate the *objective, neutral, external* illusions about law, and cannot be adopted as an analytical and theoretical framework.

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<sup>5</sup> A.Hunt *Explorations in Law and Society. Toward a Constitutive Theory of Law* London Routledge 1993 p.121

<sup>6</sup> L.Green 'Commitment and Community' in J.Raz (ed) *Authority* Oxford Blackwell 1990; K.Greenwalt 'Promissory Obligation: The Theme of Social Contract' in J.Raz op.cit; A.Linklater *Men and Citizens in the Theory of International Relations* London MacMillan Press 1982

A materialist aspect must be part of its conception to account for the problematic question of 'the subject' and autonomy, and to account for the role of 'law' in the consciousness of the societies of 'developed political systems'. In much the same manner, instrumentalist theories of law have a tendency to limit its concern to an analysis of law in terms of its role in the (predominantly) coercive subjection of one class over another, or as an analysis of the apparatus of a power elite. One effect of this reductionism, it has been pointed out,<sup>7</sup> reproduces the same public/private distinction (as the distinction between politics and economics) that the liberal derived formation manages to project in the shape of the private aspect of law referring to the individual, property rights and economic exchange, and the 'public' aspect as an *authority*. (An authority embodied by the state and whose compulsion is legitimised by *legality*). Criticism of the (Marxist) instrumentalist approach to law comes from Paul Hirst. In *On Law and Ideology*<sup>8</sup>, Hirst claims that these theories regard law as simply an 'expression' of what *is* in the condition of capitalism, 'rather than an arena of struggle, a forum with potential political and economic effects'.<sup>9</sup> What is required of a theory of law is one that situates it in the *actuality* of social relations, and not as an epiphenomenal effect of the relations of production (much less as an abstracted realm set apart from *actual* relations). 'Law' becomes internalised, both as an acceptance of a (public) power that transcends *rules* and as specific *legal rules*. In his emphasis of the consensual aspect of hegemony, Gramsci wrote that *legality* creates

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<sup>7</sup> S.Picciotto 'The Theory of the State, Class Struggle and the Rule of Law' in B.Fine, R.Kinsey, J.Lea, S.Picciotto, and J.Young (eds) *Capitalism and the Rule of Law: From Deviancy Theory to Marxism* London Hutchinson 1979

<sup>8</sup> P.Q.Hirst *On Law and Ideology*. London MacMillan Press 1979

<sup>9</sup> *ibid* pp137-8. Further Criticism comes from Andrew Fraser who sees instrumentalist conceptions of law as precluding "the possibility of developing a sensitive awareness of the legal process as a form of creative social praxis in its own right. ... Marxist instrumentalism, like bourgeois positivism, conceives law as only a formal structure of rules, categorically distinct from the social context within which that set of rules is placed". A.Fraser 'The Legal Theory We Need Now', *Socialist Review* 8 (4-5) pp. 147-87

"a social conformism that is useful to the ruling group's line of development".<sup>10</sup> An uncritical assumption that *legality* represents a mechanism for the furtherance of democracy must not be made.

I will define 'Law' as part of the social fabric of developed political systems, and propose that the discursive formations of *legality* are ultimately a detriment to the development of civil society. This definition can be identified by a differentiation from law that is derived from a source of authority other than the law itself. Thus the very *idea* of law becomes the governing principal of social relations rather than an 'external oracle' of open 'non-rational' (Weber) sources of authority. The rationality of 'law' is itself the authority. In 'less developed' forms (according to Schopflin's version of development), this authority could be nation, race, God, or historical imperative as a peculiar diversionary form, or any other 'oracle' that can exert (public) power over social relations. But this is not to say that the legal authority of 'developed political systems' is founded upon a morally neutral objectivity. Such a perception of law is the effect of the authority of statute and legitimacy of legislature. Karl Renner describes:

modern law [as] crystallized in a countless multitude of codes, statutes and orders, rulings of authorities and judgements of courts; and of contracts and other acts of private individuals. What is to be the law is set forth in writing and in print: so that what had a merely subjective, nebulous existence in the mind of man is rendered objective. In this way the notions of the individual are removed from the control of his fluctuating psychology and are made permanent. Thus the law appears to be established, stable and fixed ('given'); it becomes statute".<sup>11</sup> The certainty of law is a reflection of the certainty of identity as 'legal subject'. Indeed through its categorisation processes, law creates its own surety through the consolidation of *identity*. The following argument is toward establishing *legality* as the (discursive) aspect to the 'point of unity in law' (that differentiates it from *rules*) and the 'institutions of legislature' as its *actualisation*.

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<sup>10</sup> A. Gramsci *Selections from Prison Notebooks* op.cit p.195

<sup>11</sup> K. Renner, *The Institutions of Private Law and their Social Functions* London Routledge & Kegan Paul 1949 p. 45

The formal reasoning of calculable interest shapes the nature of *privacy*. The discourses of *legality* are grounded in the vocabulary of the *individual*. However, this *individual* is not confined to reference to a liberal ontology (although the moral implications of this ontology are often explicitly to the fore), it is also a 'legal individual' as a *unit of law* in its subjective aspect. It may refer to more than a singular subject of law – to an ethnic group or capitalist corporation. It was seen in Chapter 2 how the U.S. Supreme Court recognised such a corporation as an *individual*. Rights apply to such 'corporate legal individuals' as well as individuals in their common understanding as the human subject. The (logical) processes by which the interests of such economic-corporate categories, capitalist corporations (more characteristic of 'developed political systems') and ethnic groups (more obvious in 'undeveloped political systems') are best furthered are also followed by the self-recognised private individual. I shall consider 'subjects of law' as restrictive to *political development* - that is, a development very different to the hitherto understanding of it provided by Schopflin. *Political development* as here understood would describe the expansion of social movement from its economic-corporate bounded processes and a transition to an *assumption* of democracy in wresting some political control back into society. I will consider the questions of this (ethico-political) 'agency' and its incompatibility with law, and the relation between civil society and the state below. The relation between civil society and the state and that between civil society and the 'Law' (*legality*) are not the same. The 'Law' is not identical with the state.

An initial requirement of an analysis of *legality* is a materialist conception of law that embodies rather than neglects or ignores outright its subjective aspect. Much of what follows on the 'legal subject' is an extension of the discussions on 'the *self*' in



Chapter 1. The conclusions reached there prevent any analysis of law whose subjective aspect is premised on a prior individual rational agency. I will not, therefore, dwell on this fundamental point of distinction; the 'legal subject' understood here is a *social phenomenon*. A couple of points to make, before moving on to the social origins and legal 'construction' (of the subject) is how legal theory grounded on this subjective rationality is in fundamental error. Certain 'legal subjects' (as bearers of subjective right) are *legal subjects because* of their declared inability to reason. These would include the categories such as 'insane' and minors. The existence of the thing in question (insane) is dependent on its incapacity to be recognised and reflected by the very thing (law) that affirms its existence, by constructing its (non-rational) legal identity.

Other legally *created* subjects that have no origin as social formations or relations, as bearers of subjective right, would include capitalist corporations. Paul Hirst takes the example of the joint stock company to undermine the thesis of 'subjective bearer', he also points out the category of 'mother' as a legal unit of 'primary socialisation function'.<sup>12</sup> *Individual* rational agency in the sense of the personality and as differentiated economic-corporate agency is an *effect* of legal decree and construction. It is this transformation of the *self* that Pashukanis describes as the transformation, "from a zoological individual into an abstract, impersonal legal subject, into the legal person".<sup>13</sup>

I will refer here to the theory of law presented by E.B.Pashukanis,<sup>14</sup> for the important reason that it facilitates the aspect of 'subjective reception' within a materialist conception of law. His use of Marx's theory of fetishism of the commodity

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<sup>12</sup> P.Q.Hirst *On Law and Ideology* op.cit

<sup>13</sup> E.B.Pashukanis *Law and Marxism: A General Theory* B.Einhorn (trans), C.Arthur (ed) london Ink Links 1978 p.109

<sup>14</sup> op.cit

form underlines the material origins of laws (in this case the origin of subjective right and the development of the law of value) in a way that helps us understand the norms of *legality* to be institutionally rooted and reproduced. His materialist foundations to a theory of law departed from the crude Marxist understanding of it as the coercive means of class rule, and led him to the realm of 'private right' and the subjective bearer as abstracted legal *personality* to look for the *essence* of law.

For Pashukanis, this abstraction involves a complex relation between the subject and property; the essential form of law (in capitalist states) is to be found in private law. Taking his legal theory directly from Marx's commodity form theory, he finds the origin of the 'legal subject' in the social relations of production, where it forms one aspect of the alienated self; the relation between the subjective (wills of formal equality), and the objective (relations between things). He writes: "Every legal relation is a relation between subjects. The subject is the atom of legal theory, its simplest, irreducible element. Consequently we begin our analysis with the subject".<sup>15</sup>

The problem with attempting to locate a legal *essence* in private law is that the legal subject becomes identical with the economic subject; only that one is the formal abstraction of the other. He explains: "it is precisely in the act of exchange that man puts into practice the formal freedom of self-determination".<sup>16</sup> Legal capacities other than relations of exchange and transaction are recognised in the commodity form theory of law, but "only in commodity production does the abstract legal form see the light; in other words, only there does the general capacity to possess a right become distinguished from concrete legal claims".<sup>17</sup> It is in this that Pashukanis claims the possibility of a generic legal category of a fixed bearer of rights. This constant is despite the vagaries of relations of exchange, a consequence of which is that the

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<sup>15</sup> *ibid* p.109

<sup>16</sup> *ibid* p.117

actual situation or concrete condition of the bearer is liable to change. Pashukanis uses the situations of the debtor and the creditor as both, in different time and circumstance, applicable to the inalienable (and legal) right of the bearer. The aspect of the subject that is fixed, however, corresponds to an abstract rational agency.

The abstract legal personality could not therefore have existed before the development of commodity and exchange relations. The material conditions for the abstract legal subject did not exist before the development of relations of transaction and exchange. In the principle of 'equivalency', capitalist relations brought about a development of law of theoretical universality. Without the concept of formal equality attached to its social relations, feudal systems lacked a formal unitary or equal legal status. The (abstract) equality of exchange-value relations represents an element to law, absent in all other forms, considered peculiar to these social relations. But it is not abstraction that is the differentiating factor, rather it is the (conceptual) extent of its subject category (universality). It transcends the 'rules' of feudal guilds and estates, to whose internal organisation all notions of 'equivalence' were restricted, but is a form of law based upon the recognition of *public authority* just like any other system – the feudal included.

The flaw in Pashukanis's analysis is in its assumption that the absence of 'unity' is conclusive of a qualitative difference when in reality the difference is better understood quantitatively. In other words, that element of 'unity', and with it 'public authority', is present in all lawful societies, and the difference with the law in the modern (legal) state is simply that it oversees vastly greater numbers of organisations and processes. The specific 'public authority' that legitimises 'developed political systems' is discursive and procedural *legality*.

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<sup>17</sup> *ibid* p.118

The social (including *legal*) origin of the subject of law cannot be fully evaluated if law is ultimately reduced to (individuated) subjective rights bearers implementing the objective conditions of the law of value. The narrowing of the relation between the law and its subject has two immediate limitations. First, it does not recognise the category of legal subjects that are not human subjects. The theory of the fetishism of commodities accounts for the 'legally constructed' will of the individual (human) subject, but does not include those that are corporate bodies - economic, ethnic. Second, Pashukanis's economic reductionism does recognise such non-economic social relations outside the system of production and exchange, but ultimately they are all reducible to it. The search for the elemental component of law in private law is misplaced. Indeed, according to Paul Hirst's argument, any search for an *essence* to law is ill-conceived because it diverts attention from the legislative processes, the only point of differentiation between 'law' and 'rules' that he concedes. I shall engage with this (qualified) dismissal of the *essence* below, and develop my argument around these differentiating processes and their relation to *legality* as a discursive form. An elemental, or substantive difference to law in the modern (legal) state can only be claimed by its own (ideological) discursive *legality*.

The construction of legal *identity* and category leads to the second of the enquiries correlative of the principal question (what is the subject of law?). How are these subjects, so constructed, to become agencies of democracy as an *assumption*. The ethico-political conditions of radical democratisation by means of social movement in civil society demand that there is no economic-corporate constraint on social relations, either legally enjoined or by any other ideological or coercive method. The agency of civil society is, by definition here, social movement based on

social relations where the measurement of *freedom* is on the association itself unencumbered by formalised identity and category of operation.

The constitution of the 'legal subject' must be considered primarily as the effect of the categorisation and identity construction of the bureaucratic and rationalising processes of state and economy, and therefore limited in the possibilities of *political development*. The 'legal subject' is therefore the *effect* of law, rather than a prior agency of rationality necessitating law. Conceiving law as the regulative means of rational agencies exclusively in the form of the person narrows considerably the investigation of 'law'. It misses the points of legitimacy secured by *legality* that present and reproduce the 'law' as something beyond the regulating principles of an exclusively market-oriented agency.

Areas of constraint to *political development* may include economic-corporate categories that are not in their actions predominantly (never mind exclusively), to use Weberian terms, 'purposive-rational', but as easily and fairly described as 'value-rational'. The institutions of the modern (legal) state issue the categories and identities that are *received as* amoral. But such agency formation may be self-recognised by principles of 'value-rational' action rather than the utility maximisation of 'purposive-action'. In summary the law is more than an instance of regulation, it is, crucially, the authority behind the *identity* it has either explicitly constructed (this might include 'criminal', 'insane', 'sexual deviant', 'mother', 'single mother', etc, etc) or formalised as the legal identity of social formations (trade union, capitalist corporation, ethnic minority).

The economic reductionism of Pashukanis's theory of law is fraught with conceptual difficulties as well as having impossible political ramifications for civil society. Any resolution to the problem of law can only be achieved when the

differentiated agencies of property acquisition and their regulative necessity are removed; the 'withering away of the law' will be followed by the abolition of private property. But reducing domination of law to the domination of the commodity form necessarily misses the broader rationality to the legal-domination central to societies of 'developed political systems'. This domination encompasses more than commodity exchange relations. The rationality of 'law' provides the human consciousness with well-defined perspectives to its environment; the *self* perceives its own development as proceeding according to these rational identities and actions. The rationality of law locks the consciousness into economic-corporate frames of reference. Thus the domination of the legal-ideal is not founded on a legal *essential*, nor can it be located in private law. An extraction of the problem of private law as Pashukanis presents it, in other words private property, would not be followed of necessity by a 'withering of the law'.

An irreducible legal element is a fiction; enquiries after which divert attention away from the complexities of *legality* in developed political systems. The only conceptual parallel that can be made is in an area of 'unity to law' that can only be grasped in the *idea*. This comprises all (often contradictory) discursive formations of *legality*, including the bases of rights, justice, and neutrality etc established in the consciousness as a 'legal mentality'.<sup>18</sup> This 'unity', however, can only establish itself as an over-arching 'public power' through the *actual processes* of the legal institutions of state in their application of these concepts.

Paul Hirst describes the privileging of private law as a "profound error": "Pashukanis's search for the 'form' of law, for the definitive feature of its rules that provide its *raison d'etre*, was a chase after a chimera. It is legal *institutions* that

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<sup>18</sup> M.Delmas-Marty *Towards a Truly Common Law. Europe as a Laboratory for Legal Pluralism* Cambridge University Press 2002

differentiate the rules they make as 'laws'.<sup>19</sup> His critique of Pashukanis's commodity form theory develops the 'legal subject' beyond its restrictive identification with 'economic subject' by looking to 'public law' for an elemental definition to law that sets it apart from mere *rules*.

Hirst's own theory is a perspective of law that shifts the focus from one on private property to one that emphasises its "instance of regulation"<sup>20</sup> and its organisational complexities. Law, in his analysis, consists of three elements ('necessary to the instance of regulation'): An apparatus of regulation; rules issued from these apparatuses that defines the *form of existence* of the subject by determining its *status* in its ascribed legal category; *norms of conduct* that stipulate category-specific legal requirements; and an apparatus of coercively backed adjudication.<sup>21</sup> His criticism of Pashukanis's 'legal subject' analysis comes (in part) from his point that the exclusivity of the *personality* of the bearer of subjective right necessarily excludes analysis of other subject formations, like the joint stock company, and other legal categories such as 'wife'.<sup>22</sup> This underlines the need to broaden the subject category to include all corporate institutions whose interests are based on principles of wealth accumulation, exclusion, tradition, etc.

The *idea* behind the concept of, what Paul Hirst describes as, 'public power' (public law) is crucially important to an immanent critique of *legality* as discursive formations in the public domain. Public law in this conception represents the legitimacy behind the powers that 'issue' law, thus elevating it above the category of 'rule'. *Legality*, although distorted in its discursive presentation in the public domain, represents a convergence of 'law' above the category of (mere) rule to a conception of

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<sup>19</sup> Hirst *Law Socialism and Democracy* op.cit p.21

<sup>20</sup> *ibid* p.19

<sup>21</sup> *ibid*

<sup>22</sup> Hirst *On Law and Ideology* op.cit p.??

universality. The purpose of this part of the critique is to establish a conceptual parallel between the *illusion* that Hirst describes this 'public power' as, and *legality* as a source of legitimacy. A fairly detailed look at Hirst's concept of 'public power' is therefore required.

Denying any essentialism to it, Hirst defines 'law' as an "institutionally specific instance of regulation, which is itself presented in the form of public law".<sup>23</sup> Public law is not a corpus of legislation defined as an opposite to private law. It entails, first of all, recognition of a *public* from which comes an *authority* that supersedes all other laws *as rules*. Strictly speaking this 'law' is still conceptually no different to *rules*, the difference lies in that they are perceived to be *superior* - in their application to wider organisations. Hirst makes the proposition that "public law involves the 'fiction' that the state exists in the form of law and that law is not merely one definite sphere of state activity but is definitive of the whole".<sup>24</sup> Thus the 'law' and 'the state' are not identical, but 'public law' acts as a form of public *power* (received as embodied in the state). Neither is this something peculiar to modern (legal) states; the identification with the state in the public imaginary is present in other forms of state. The specificity of the fiction of public law lies in *the differentiation* (and recognition of as the basis of legitimacy) *between it and rules*; the nearest thing to a *legal essentialism* that can be reasonably and accurately made.

Hirst makes this point in another way, emphasising the institutionalisation of law and its multifarious agencies. A necessary condition of public law is the 'fiction' of it being 'definitive of the whole'. It requires this because: "(1) Laws and regulatory instances are not a homogeneous sphere of *legality* (law) - there is no 'Law' in general, only specific bodies of rules and definite apparatuses regulating spheres of activity ...;

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<sup>23</sup> Hirst *Law Socialism and Democracy* op.cit p.22

<sup>24</sup> *ibid* p.24



(2) because the rules of procedure that legal agencies follow are specific constructions of other agencies of decision, legislatures and higher courts".<sup>25</sup> In a sense, public law amounts to more than the sum of its complex and varied parts. It presents itself as the (illusory) unification of this complexity of rules and regulation, and the perception that "*all* laws are equally valid and should be obeyed".<sup>26</sup>

Public law is presented as composite of sovereignty: "The doctrine of sovereignty transcends different forms of state and constitution", it was presented thus in feudal systems, and was "retained and reinforced by the doctrines of the liberal era ...".<sup>27</sup> It is sovereignty that resolves the paradox involving the notion of 'law' as being "'above' the activities it regulates, and yet subject itself ...".<sup>28</sup> Furthermore, "Law and public law cannot be separated; this is because what differentiates 'law' from other classes of rule are the claims advanced by institutionally specific instances of regulation".<sup>29</sup> But Hirst's identification of *legislation*, and its complex material processes as the 'point of unity' in public law is only one aspect to it. His argument does neglect the consensual aspect of law that must be of primary consideration when both *a priori* rational agency and a 'command' theory of law are rejected as methods of explanation.

It is fitting at this point to recap on the position reached on the understanding of 'law'; and then examine its relation to the state. With the aid of Hirst's critique of a materialist theory of law derived from the commodity form, it has been established that there is no legal *essence* - in the sense of a substantive differentiating factor to law in the modern (legal) state. Any converging point of unity to law that may be identified cannot be supported with reference to the subject category alone. For

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<sup>25</sup> *ibid* p.25

<sup>26</sup> *ibid*

<sup>27</sup> *ibid*

<sup>28</sup> *ibid* p.26

Pashukanis, this involves the individuating effects of commodity relations and the transcendence of a (human) rights bearer as the effective establishment of a qualitative or essential difference to law in 'developed political systems'. The consciousness of 'the subject', as 'legal mentality', is, however, crucially important. It is in the discourses of *legality* in developed political systems that this *reception* of legitimacy to 'law' can be discerned. The 'passive activity', referred to in Chapter 2 as a 'consensual' aspect to the public domain and its cultural production, would in this instance perceive the formal reasoning of law and its injunctions as 'common-sense'. The point of unity to law in the modern (legal) state is a convergence of the norms of *legality*, that provide the consent to law, and the *legal* institutions of state that issue and enforce them.

The 'law' as the public power that commands the recognition of its subjects that it is *law*, is the source of legitimacy for the modern (legal) state of developed political systems, much less is democracy. A good example of the misapplication of the term 'representative democracy' comes from the most developed political system of them all, where its president was 'nominated' ('elected' would be even more of a misemployment) through processes of *legality* and not the 'channels and procedures of' democracy. But this has never compromised the legitimacy of the administration.

The pre-fix 'legal' to the state in developed political systems refers to its legitimacy, rather than a reference to the 'nature' of the state itself. There are elements to the state that need have nothing to do with the norms of *legality*. The 'legal-state' refers to a form of legitimacy, not a form of state. The legal-state remains legitimate so long as it acts within the 'law' or within the terms of *legality* (or at least is perceived to do so). It is a paradox that the source of its own legitimacy is 'within'

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<sup>29</sup> *ibid* p.27

itself but *apart* from it. The state has to stand over the 'law' as the mechanism of regulation, but also has to be subordinate to it.

As a necessary component to 'law' (as differentiated from 'rules' that are not themselves subject to a point of unity), the state has a complex relation to it. It must be emphasised that they are not identical. The only feasible division that can be applied to the law and the state is a methodological one. Legal institutions and processes are not coincidental with the state institutions of judiciary/police; agencies of wealth distribution; and parliament. But since some of these institutions are basic to the composition of any modern state, the difficulty in separating the processes of *legality* from all (including arbitrary) actions of the state is analytically impossible, just as it is to separate state and society conclusively. More important, in political terms, is the difficulty of this separation occurring in the consciousness of those subject to 'law' in developed political systems. The point of 'unity to law', or processes of *legality* as 'public' and superior to mere *rules*, is perceived to be embodied by the state; not in any way distinct from it.

The institutions of state (judiciary/police; social security agencies; parliament) are *received* as the actualisation of the norms of 'neutrality', 'justice', and 'rights', the *material* embodiment of these discourses. The 'law' (*legality*) is an adoption of procedure by the state, whose 'public power' is dependent on its adherence to the concepts that are authorised in the public domain. The 'law', on the basis that *legality* represents (the consensual aspect of) public power, is 'outside' (or 'above' -as its source of legitimacy) the state. But it is 'within' the state as the application of the basic principle of a 'unity to law' that claims any reality *only* in the human consciousness. The political ramifications of this are that: whilst *legality*, as an instance of recognition of *public power* and the retention of some of its precepts, may not be an

impediment to the development of democracy through social movement in civil society, its identification with the state signals its terminal decline.

It is impossible to talk about law without acknowledgement of its coercive form. But these two aspects are not clearly separated; coercion and consent blur into each other. Coercion is sanctioned by virtue that it is *legal*. The use of state violence proves with depressing regularity to be beyond democratic accountability when its justification is made in the legitimising language of *legality*. The 'fairness' represented in the evenly balanced scales on the universal symbol of 'justice' ratifies the use of the sword not just as a symbol of 'fair trial' in the narrow area of criminal law. However, a coercive aspect to 'public power' is not a *logically necessary* condition of its existence. As it has been historically presented as the sovereignty of the state, this 'power' has always entailed police institutions. All states are police states, anything else would not be a state. The extent of the 'power' that *legality* holds (as a *public power*) in the imaginary of those subject to it in 'developed political systems' can be seen by the effectiveness of its own discourses to present the modern (legal) state as something else.

To establish the 'public power' of *legality* in 'developed political systems', it must be examined from at least five different viewpoints: 1) it must be recognised as the basis of moral decision in 'developed political systems'; 2) it incorporates the idea of 'neutrality', from which is then extracted a certainty to our *understanding* in those societies; 3) it presents the exercise of *right* as the realisation of the subjective freedom of its bearer; 4) it is representative of justice - in all its areas - criminal, social; 5) it rationalises social relations. This is not an ordering of importance. Indeed, *ordering* might not be an entirely appropriate way of approaching these aspects; the 'public power' that inheres in *legality* is perhaps better identified from the discursive

fusion and contradiction that forms its ability to be, as Hirst put it, 'definitive of the whole'.<sup>30</sup> The 'Law' is more than a legal discourse restricted to the necessary functioning of an economic system based on equivalency in the law of contract and its peculiar manifestation under capitalism. It is also crucially important to the functioning of the system as a whole, including social relations that may have no direct economic bearing or effect; in other words its ideological function.

The development of 'law' into the form received as sovereign in 'developed political systems' can be chronicled from a number of different foundational points: Roman Law; Greek rationalism; natural law; Judaeo-Christianity; the post-Aristotelian philosophies of the early Enlightenment and the subsequent development of liberalism. It is in the discourses of this latter philosophy that the contemporary relation to property can be found at its most inextricable in the triplicity of common-sense that is *law-property-morality*, and most influential in the questions relating to 'neutrality' and 'right'.

From Roman Law came the distinction between public and private law, that was to become the legal distinction between state and civil society in the political developments of capitalism. The character of 'public law' became distinct from the reference to property that characterised private law. It was the Roman Law doctrine of *legibus solutus* (whatever pleases the prince has the force of law, or in modern terms, sovereignty legitimised by *legality*) that provided the concept of *impersonal* authority, the key element to the legitimacy of the modern (legal) state. Without formal reasoning inherited from Roman Law and Greek rationalism, it is impossible to conceive of the 'legal ideal'.

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<sup>30</sup> Hirst *Law Socialism and Democracy* p.24

Judaean-Christianity played a precursor role in the formation of 'individual agency' whose rationality is basic to contemporary *legality*. Through its concept of 'culpable personality', as logically necessary to redemptive faith and divine retribution, the discourses of Judaean-Christianity established the grounding to an individuated subject of 'Law'. This is explicitly posed in the book of Exodus where the simple *quid pro quo* principle of retributive justice is written as 'an eye for an eye'.<sup>31</sup> Although the conditions of modernity that fractured feudal social relations, into the atomism of civil society (Marx) or system of needs (Hegel), and the emphasis on this universality shifted to one of 'a right to' rather than 'a duty to' were some way off in historical terms, the identification of a free-willed and responsible individual had already been made by the discourses of Judaean-Christianity.

There are also conceptual origins to contemporary human rights discourse in the Old Testament. Its basic terms are in Leviticus as: '... if a stranger sojourn with thee in your land, you shall not wrong him. But the stranger that dwells with you shall be to you as one born among you, ...'.<sup>32</sup> The same universality is the foundation of the New Testament: 'For God has no favourites: those who have sinned outside the pale of the law of Moses will perish outside its pale, and all who have sinned under that law will be judged by the law'.<sup>33</sup>

The universality of subjective *right* as the foundation of the modern (state) legal state can be seen to have derived from two broad, and theoretically speaking, incompatible perspectives of *natural law*. The first is the tradition which views law as the confirmation of the universal physical laws of nature. According to this view, a law that is not *just* cannot be a law; as opposed to the second tradition and contributor,

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<sup>31</sup> Exodus 22:26

<sup>32</sup> Leviticus 19:16

<sup>33</sup> Romans 18:4

*positivist* law which disregarded the content so that a law remains so whether it is 'just' or not. The doctrines of natural law secularised divine authority.

The early Enlightenment discourses on the individual were conducted in rationalist language in its widest sense.<sup>34</sup> The break with the Aristotelian tradition and the advent of the doctrine of the social contract changed the perception of society to one comprised not of natural social structure and hierarchy (although equally answerable to the same 'public power' - God) but one composed of *individuals*. In this event law became a management of conflict, not of 'prior differentiated agency', but of legally constructed agency.

The loose association that connected these legally constructed *individuals* required a system of law that was, in appearance at least, impartial and indifferent to any specific morality or creed. It could then lay claim to objectivity in its standing outside and above society – its characteristic of 'finality'; the rational oracle of (public) authority that secures the modern (legal) state. The material developments of *legality* came with the advent of the modern (legal) state and the development of capitalism. The state required an abstract vocabulary of legitimacy, and capitalism a regulation of contract, and both the construction of the 'subject'.

From these historical referents come the contemporary discourses of *legality*. Some of these concepts, inherited from the liberal tradition, are central to the contemporary canon of civil society and have had 'negative' consequences for the development of its academic discourse. These conceptual bases of the modern norm of *legality* – justice, rights, and impartiality (as moral neutrality as well as formal equality) – arose from a development of intense conflict between self-interested

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<sup>34</sup> Rationalism here does oppose empiricism as a 'narrow' differentiation. (Locke, Hume, Berkeley, et al) empiricist in sense of rejecting the possibility of obtaining knowledge of what exists by reason alone (Descartes, Leibniz, Spinoza et al) and that it is characteristically deductive. The rationalism here refers to a commitment to reason as opposed to non-rational sources of authority.

*individuals* (i.e. *individuals in law*, whether they be human subjects or capitalist corporations). Just as important as not identifying the term *legality* with all systems of law is not conjoining it with the form of law that it implies. *Legality* refers to a system that orders society through broad discursive measures whose focus is wider than the practice and institutions of the state legal order, and which maintains the legitimacy of the 'legal ideal', and ultimately 'rationality' itself as the pre-eminent value.

The term 'rationality' must be considered not as objectively situated logical flagpoles, but as the steering value of the legal ideal itself. Its interpretation as 'common-sense' deflects from its antipathy toward an ethico-political (civil) society'. The discourses of *legality* mystify the relation between *rationality* and *objectivity*, and the *rational* course of action is received as the objectively true course. To put it another way, no self-abrogating *rationale* can be applied to legal analysis. We have, therefore, as the starting point of 'objectivity' an assumption of 'given' categories of economic-corporate interest. David Hume was among the first to question the limits of reason in practical affairs.<sup>35</sup> He observed that our faculty of reasoning can operate only upon given premises. It is only after certain premises are assumed can conclusions be reached by *reason*. The point of Hume's argument is that: it is rational to do certain things - so we *ought* to do certain things. But the rationality implied in the 'ought' is in doubt; what *ought* to be done is done as much out of convenience as anything else. So we may then question whether it is rational doing whatever it is that is convenient. The problem of rationality, that is for Weber 'the problem of modernity', is dependent on a process of *generalisation* and *systematisation*. This involves the extraction of 'legal relevancies' (from social relations) to determine the manner in which these logical aspects are concordant with the formal reasoning of

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<sup>35</sup> D.Hume op.cit



legal analysis.<sup>36</sup> According to Foucault, what we have to do is analyse "specific rationalities rather than always invoking the progress of rationalisation".<sup>37</sup> Rationalisation, as the discipline of law, is an important part of the individuating processes of the state. It applies itself to " ... everyday life which categorises the individual, marks him by his own identity, imposes a law of truth on him which he must recognise in him".<sup>38</sup> There is a soundness to the 'certainty' and 'rationality' that law represents and by logical corollary the 'right' thing to be done is the 'rational' thing that can be done.

The Law is the maintenance of a conflict that it itself creates through its own construction of the 'legal subject' and its well-defined interests in designated areas of action and right. The coercive necessity of the state, however, requires legitimacy for the system of domination that it preserves. The contradiction comes from the regulation of conflicting legal subjects whose status was *constructed* by the Law. The philosophical paralogue for all these justificatory 'norms' is an assumption of individual rational agency that only makes sense in terms of a (constructed) 'legal subject'. Moreover, not only is this agency received as 'autonomous' in its protection from external impediment of action (both, paradoxically, provided by the state) but also in its action as chosen independently of value-laden and rhetorical discourses of rationality and *choice* themselves. The rationality of *legality* provides the ground for the development and consolidation of instrumental social relations.

Most synonymous, as an element or base, with law is the idea of *justice*. This is more commonly as retributive means, but the political question of social justice is discussed at academic levels in terms of the degree to which the liberty of the individual is impeded by 'socially necessary' considerations of distributive justice.

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<sup>36</sup> M.Weber *Economy and Society* University of California Press.1978 p.62

<sup>37</sup> M.Foucault 'The Subject and Power ' in K.Nash op.cit p.17

The term itself means, at this theoretically precise level of presentation, egalitarian and democratic notions and practices that are themselves an affront to freedom. Some ('social'-) liberal thinkers have tried to close a gap that for the main current of this tradition is one of incompatibility.<sup>39</sup> But where the level of discourse presents the relation between *liberty* and *equality* as opposed rather than coincidental, the discourses of *legality* in the public domain conflate the two. This fusion is not as an analytically tight resolution to the problem of conceptual incompatibility, but as hazy inclusions in the political (and general) vocabulary of 'developed political systems' that serves to conceal rather than ameliorate 'injustices' and inequalities.

But despite its presentation through the discourses of *legality* as a kind of secularised Christian philanthropy, the answer to the question 'what is just?' is hardly settled. Indeed there are significant differences in interpretation of this slippery concept from even among those who shit from the same horse so to speak. I shall consider some of these variations below. But it must be made clear that the division itself is in a way misleading. It suggests that the orthodox liberal emphasis on (and priority of) the individual has been diminished, or subordinated in the cause of 'social justice', in 'social liberal' theories. But this is not the case. Stemming from different perspectives on the relation between 'liberty' and 'equality', the differences in these currents belie their similarities. Both (broad) viewpoints prioritise liberty (and the individual) over equality (and society). The emphasis is merely more explicit in the condemnation of social justice in the discourses of neo-conservatism, and the New Right and its apostles, than those of 'social liberalism'. Even in the latter it is still barely concealed in the super-ordination of the principle of liberty over that of equality.

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<sup>38</sup> *ibid.*

<sup>39</sup> The most prominent of these being T.H.Green, R.Tawney and H.Laski.

One of the most influential prophets of these contemporary discourses is Hayek. In his work, the concept of justice loses its meaning entirely if it is to involve a regularity and coercion that is logically antithetical to an abstracted and negative understanding of liberty. In this context, the term 'justice' is misemployed. The term 'social justice' is ultimately contradictory, and, for Hayek, the 'road to serfdom' begins with interventionism by redistribution.<sup>40</sup> The most referred to contemporary comparison of theoretical priority is that between John Rawls and Robert Nozick.<sup>41</sup> Rawls's theory of justice is alive to the problem of social inequalities and is meant to offer ameliorative proposals through the application of a principle of justice. Any such principle according to Nozick would be 'unjust' because liberty had been infringed upon. Even for Rawls, equality amounts to equal basic liberties; following his lexical ordering of the principles of his theory of justice. A basic criticism to make of Rawls is that he fails to take account of 'the worth of liberty'; as Henry Shue writes: "To ascribe priority to equal basic liberties when some citizens are too poor to be able to enjoy their liberties is a cruel charade".<sup>42</sup> Although the distributive principle of Rawls's theory is in place to secure the conditions in which 'justice' can be properly carried out. The priority is with *liberty* as the basic component of 'freedom'.

The point to underline is that the notion of justice is presented as a philanthropic welfarism (questions of security and other matters of *realpolitik* notwithstanding) even though the priority of the needs of the individual is conceptually 'given', and effectively translated into the demands of the 'legal *individual*'. Despite this, the received common-sense understanding of 'justice' is as something inherently desirable, fusing contradictory aspects of Christian philanthropy

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<sup>40</sup> F.Hayek *The Road to Serfdom* London. Routledge. 2001

<sup>41</sup> R.Nozick *Anarchy State and Utopia*.Oxford. Blackwell. 1978; J.Rawls *A Theory of Justice* Oxford University Press 1999

<sup>42</sup> H.Shue 'Liberty and Self-Respect' in *Ethics* 85 1974. P.201

and Judaeo retributive justice into the 'collective consciousness of society'. In similar vein to Hayek, Nozick's understanding of freedom cannot accommodate any form of social justice. A fundamental part of the criteria of freedom is that an action is unimpeded by other actions that have no *rightful* basis. A policy of egalitarian redistribution comes into this category and would therefore be, in Nozickian terms of reference, *unjust*.

The concepts of 'equality' and 'liberty', as part of the discourses of *legality* in 'developed political systems', need to be redefined or at least re-examined. Steven Lukes sees their presentation as an irreconcilable opposition of 'equality versus liberty'.<sup>43</sup> However, the presentation to which Lukes refers is of an academic level of debate. At another level, as the 'wider' discourses of *legality* in the public domain, these norms of 'developed political systems' are not incompatible. Contrary to the analysis of *either* one *or* the other, but not *both* as offered by some of the theories summarised above, these discourses *conflate* the two. Certainly the *separation* of the two to which Lukes refers is evident enough, and he is right to argue that it would make ideological sense to maintain it. But the language of *legality* is composed of far more complex formations and channels of *publicity* than the more precise and considered levels of debate and communication referred to in Lukes's argument. The rhetorical standard of 'liberty' of those in charge of the 'free world' is in no way compromised, in its reception in the public domain, by its synonymous use with the other norms of *equality* and *justice*. *Legality* reproduces its own moral legitimacy in this way by including as central to its discourses the notion of 'justice' (and 'equality' however vaguely defined). However, the embrace of 'the private', that is the culture of privatism in 'developed political systems', is the practical application of the

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<sup>43</sup> S.Lukes 'Liberty and Equality' in D.Held *Political Theory Today* Cambridge. Polity Press 1983 p.57

priority of liberty over justice, and denies the necessary conditions for the ethico-political development of social movement. Such movement would be disassociated from liberal democratic conceptions of the effective implementation of rights by its, necessary, recognition of equality in far more substantial terms than the formalistic *legality* of 'developed political systems'.

Where the vague notions of 'liberty' and 'justice' fuse into a discourse of *legality* that appeals to its own, necessarily present, universality is in human rights discourse. Just as all bases of *legality*, the more difficult norm of 'individual liberty excluded, have their origins in either religious humanism or Greek rationalism, or both. Contemporary discourses on human rights owe the development of two distinct aspects to, on the one hand, the concept of 'brotherly love' inherited from different religious texts; and on the other, the rationality of its principles and detachment of its reasoning from the Stoics, Plato, and Aristotle. The decline of the natural law tradition and the emergence of positivism as the means of interpreting law in the modern (legal) state reflects a change in the notion of *rights*, and specifically 'subjective right'.<sup>44</sup> The demise of the idealist grounding to law is, according to Habermas, down to a growing awareness "that private law could be legitimised from its own resource only as long as it could be assumed that the legal subject's private autonomy had a foundation in the moral autonomy of the person".<sup>45</sup> The question that this raises concerns the justification of private law once its intrinsic (moral) value has been extracted by a positivist interpretation. This awareness, to which Habermas refers, and which extends to the development of law in the modern (legal) state beyond the German system, has been a reconsideration of rights vis-à-vis law, divesting them of a (moral) foundation of private autonomy. Rights are now considered to be "reflexes of

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<sup>44</sup> J.Habermas *Between Facts and Norms* op.cit p.85

<sup>45</sup> *ibid.*

an established legal order that transferred to individuals the powers of will objectively incorporated in law”.<sup>46</sup> Despite this extraction, however, the notion of rights still commands a 'philanthropic/moral' recognition through the discourses of *legality* in 'developed political systems'.

It is claimed that there is a definite and positive use to the ambivalence attached to this development. Delmas-Marty picks up on the point of 'equivalency' and applies it to universality with respect to the worth of human life. He defends the principle of abstract indifference as grounding for universal human rights using the Kantian distinction between dignity and price to examine what he describes as the incompatibility between a 'market mentality' and a 'human rights mentality'.<sup>47</sup> But crucially "... because it is the very possibility of money, of a price, even the principle of equivalency, that *also* enables us to neutralise the differences to reach a pure singularity such as dignity or universal law”.<sup>48</sup> Without actually putting a price on it, a human life is deemed to be of equal exchange-value with any other. Recognition of equivalent worth in each individual in these terms then allows for the recognition of equal moral worth, and therefore entitled to all the considerations that underwrite human rights discourse.

However, its ideological premises notwithstanding, the trans-cultural universalism to which human rights discourses refer cannot be dismissed simply as a form of bourgeois rhetoric that masks reality. It is true to say that 'human rights' have been appealed to in the moral cloaking of economic-corporate motivated action by governments of 'developed political systems' for decades. Nowhere is the notion of rights deployed to greater political effect than as part of the discourse on human rights. The language is taken from the main text, the United Nations Universal

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<sup>46</sup> B. Windschield cited in Habermas *Between Facts and Norms* op.cit p.87

<sup>47</sup> M. Delmas-Marty op.cit pp162-7

Declaration of Human Rights (1948). The universal inclusion of individuals is the proclamation of Article 1: 'All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act toward one another in a spirit of brotherhood'. The pre-amble to this is written in the language of *legality*: 'equal and inalienable rights', 'freedom', 'justice', 'peace in the world' capturing the essential norms of *legality* as unproblematically compatible and of singular interpretation. This 'legalistic' discourse on human rights makes universal claims premised on ontological assumptions of individual rational agency and conscience. But so grounded, it is a false universality insofar as this agency is insupportable. However, this does not dismiss entirely a universality (as a public power); certain elements to the discourses of *legality* may accommodate an ethico-political system not grounded in *rational agency*.

Where the theoretical framework for the concept of human rights may be criticised on the grounds of formalised abstraction as their probable limit, it must be recognised, as a fundamental understanding to *civil society*, that the notion behind it has an ethico-political dimension to it. It transcends the economic-corporate boundaries of *identity* to embrace a universality that recognises the integrity of self-governance and the despotism of *identity* and exclusion. The objective of human rights discourse, that of its own obsolescence (however utopian this might be dismissed as) must be the notional embrace of the ethico-political development of social movement. It must also be made clear, however, that this objective is a socio-political improbability given the criteria of a 'developed political system'. By definition the priority of the political agenda that determines the central characteristic of 'developed political systems' denies both the application of 'justice' (as the

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<sup>48</sup> Derrida cited in M.Delmas-Marty op.cit p165

socially redistributive principle it must be understood as in terms of theorising civil society) and the exercise of 'freedom' in the manner described in Chapter 3, where it is understood in terms of the association as subject rather than object.

The 'Eurocentrism' of human rights discourses in the public domain of developed political systems mitigates against their effect. Derived from abstracted principles of rationalist Enlightenment, they represent not an *assumption* of democracy but an *imposition* of values - predominantly *rationality*, whose ethical agency is 'the individual'. Human rights merely translates as 'individual rights'. A universalist discourse based upon the rights of 'the individual' is a paradox. The hegemonic status of 'the individual' is effectively anti-democratic in its denial of the culturally specific complexities of democratically organising social relations. As such, the *humanism* that underpins human rights discourse is not effected.

Underlying both norms of liberty and justice, is the first characteristic of *legality* - neutrality. This is non-specification of what constitutes the 'good life', but 'private life' is both the foundation and effect of the development of rights and their installation as part of the subjective aspect to law in the modern (legal) state. The term 'neutrality' is itself an ideological attachment whose precise meaning is lost among notions of impartiality and uniform legal and bureaucratic application. But this is only part of the examination of neutrality.

It can be viewed from at least two different levels. The first corresponds to the formalistic approach referred to above. The question of neutrality from this perspective makes the assumption of an objective relation to society, composed of partially surrendered rational agency. In this analysis, the question of neutrality is only raised as a reduced concern over the impartiality of the processes of *legality*. The second level, as the (Marxist) instrumentalist approach to 'law', considers the question



of *neutrality* in law to be a systemic problem of property relations. Another possible level of investigation sees the question as *inherently* ungrounded. That is to say, value neutrality is conceptually impossible to any society.

The neutrality of law in the modern (legal) state rests upon uniformity and predictability. Political (governmental) power is exercised *within* the rule of law; administrative (bureaucratic) power applies the law uniformly and predictably. Thus, in this legal ideal, the state, as the apparatus of the implementation and enforcement of these constraints in the executive and administration, is perceived as a neutral institution. However, at both the conceptual level and at its point of application, 'neutrality' can be seen to be a fiction. There is no logical or necessary step from a uniformity of subjection (formal equality) to (morally) neutral, objective frameworks and institutions.

The proposition here that 'neutrality' is a spurious foundation to law in the modern (legal) state, is not just as a favourably tendentious application toward various factions of property interest in society, but conceptually invalid in its ideal form. Law in the modern (legal) state provides a framework and order that is most amenable to the morally specific life practices that are an inescapable condition of the centrality of property to the legal order. Society is sutured by interlocking discourses on the impartiality of legal objectivity, certainty, and rationality. At its most basic, *neutrality* implies the moral indifference of law itself rather than just an impartiality and regularity of its procedure. But this is a spurious claim. It is premised on (individual) rational agency, whose *legally* enjoined 'subject' exercises property relations legally framed in a language of *right*, and the *individual*. This is in itself the acceptance of a

specific value. It is, in the final analysis, the arbiter of property relations; as Jeremy Bentham wrote: "Property and law are born together and die together".<sup>49</sup>

The most vigorous examination of 'neutrality' as a systemic problem of the state legal order in its protection of private property comes from Marxism. In his *Critique of Hegel's Doctrine of the State*, Marx denies the universality of the bureaucratic class as agents of a neutral state. Rather, "*private property* is the universal bond of the state".<sup>50</sup> Marx's analysis of the property relation to the state does not conclude that formal reasoning and impersonal authority, and the logic of calculable interest therein is in itself inherently contradictory to neutrality *as moral indifference*. But this is not of course read as a 'malfunctioning of the legal order'. Here the problem is diagnosed as (materially) systemic, and it is the specific relation to property that undermines all claims to neutrality by the modern state.

Marx compares the relation of property to the constitution of Rome and that of primogeniture in the modern state. In a way that *private property* was not the dominant character of Roman law and constitution, the German case, to which he refers in the *Critique*, has its law rooted in private property and its political constitution. Where property in the political constitution of Rome "asserts itself as *public* property, ... in the form of grand display on the part of the republic, or else *luxurious forms of general welfare* for the benefit of the mob ...".<sup>51</sup> In the system of primogeniture, however, "... it appears that private property is the relationship to the state which makes the state into an inherent characteristic or an accident of immediate private property of *landed property*".<sup>52</sup> The modern state is the *effect* of private

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<sup>49</sup> J.Bentham *The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation* Oxford. Clarendon Press. 1996 p.203

<sup>50</sup> K.Marx 'Critique of Hegel's Doctrine of the State' in *Early Writings* London Penguin 1971 p.178

<sup>51</sup> *ibid* p.179

<sup>52</sup> *ibid* p.180

property. All claims to neutrality of state, and the impartiality of law, are therefore unfounded.

To further clarify the conceptual impossibility of neutrality within human society, the Weberian concepts of 'purpose-rational' action and 'value-rational' action can be employed in a focus on the subjective aspect of law. What these two types of action can help illustrate is the spurious objectivity (moral indifference) that the 'legal ideal' is founded upon. These actions are defined as the essentially self-interested and privatised action that is 'purpose-rational', and 'value-rational' action that follows imperatives external to the subject. But if these two actions cannot be sustained as (conceptually) different types then there is no bridge to a transcendent secularised law that is disconnected to any specific value. Insofar as it pre-supposes an attribute of autonomy, the proposition that the 'legal' form of domination commands its allegiance through the 'purpose-rational' action of the individual is problematic before we even consider the exclusion of 'value-rationality'. The exclusion of a *value* to the rationality of action that is correlative to an ideal-typical *legal* form of domination is a conceptual impasse regarding an understanding of the nature of *legality* in developed political systems. The obvious point to make, as others have made, is that the acceptance of legal domination is an acceptance itself of a value.<sup>53</sup> The value orientation is its rationality and, by extension the contractual nature of property. The identification of a *value-rational* action as one that is determined by some ideological principles and imperatives derived from a source other than the law itself is merely pointing out different sources of value (and bases of authority) in which *legality* must be included. Whilst it is possible to sustain the division of action

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<sup>53</sup> R. Bendix Max Weber: *An Intellectual Portrait* London Methuen 1966; D. Beetham Max Weber and the Theory of Modern Politics London George Allen & Unwin 1974; W.J. Mommsen The Age of Bureaucracy: Perspectives on the Political Sociology of Max Weber Oxford Blackwell 1974; J. Habermas Legitimation Crisis (T. McCarthy, Trans.) London Heinemann 1976}

types on the basis of a perceived autonomous action that is purpose-rational, it does not follow that the form of law to which this instrumental action is best suited is qualitatively different to the extent that it stands alone as a form of law indifferent to the social relations it orders. The nature of instrumental rationality (which provides the *rationale* of *privacy* as *privatism*), rather than being relative to morality, is an embrace of the specific morality of the privatised 'rational individual'.

*Legality* presents law in the modern (legal) state as a 'transcendental' sphere of neutrality, as representative of the 'public power' of law, and compromises the differentiation between 'formally- rational law' and 'substantively rational law. Mere acceptance of any difference between these Weberian ideal-types becomes an assumption of the 'superiority', and consequently the desirability, of the former over the latter. It would be to accede to its ideologically established position as a unique form of law based upon *objectivity*, a point of unity that represents merely, in Karl Renner's words, 'a subjective, nebulous existence of the mind'.<sup>54</sup> Less explicitly than 'substantively rational law', 'formally rational law' represents a coded prescription for what kind of life practices have *value*, intrinsic or instrumental. There is a definite continuum of systems of order characteristic of societies based on different (non-rational) forms of legitimate authority.

On different grounds, Hirst's critique of Pashukanis discussed above can be further supported insofar as the law of 'developed political systems' is not *essentially* different to those systems not constructed on capitalist political economy and the 'legal ideal'. The more refined and technically developed system of law that aspires to the 'legal ideal' shares the same basic code (if not content) as systems of order derived from religious, ethnological or historical imperatives. The legal ideal (as a

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<sup>54</sup> K.Renner op.cit

'system of general rules') in developed political systems maintains social relations no less morally specific (than forms of substantively rational law) in its provision of the architecture around which the philosophy of the individual can most effectively be put into practice. Historically the sphere in which the 'living the life of the philosophy espoused' has been the market. It is where 'rational autonomous individuals' can exercise greatest freedom without (by prohibition of law) impeding the freedom of others, and (by way of *legality*) acquire a definite moral justification for actions designed to further nothing more than individual or private (economic-corporate) interest.

The discourse of *rights* maintains the priority of the individual and is inscribed on the consciousness of the subject as being *the* (irreducible) ethical entity. But the common-sense of the subject of a 'developed political system' will tell him that it is a system that champions both individual liberty and social justice in terms laid down by liberal political philosophy but without any contradiction. The two ideas are interwoven, as part of the norm of *legality*, into a 'legal consciousness' that views law as 'public power' rather than as specific rules. The collapse of conceptual divisions in the general principles at certain discursive levels asserts the human subject as the 'unit of law' despite legal subjectivity ascribed to corporate bodies, and maintains the culture of individualism characteristic of 'developed political systems'.

It is the interconnected relations between morality and law that have blurred into synonymy within the discourses of *legality* that is problematic for the development of civil society democracy. 'Humanist action' can become indistinguishable from the more 'self-regarding' calculating reasoning. Although laws in the modern legal state do explicitly instruct the subject in specific courses of action to be taken, predominantly they prevent certain courses of action and are there only to

facilitate chosen *and permissible* actions. They nevertheless promote the general guide to action as received by a 'rational autonomous individual'.

The 'legal ideal' assumes its subjects to be rational and autonomous agents of action. This rationality and autonomy is formally extended to the subject who through the discourses of *legality*, accepts as binding the basis of self-identity of *individual*. The discourses of *legality* propagate a self-perception of 'autonomy' and 'individuality' through investing such intangibles as 'rational-choice', 'rights', and 'equality before the law' in the subject. Such axioms of *legality*, the reference points of its legitimacy as 'public power', reflect this individual rational agency in the rationality of law itself, as detached from the human condition just as other forms of law are set above it.

The ideological weight to these discourses in the public domain serves against any democratic pretensions to the norm of *legality*. The abstraction of the human subject into an (individual) rights bearer is an undemocratic projection. The universality that is foundational to *legality* as a public power or authority is lost in abstraction, and is ideologically anti-thetical to the solidarism necessary for a civil society based democracy. Where *legality* could claim to represent a positive element in the development of democracy is in its universality that has no theoretical exclusion. It is a matter of the *content* of 'law' as to how this inclusion is recognised in terms of a 'public power'. To further the possibilities of democracy, there must be a greater emphasis on *legality* as the discursive aspect of public power in 'developed political systems', and not as a 'given' or *condition*.

## Concluding Chapter

The promise that 'civil society' held two decades ago for the expansion of democracy against the compulsion of 'the state', and domination by 'the economy', has not materialised and developed. Indeed it seems to have disappeared altogether in its central European nursery. We can recall Walesa's remark that "there is no freedom in solidarity" to get some idea of how the ethic of civil society was blown away by economic liberalisation. If the fragmentation of this historical movement was so swift in coming after the demise of the states that spawned it, in the sense that they determined the nature of their opposition, then, as was pointed out in the Introductory Chapter, there seems, on the empirical face of it, little point in a continued theorisation of this protean and sometimes contradictory concept. But it is incumbent upon all theories of democracy to recognise clearly the reasons why this 'promise' was never kept. The *actual* development of the east and central states of Europe in the post-communist era indicate that certain 'shibbolethic' principles of liberalism are in fact barriers to this development.

The most effective theoretical and methodological framework for capturing the *ethic* of civil society as a democratic ideal is a neo-Gramscian conception of civil society distinct from both the state (as political society) and 'the economy'. However problematic analytical distinctions are in this tri-partite system, civil society cannot be left to a collection of institutions that although not *directly* under the compulsion of the state are,

nevertheless, as dominating under different forms of power relations. Two immediate inclusions that undermine the conceptual validity of civil society are 'the family' and the capitalist corporation. A tri-partite model does not necessarily exclude 'the family'. Cohen and Arato's model is deficient, as has been shown, on a number of grounds, but one of its biggest mis-identification is 'the family' and civil society. But even less likely to capture this ethic of *solidarity* as a democratic basis to society are the dualist models that, rooted in the dichotomous opposition of state and civil society, include alongside organisations like *Amnesty International* and *The Global Coral Reef Network* corporations like *Sony*, and *News International*.<sup>1</sup> But however the democratic promise of civil society was to be actualised, it was not to be by way of an individualist conception of freedom through (private) property accumulation and a market orientation of the ethic that underpins liberal society.

The question that is most often asked of *civil society* is: Is it relevant? The question that must be asked of it by those interested in democracy is: *How* is it relevant? It might seem a little late in the argument to refer back to the chequered history of the term 'civil society', but where there is a dominant common factor to its theory in the Western political tradition, is in its opposition to the state. But keeping the state 'out of social life' does not necessarily conclude with a democratic society, even if it is a condition. The relevance of civil society following its resurgence in the last quarter of the 20<sup>th</sup> century lies in its method of an *assumption* of democracy as its emphasis, and not as a *priority* of individual rights. It is the only possible theoretical position that can be taken if the worn out 'representative' systems of the West are to be seriously and critically challenged.

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J.Keane *Global Civil Society?* Cambridge University Press 2003 p.9



*Civil society* is also regarded by some as a purely Western product. But this reflects a very narrow conception of civil society; as a composite of institutions that reflected the values of the Western political tradition. This is alright if we are content with democracy being 'expressed' through representative government and that democratic theory therefore confines itself to this framework. There is even less problem with identifying the value of property rights attached to civil society as a Western value, in the Western political tradition. Historically, it is difficult to argue anything other than that this is the case, and that civil society cannot be 'exported'. Apart from the little sense that the related 'export of democracy' makes, this horizon of civil society and its 'application', is unnecessarily limited.

Contemporary resurgence in civil society bears out the democratic impulse that is concealed within the institutional specificity that characterises civil society theory. We can take as the cue for contemporary and *democratic* interpretations of civil society outside the Western political tradition, the *Democratic Opposition* to the communist states of East and Central Europe in the events leading up the demise of both. (The sudden collapse of the latter was swiftly followed by the disappearance of the former in the wake of the impact of economic liberalisation). The conception of civil society held by this social movement was one grounded strongly in the democratic element of *solidarity*.

It is important for democratic theory not to bind itself to the empty concepts of liberalism's contribution to democracy. Theorising democracy from a centred position of the 'politics of the existing', and proceeding from existing frameworks of 'representation' limits the understanding of democracy to formal procedure and due process. This effectively disregards the historical resurgence of civil society as a methodological means

of conceiving democracy as an *assumption* by society 'in society', a development beyond its 'representation somewhere else'. Social movement in the last two decades in systems 'undeveloped', (in Latin America, the Middle East and sub-Saharan Africa) has been marked by, albeit for different contextual reasons, a solidaristic (democratic) conception of civil society. I do not intend to introduce a comparative analysis of civil society here in the concluding chapter. But reference to certain historical instances of civil society around the world in the last two decades supports the thesis of an underlying democratic continuum to 'civil society', in contrast to the variegated conceptual history of the term.

The discourses of Latin American civil society sets it up against 'universalism'. The suffocating homogeneity and universalism of the Comintern inspired Marxism of the region represented a threat to the cultural fabric of Mexican society. The same threat now comes from the homogenising universalism of commercial society and a world economy.<sup>2</sup> In Latin American political thought '...civil society is seen as an alternative to conventional politics, expressed as a *social process* governed by the activities of actors and agencies, all of which are located outside the scope of the state. In its most extreme form, it has also become a narrative in which society is set *against* the state'.<sup>3</sup> These 'actors' and 'agencies' in Mexico in the 1980's were fairly well co-ordinated movements. A National Co-ordinating Committee was responsible for connecting each of the loose associations of social movement of the National Urban Popular Movement and of the National Union of Autonomous Regional Peasant Association. In all the areas

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This 'world economy' is often inaccurately equated with globalisation. Whilst it may account for its dominating aspect it does not amount to the whole of actual or possible processes of globalisation. Neither does it mean 'free trade'.

L.C. Leiva and A.Pagden 'Civil Society and the future of the modern republics of Latin America' in S.Kaviraj and .Khilnani (eds.) *Civil Society History and Possibilities* Cambridge University Press 2001 p.179

'undeveloped' politically, where civil society has become central to democratic discourses, it is in the Latin American region where the radical anti-statist interpretation has been most in evidence. The implication is “the redirection of politics into the social and cultural. It has resulted in the awareness of the need to redraw the ordinary boundary of the political in such a way that the state is no longer the natural centre of all political activity”.<sup>4</sup> Furthermore, “...civil society has also come to be seen as the only domain in which true political experience and hence real solidarity is possible”.<sup>5</sup>

Theorists of civil society in the Middle East similarly tend to emphasise forms of association (non-state institutions) and certain social formations as the basis of what is conceived as civil society. There is a significant disagreement, however, on whether certain of these formations based on the ascriptive identities of tribe and family can be included in civil society. There is a reluctant acceptance on the part of some ' liberal Islamic' theorists of civil society that, rooted in authoritarian and patriarchal power relations as most of these 'neo-traditional' formations undoubtedly are, they are, nevertheless, the only plausible social category that can provide the agency of a civil society - even if it cannot meet the ethico-political criteria of *inclusion* and the principles of volitional membership and contingent identity.<sup>6</sup> Whether or not these social formations do promote democracy is not a question that can be answered simply. They are extremely varied in their receptivity to change: “under the right conditions,...,some groups, starting

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*ibid.* p.201  
*ibid.*

See: Saad Eddin Ibrahim 'Civil Society and democratic transformation in the Arab homeland'. Pamphlet issued by the Ibn Khaldun Centre, Cairo. 1991

from a traditional basis can be institutionalised as modern associations with 'universalistic' orientations and open membership".<sup>7</sup>

A clear example of the emphasis on democracy in Middle Eastern civil society discourse comes from Al-Azmeh.<sup>8</sup> The 'democratist discourse' that he attacks posits that democracy is concerned with the relation (as direct correspondence) between the *people* (as an historical formation whose identity is Islam) and *the state* (as the expression of this identity). The civil society that is imagined by Al-Azmeh rejects this statist conception of democracy and the underlying commitment to Islamist discourses that cannot contribute to a democratised civil society. What becomes apparent in just a cursory look at the comparisons between very different historically conditioned civil societies is that there is a democratic impulse *against* the state. (Rather than representing a strategy for power within the 'political realm' of the state as the democratic objective. It is also, importantly, a democratic struggle against the foundationalism of Islam and the '*umma*' of Marxism-Leninism',<sup>9</sup> and the universalism of commercial society.

However the successes of civil society in these and all other parts of the globe have been modest to say the least. Its inability to establish itself in its contemporary central points of resurgence (Poland, Czechoslovakia, Hungary) is, to reiterate the point at the beginning of this thesis, perhaps reason enough alone to dismiss civil society. But its relevance to this region particularly, is perhaps greater than ever if civil society is understood to be the means by which a radical democracy can be *assumed*. The urgency of

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S.Zubaida 'Community and democracy in the Middle East' in S.Kaviraj and S.Khilmmani (eds.) op.cit p.24  
A.Azmeh 'Populism Contra Democracy: Recent Democratist Discourse in the Arab World' in G.Salané (ed.)  
*Democracy without Democrats ?The Renewal of Politics in the Muslim World* London IB. Taurus 1004  
Ernest Gelner op. cit refers to Marxism as this. *Umma* refers here to the monism that Marxism represents, and its  
antithesis to pluralism.

democracy in the former communist states is palpable where disillusionment with the new liberal regimes is widespread. Concentrations of this disillusionment with representative government are to be found, predictably, among the poor; poorly educated, poorly housed, poorly occupied etc<sup>10</sup>. Adam Przeworski speculates that the disillusionment with representative government lies in "the absence of collective projects, of socially integrating ideologies, of clearly identifiable political forces, of crystallised structures to be represented".<sup>11</sup> What makes the urgency of democracy even greater in a vacuum of social solidarities and the lack of 'public ethos' of society that Przeworski intimates, is the presence of right wing factions who articulate the disillusionment into the basest form of 'the politics of identity'.

The relevance of civil society remains whilst there is an 'urgency to democracy'. As civil society refers to the means by which the will to become democratic is exercised, and as a democracy of no horizons which is never fully achieved, the question of whether there is any theoretical relevance to civil society should never really be raised. To dispense with 'civil society' is to more or less accept that, give or take a bit of constitutional and electoral reform, the limits to democracy have been reached. Certainly the contemporary conditions of 'developed political systems' indicate an exhaustion of democracy in its liberal representative and procedural form. Yet it is legitimised further in its 'export', by political rhetoric in the public domain, to 'developing countries'. Any theory of democracy that is state-centric in this respect confines its own field of investigation to the procedural tinkering that contributes little to furthering its conceptual reconstruction and radicalisation. For imaginative insight into what it is a theory of, democratic theory must

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<sup>10</sup> A.Przeworski *Sustainable Democracy* Cambridge University Press 1995

be *critical* theory. If it is to be taken seriously as the political empowerment of society, democracy requires that it is conceived as an integral part of social relations and not that it is epiphenomenal of *actual* life and confined to a rarefied political realm.

The urgency that democracy finds itself in arises from a growing disillusionment with the effectiveness of its institutions, compounded by its veiled and complicated governmental procedures. The representative system that predominates (but not necessarily provides the political order of) 'developed political systems' can no longer present itself as an effective and satisfactory means of expressing the will to create the conditions of one's own existence. In other words, of facilitating the will to *become* democratic.

Through the hegemonic discourses and cultural production of the public domain, this will is re-rooted from its effective (public) expression into a realm of privatism. 'Representative democracy' cannot accommodate any democratic expansion in society (it barely reflects its sexual division let alone its different ethnic components), but privatism effectively accommodates the faults and deficiencies of 'representative democracy' effecting its acquiescent legitimacy. This re-rooting of the will of the *self* to form and control the conditions of its existence is *ineffective* in its political application, unless we are to consider 'consumer power' as effective political agency. This would make no sense at all. It is the very culture of consumption that is central to the problem of privatism, and consequentially democracy. It is *unsatisfactory* in its limiting developmental space for the *self*. Arguments for the public conception of *privacy* were made in Chapter 1 as basic to a democratic society (as opposed to a representative political system).

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<sup>1</sup> *ibid* p.57

It now seems a gross mis-employment of the prefix 'developed'; having so consistently attached it to the political systems of the richest and most powerful states of the world. Reconsideration of the term must follow when one considers the essentially privatised nature of the *self*, and how such a condition maintains a system that can only remain far from *politically developed*. A development of the radical democratisation of society must entail a fluidity of identity and a *public* exposure of the contingency of that 'identity' to the organic cultural processes that are the momentum of this development. Political development along these lines can only be initiated outside the formal political realm of constitutional and bureaucratic procedure. But it is the cultural 'certainties' of a privatised life that bring meaning and identity to the *self* as (almost) 'natural' in 'developed' political systems, that pose the most problematic obstacle to political development.

This crisis of democracy, however, does not amount to a threat to the legitimacy of these systems. An important factor in this, is the relation between these systems and the rest of the world, so perhaps we should be talking in terms of those states whose populations comprise 14 per cent of the world population and who enjoy three quarters of the wealth.<sup>12</sup> The focus throughout this thesis has been on the 'cultures of contentment' (Galbraith) in the societies of the 14 per cent that afflict the development of democracies *within* these societies and beyond. When one looks at the incredible global discrepancies that these statistics point at, and the calculated greed that has brought them about, a number of concerns should be raised. The most basic of these is the relation between 'developed political systems' and the other 86 per cent of the world's population, and the

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<sup>2</sup> Figures at September 2003. Source: World Development Movement. <http://www.wdm.org.uk>

implications for democracy both *within* and *without* the exclusive club of the states of the 14 per cent.

In the context of this thesis, perhaps the first question to ask is ‘what is the *actual* meaning of ‘developed’ (as prefixed here) in all its social, economic, and political implications?’ The real meaning of ‘developed’ in this context can be found in the global consequences of its maintenance. The agenda of contentment that dominates the politics of these systems is directly implicated in these inequalities. They are the realities of an inequality to the very value of life, where the principle of equivalency, mooted in Chapter 4 as a basis for human rights, does not apply.

For any political system to be ‘developed’ there must be the foundation of the material conditions of life, although according to the criteria used by Schopflin, not necessarily extending universally to the society of that system. The relativity of wealth in ‘developed political systems’ makes it difficult to establish that this foundation is firmly in place. But the accumulation of wealth in global terms, however, ensures that the political agenda is secured to matters of domestic private concerns of economic-corporate interest. What is of particular concern is the consent given by the 14 per cent to the governance that has been created by design and maintains this gulf in life conditions and value. For instance, how could the grossly destructive farming subsidies in North America and Europe be sanctioned by an ethically disposed and democratically empowered civil society?<sup>13</sup> It is a question that needs to be taken seriously by theorists of a democratic civil society, if democracy in the affluent societies of these continents is to be theorised effectively. How

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<sup>3</sup> The governments of the 14 per cent spend \$1bn a day on subsidies to its farmers, an amount six times greater than the amount spent on aid to the other 86 per cent. Large surpluses (sugar, cotton etc.) are generated in the ‘developed’



can theorists of civil society in the West mount a serious theoretical challenge when the basis of it, the proposed 'actors of civil society', are mired in the retreat from politics that is privatism?

The relation between (actually existing) 'developed political systems', as the minority of richest states, with the rest of the world is objectionable on a number of grounds. It might be argued by pragmatists that it is an intolerable situation because it is insecure or unsustainable. That the domination by the richest and most powerful must be checked, is the logical argument used, to diminish the possibility of these identities becoming occupied by others. Humanistic concerns, which have more in common with the solidaristic/democratic notions of civil society, regard the relation of inequality as simply *unacceptable*, without much further qualification. All these points of view are of sound reasoning – indeed, no argument in defence of this relation can be maintained by anything other than principles of self-interest. The condition of the relation between 'developed political systems' and the rest of the world reflects the political alienation of societies within 'developed political systems'.

The aggressive foreign policies of these states are, however, necessary for the maintenance of this gulf of disparity in life value. To deflect from their real purpose, these policies are conducted in the name of 'the free world', employing the rhetoric of liberalism and *legality*. Typical of this conceptual confusion of language is the former head of the World Trade Organisation, Mike Moore's reflections on the human condition: "This constant struggle for improvement flourishes best in conditions of political and economic freedom, which are pre-eminent preconditions for development and social

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world and are then off-loaded onto world markets at prices less than it costs to produce them. Source: World

justice. Freedom is growing globally, and democracy is now the best and most revolutionary option in places plagued by poverty and failure. Where freedom grows, poverty and injustice retreat. Where freedom in all its forms stalls, so does human progress".<sup>14</sup> The first thing one notices is the conflation of economic freedom and social justice as unproblematically compatible abstractions. But if we are to assume that freedom is more or less identical with economic freedoms (and the political freedom to get on with them), and 'injustice' is understood as social and economic equality, then the global perspective explicitly demonstrates the contrary to Moore's observation that 'wherever freedom grows, poverty and injustice retreat'. Pre-conditional to freedom as espoused by those who identify it with freedom of property and exchange relations is an *absence* of social justice. Injustice is here determined by the impediment to the freedom of these relations. The axiom that the primary condition for freedom of self-development is the freedom to engage in property relations is preserved in the discourses in the public domains of the rich and powerful states. It annuls any culpability on the part of the societies of these systems for the lack of development (political, economic and social) in the 'places plagued by poverty and failure'. The root causes of the crisis of and implications for the expansion of the democracy are to be located in this relation. The material conditions that are pre-conditional for *political development*, as an expansion of democracy, in the poor states of the world is itself dependent on the expansion of democracy in 'developed political systems'.

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Development Movement

<sup>14</sup> M.Moore *A World Without Walls. Freedom, Development, Free-Trade and Global Governance* Cambridge University Press 2003 p.9

The condition of democracy in the richest states of the world is not only critical *internally*, it denies its development elsewhere. The development of democracy anywhere, as contextual and organic processes, is paradoxically dependent on its initiation in these states. This, however, cannot mean an 'export' of a political system proselytising on behalf of a specific (private) way of life. That would be to contradict the bare meaning of democracy. But this contradiction is not a recent phenomenon. It has been used in political discourse, (in the public domains of 'developed political systems'), as the condition of political recognition and economic aid set by governments since the end of the Second World War and the collapse of the colonial empires. The reality has been very different. Capitalism does not rely on a constitutional democracy, merely political stability. Some of the thugs who have not the remotest connection to what we could consider as even *reasonably* democratic have been, and are still being, installed and propped up by governments that profess this rhetorical and 'politically commercial' idealism. But part of the self-maintenance of the 'most developed political system' is, as Terry Eagleton aptly puts it: "its cynical reliance on the ignorance and forgetfulness of its own people".<sup>15</sup>

The place that civil society occupies in political and social theory is justified by the urgency of the question of democracy. To dispense with the notion of civil society, as an *idea*, is to resign oneself to an atrophying democratic procedure. The renewed interest in civil society in Western leftist academic discourse has been largely its adoption by those on the left who have dispensed with the notion of *class* as political agency, or at least *the*

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<sup>15</sup> T.Eagleton. *The Guardian Review* 6/9/03 p.14 This is a reference to Noam Chomsky's method of denying the U.S. government this form of support.

political agency.<sup>16</sup> Paul Hirst poses the question: If Marxist critiques of representative democracy are redundant - how do you criticise it? He then answers it with "...to raid the storehouse of Western liberalism and democratic theory".<sup>17</sup> But radical democratic theory must be wary of such a raid. The dangers are that this will obscure the *idea* of civil society, and its ethico-political tendencies will become subsumed by liberal (individualist) conceptions.

Any enhancement of democracy within the formal structure of developed political systems is of little democratic development in itself. Expansion of democracy in these formal systems is an expansion also of the bureaucratised procedures that are necessary to any constitutional and electoral reform. Devolved government in a developed political system like the United Kingdom, for instance, has done more for the legitimacy of the 'representative' system than it has done for *democracy*. The power that is devolved is limited, but the increased levels of government consolidates what is an already attenuated form of democracy and expands its bureaucratic and legal (legitimizing) apparatus.

The limited conceptual horizons of theories of democracy that espouse the political *application* of the public sphere, are evident in their failure to recognise it *as* an (ethico-) political sphere. Emphasis on the *idea* of civil society and an analysis of the praxis of social movement opens up democratic theory to the possibilities of 'extra-parliamentary' conceptions and removes the state as its 'natural' locus. A basic requirement of a distinctive theory of civil society then is a fundamental review of the received conceptual language of 'developed political systems'. Following any 'raid of the storehouse of

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<sup>16</sup> J.L.Cohen *Class and Civil Society* op.cit J.Keane *Democracy and Civil Society* London. University of Westminster Press 1981

<sup>17</sup> P.Q.Hirst: *Representative Democracy and its Limits* Cambridge, Polity Press. 1990 p.2

liberalism', there must be a radical reconstruction of what is taken. It is crucially important for the preservation of a distinctive theory of civil society that interpretation of its precepts are not confused as terms of reference drawn from the philosophy of the individual.

It is perhaps worth recalling at this point, Havel's account of 'Western intellectuals' failure to understand the growth of civil society as a solidarity of dissidence (in Czechoslovakia and elsewhere before 1989). The question he recounts as an example of this lack of understanding to the form of democratic empowerment imagined by dissidents is: 'What can we do for you'.<sup>18</sup> The good intention was noted by Havel but he also recognised 'a built-in misunderstanding'.<sup>19</sup> Apart from making the obvious point about 'first and foremost helping ourselves' by expressing the will to democracy, Havel talks of the 'solidarity' of civil society as an ethic beyond comprehension by the liberal imaginary "in the deepest sense something else is at stake." The civil society here conceived was not acquainted with the rationally based individualism that informs the consciousness on the *self* in the Western tradition. Its trajectory was certainly not toward an embrace of this tradition; indeed the differences between the two systems of capitalism and communism are obscured by the similarities in some of Havel's writing: "this totalitarian power is a great reminder to contemporary civilisation. Perhaps somewhere there may be some generals who think that it would be best to dispatch such systems from the face of the earth and then all would be well. But that is no different from a plain girl trying to get rid of her plainness by smashing the mirror which reminds her of it".<sup>20</sup> When civil society appeals to the principles of liberalism, it no longer claims the distinctiveness to which

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<sup>8</sup> V.Havel 'Anti-political politics' in J.Keane (ed.) *Civil Society and the State. New European Perspectives. London. University of Westminster Press. 1998. P.391*

<sup>9</sup> *ibid*

Havel posits in the passage above. The ideals must be consistently separated from the actual practice of these principles in economic, social and political terms in 'developed political systems'.

This thesis has been concerned with critical analysis of what are the four basic norms of liberalism. For their adoption as the fundamentals of a radically democratised civil society, they cannot be ascribed an inherent normative value. Certainly their liberal interpretation can assume an unproblematic desirability in all four bases. For the purposes of the 'deepened and expanded democracy', however, the norms of *privacy*, *publicity*, *plurality* and *legality* can be as ideologically threatening to civil society as any of the 'enemies' identified by Hall.<sup>21</sup>

The necessary reconstruction of these norms is most demanding in the understanding of *privacy*, and the reified position that 'the private' holds in the consciousness of subjects of 'developed political systems'. As a central tenet of any theory of civil society, and as any normative conception of democracy, *privacy* can only be interpreted according to the ethical projections of such a society, as an essentially *public* process. That this might seem a paradox is because 'the private' as the sphere of moral preserve in its liberal form, accentuates not the development of the *self* but the (moral/private) *choice* of that *self* as a rational, autonomous and *private* individual. Such a consciousness cannot readily *imagine* the possibilities of a democratised and fluid civil society. 'Identity' becomes more or less fixed as a 'given' that the limits to autonomy are the limits to the *self* as an individuated entity. Anything beyond these limits is considered, correctly, beyond the control of the individual. The political implication of this is that

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<sup>20</sup> *ibid.* p.390

representative democracy has lost its case for being the means by which this control can be extended. Institutions turn 'inward' in their quest for greater control over the conditions of existence. As 'the private' becomes more deeply ingrained as an essential part of the human condition, the further away democracy is pushed as an empty (and derisory) concept. As a corollary of this, a privatised existence sanctions all manner of state action including violence (*elsewhere*) through its own disinterest and *self*-limitation.

Inextricably linked to how we conceive *privacy* is the factor of 'identity'. Far from the fluidity suggested by the liberal emphasis on individualism and autonomy, the 'identity' that forms under the conditions of a privatised life is fixed as an individuated *self* whose development is measured by accumulations of various aspects of 'the private'. The *self* is essentially 'private', but it must be exposed to the cultural processes of an intellectual and moral reform that can accommodate a certain 'modularity' of subject.<sup>22</sup>

A reconsideration of *privacy* was made by Cohen and Arato, as defined in the sub-title of Chapter 1 of this thesis. But it does not amount to a conceptual reconstruction. They reject the idea that "one can reason from a spatial metaphor or division among institutions to designate the boundary between private and public..."<sup>23</sup> But they do not *reconstruct* the notion of *privacy*; an opposition to the *private* as a spatial metaphor does not entirely dispense with 'the private'. All they are in effect doing is ascribing a rational inherence to the *self* in a similarly uncomplicated manner as those who still try to 'reason' from an institutional divide. They state that an analytical application of 'the private' to institutions is inappropriate. Even in 'the family', which (representing a certain 'spatial institution')

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<sup>21</sup> J.A.Hall op.cit

<sup>22</sup> E.Gellner 'Modular Man' in J.A.Hall (ed) op.cit

<sup>23</sup> J.L.Cohen & A.Arato op.cit p.352

comes into conflict with the public (in the form of law), the 'private' line is blurred by legal intrusion. But they retain the concept of 'the private' as an autonomous aspect of consciousness. Where any argument 'reasoning' from a premise of institutionally designated aspects of 'the private' (totally separated from its opposition of *public* in whatever form – law, norm etc.) can only be maintained from ideological premises that are opposed to their 'post-traditional civil society'. It can only be the argument of those in whose interests it is to maintain the allusion of 'the private'. Cohen and Arato explicitly reject the notion of *bourgeois* society as part of a theory of civil society, but their retention of it as an (ideological) illusory foundation to a contingent *self* complicates this rejection. According to their argument, 'the private institution' is not feasible but 'the private *self*' is. For them, it is an aspect of the *self* that '*necessarily* comes into conflict with law'; *privacy* is a 'given' as *individual moral autonomy*.

Certainly, ineffective and inadequate reconsideration blurs the distinction between civil society theory and liberal theory. A reconstruction of *privacy* is perhaps the most basic in theorising a distinctive form of democracy as civil society. *Rational choice* serves well the underlying ethic to liberal society but such individual agency cannot maintain the *solidarity* that founds the democracy of a civil society.

It must be recognised by civil society theories that emphasise *democracy* as its condition of existence, that *the self* (as regards its 'identity'/status, values and its overall morality) is a social construction. The intention of the discussion of conscience in Chapter 1 was to undermine the idea of an innate sense of 'right and wrong' that is totally divorced from the environment of *the self*. If 'conscience' is simply a human capacity to 'instinctively' identify the difference, then it is no more than an ability to interpret norms



and codes that are explicit in the public domain and implicit in the forms of association in society.

The culturally specific differences to these norms and codes can, however, be great enough to denounce what is a norm in one society as unconscionable in another. The *self* that is a complex of cognitive and affective processes, determines the more specific content of what is acceptable or otherwise in a society. Most would claim killing to be wrong but few would do so without any qualifying conditions. These conditions may be utilitarian, legal, or in the economic-corporate interests of the nation-state. Proponents of 'conscience' could argue that a killing *motivated by conscience* would be guided by a morality intrinsic to *the self* rather than what are extrinsic (contingent) values. However, the conclusions reached in Chapter 1 point to there being no distinction between what might be termed extrinsic values and intrinsic values.

The point of concern for democratic theory should be this lack of *opposition* when these extrinsic values (variously utilitarian, legal, economic-corporate) do not present any convincing case (therefore any 'morally legitimate condition') for deploying the full force of the state's violence (war) 'somewhere in the middle east', 'some place in Africa', or even on 'an island off Scotland'.

Where democratic theory and civil society merge in their focal point of criticism needs to be on the processes of privatism as root cause of the lack of infusion of 'morality into politics'. The urgent question for democracy is why no collective will can be mounted to challenge the governments that consistently fail to present convincing arguments for killing people, even when an argument that could not persuade those that would consider the interests of the economic-corporate nation-state to be a qualifying condition has been

presented. In the United Kingdom, the case for war with Iraq in 2003 was supported by those for whom this condition of 'the nation-state', which is itself without condition, had been met. Support from such elements as the Conservative Party was secured, but the active and vocal support from the public that has historically been granted almost unquestioningly, was not there in this particular instance. It was not, however, replaced by an active and vocal opposition of the same proportion, it was met with acquiescence and ultimately provided the government with its legitimacy.<sup>24</sup> Utilitarian rhetoric about 'global threat' and the morality of the violence grounded on its necessity for future non-violence, did not draw support for mass killing whose reason was in narrow economic and strategic interest obscured from the public domain (but not 'the public sphere'). Not being able to prevent the interests of the most powerful factions in society as the same as those of society 'as a whole' represents a crisis of hegemony in that government. The absence of a serious challenge to this *inability* of government represents a crisis of democracy.

The lack of faith in democracy (as represented) in 'developed political systems', and its replacement with a faith in the certainty of *legality* to provide the means of accountability where democracy fails, explains in relatively small part the acquiescence *and* consent, toward mass killing. Legal resolution is sought for politics as both moral grounding and expediency. The factor of ignorance may account for the *consent* to a form of governance that undertakes mass killing for reasons that are obscured. Reasons for a state's interaction with others is not always obvious and never entirely transparent.

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<sup>24</sup> An illuminating comparison has been drawn between the surprisingly high popularity ratings of the Thatcher government of 1986 following the 'Westland Affair' and the similar consent held for Blair's government by 'the populace' in 2003 following an enquiry into whether the case for war with Iraq in that year was presented using deception. Michael Brown *The Independent* 9/9/03. Whilst 'the economy' is alright, then other matters such as that which *The Hutton Enquiry* is there to try and establish, do not effect legitimacy of a government that deceived its

However, the extent of the coverage of these interactions in the public domains of 'developed political systems', whilst not comprehensive and never entirely 'neutral', is nevertheless sufficient; and therefore reason to discount 'ignorance' as a significant factor in this lack of democratic opposition.

The political alienation that characterises the democracies of 'developed political systems' suggests that political impotence is more likely to account for grudging consent to the actions of government. The primary effects of privatisation on the political consciousness of the *self* is to make it disinterested, powerless, or both. The two perspectives of privatisation were seen in Chapter 1 to be in an incorrect opposition to one another regarding the question of its cause. Rather, they are complementary processes where the 'disinterested' position of a consciously chosen form of privatised life, compounds the 'powerlessness' that arises from inadequate institutional channels and spheres through which political action might be taken or expressed. The primary political implications are that society loses its faith in representative democracy, specifically in its ability to accommodate any sense of control over the decision-making that shapes the environment of the *self*. But, in near contradictory fashion, its legitimacy as a political system is maintained. No effective democratic opposition *as* social movement is articulated in privatised spheres of existence. A privatised *self* cannot become the initial will of an ethico-political social movement.

The 'self' is layered with 'identities' and economic-corporate concern. What 'the private' does is secure these, effectively impeding its development through the recognition of its own contingency by means of (public) cultural and democratic receptivity. The

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own electorate into backing the state in a war. The privatised existence of British society was not threatened by either

processes of intellectual and moral reform are a realisation of the contingency of mind. The awareness of, and *resolution to* 'cognitive dissonance' (referred to in Chapter 1) is perhaps the nearest thing to 'acting on conscience'. The *self* is therefore crucial to a democracy that is to be assumed by civil society as an ethical dimension to life.

To keep the focus on the development of democracy, rather than on the optimal conditions of the development of the *personality*, privatism is not being judged here (primarily) as an 'inauthentic mode of existence' insofar as it directs it from its 'authentic' concordance with some form of *human nature* or other. It was proposed in Chapter 1 that the only sense in which a (self-)consciousness can be 'true' is in its awareness of its own contingency, and that of the values and institutions that are composite of that consciousness. But what is pre-conditional for the form of democracy that is *assumed* by civil society is a public orientation of 'the self'.

The agency of civil society, *social movement*, is dependent upon a development of consciousness *from* its identity. The subject matters dealt with in Chapters 1 and 3 are closely related. The *self* as a 'public' construction allows for vulnerability to cultural attack and for re-development. It is the *self* that forms an integral component to social relations that are represented as the *subject* of freedom. For an ethically disposed and radically democratic civil society, it is not a matter of a privatised self choosing social formations with which to associate, and therein locating 'freedom'. Rather, it is an indivisible relation between a contingent consciousness and an inclusive formation that provides the flexibility of freedom of association. In other words, relations that are appropriate to a civil society and distinct from liberal society.

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of these political crises, "neither hurt the voters where it matters – in their daily lives or in their pockets." (Brown)

The same processes as those of privatism that condition the development of the *self* in 'developed political systems' account for the development of social movement terminating at a formal inclusion in a 'politics of identity'. In the same manner that intellectual and moral reform is largely precluded by prioritised considerations of 'the private', the economic-corporate restraint that 'identity' places on social movement denies it any ethico-political development.

There are more than mere parallels between the development of *the self* and development of social movements, their projections are ultimately mutually dependent. Just as the self must 'sink itself', rather than rationally transcend its (material-cultured) existence into an abstracted instrumental rationality, social movement must also open itself to the discourses of other social instances of social movement, rather than adopting the strategic rationality by fixing its identity to an economic-corporate political consciousness. All political movement by the very fact of what it is, exposes itself to critical attack. What is crucial to the political development of social movement is the receptivity to this critical attack and an amenability and tendency to transform itself by its recognition of common, but not always obviously so, objects of protest.

The paradigm of the 'New Social Movement' cannot allow for any theoretical development and restricts the democracy of civil society to a rights-based form of a 'politics of influence', formally recognised and institutionalised into a 'politics of identity'. The problem of theorising democracy using the concepts of civil society in this way, that is without adequate critical analysis, is that it restricts its scope. It restricts democracy, not just in the way of tyrannical majority rule but, as a political empowerment of social relations 'fluid' enough to prevent the crystallisation of majorities as *fixed* and

*certain* categories of identity. In the context of Cohen and Arato's analysis of the 'New Social Movement', its primary distinction and reason for the prefix 'new' is that it has internalised its own principle of identity, or in their terms, 'thematizing its own newness'. In the wider theoretical context of civil society theory, this translates into the principle of 'self-limitation'.

This tightly held principle is as problematic as the concept of 'the private' to which it is inextricably related. 'The private' informs 'self-limitation' in a number of ways, none of which have an immediate obvious contribution to make to democracy as an incremental process with no horizons or limits. 'Self-limitation' can only be contributory in this way as a tactically applied political action, not the principled restraint of democracy in society.

If 'self-limitation' is set as a principle of civil society theory then it cannot escape the influences of liberal theory. To maintain its own democratic emphasis and distinctiveness, 'self-limitation' can only be viewed as action determined by the strength of the opposition. It is therefore a strategy, not a principle. Nor should it be an *inevitable* strategy concluded from the inevitability of *systems*. The 'new evolutionism' (Michnik) that originated in the European nursery of contemporary civil society was determined by the power of the state and not by way of recognition of its legitimacy. Nor can it have been a principle derived from a perceived inevitable continuation of its opposition (indeed this opposition proved to be short-lived).

In its Western adoption, 'self-limitation' is problematic because it becomes confused with the liberal conception of civility which demands a certain self-restraint. But this notion is more appropriate as a general code of behaviour rather than a political strategy that was necessary for the continued existence of the social movement in the former states

of communist Europe. Where the legitimacy of the opposition is (more or less) intact, as it is in 'developed political systems', the Western transplant of civil society, the 'political edge' (or active opposition) is to be found in 'civil disobedience'.

It is the notion of 'civil disobedience' that Cohen and Arato identify as that aspect of their theory of civil society that retains the democratic 'core': "...reflection on civil disobedience can provide an answer to this question by showing that there is indeed an alternative to the choice between 'soulless reformism' and revolutionary fundamentalism, between civil privatism and the total politicisation of society".<sup>25</sup> It is important to consider civil disobedience as an expression of the constant unrest of society in its evolution, directed against the public power that contains it. It is not necessarily a 'principled action' because it respects the limits of its brief and the integrity of its opposition, it is so because it is an action based on a *value*. Of what exactly this value consists or represents is a contingent matter. But importantly civil disobedience, as part of political action in civil society, represents (potentially) a threat to the legitimacy of the order and not just one aspect to its rule or one specific law.

The reconstruction of one concept to allow for greater room for the theoretical expansion of democracy alters its relation to, and thus the understanding, of others. For example, if the concept of 'the private' is reconstructed as a domain of 'self'-development (and moral choice) and then reconsidered as a *public* conception, then 'self-limitation' has obvious consequences for *privacy*. It is impossible to separate the principle of 'self-limitation' from a *self* as the subject of development and as the politically applied principle of social movement. 'Self-limitation' applied to *privacy* narrows its possibility

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<sup>25</sup> J.L.Cohen & A.Arato op.cit p.565

by maintaining the economic-corporate layers of identity, and securing it to a culture of privatism. It is contradictory to the processes of intellectual and moral reform.

'Self-limitation' applied to *plurality* is similarly restrictive. The principled 'self-limitation' of New Social Movements consolidates an identity that on the one hand enables greater political representation and organisation, and on the other denies more inclusive and fluid social movement and subsequent *political development*.

The (public) development of the *self* and the development of social movement as a paradigm of social relations that are ethic-political are inextricable, and are dependant upon and impeded by the same factors. Crucial to the development of the *self*, as a 'subject' of civil society is a *receptivity* to the cultural fluidity of society and the contingency of its own consciousness. Similarly, the ethico-political development of social movement turns on its *receptivity* to the discourses of inclusive movement and democratic link. In other words, these (*self* and social movement) developments are dependent upon the discourses of the public sphere.

This receptivity is then the maintenance of a public sphere; an openness to reform and fluidity of identity is its reproduction. It is, in some version, the basic criterion set by theorists of the public sphere as the court of some form of reason or reasoning. Habermas describes the communicative processes of the public sphere as necessarily proceeding from the recognition of the possibility that ones own argument may be wrong. In the Kantian language of the categorical imperative, the communicative principle is not "a maxim that I will to be general law, [but] I have to offer my maxim to everyone that the aim of discursively testing its claim to universalisability. The emphasis shifts from what



all can will in agreement to be a universal norm".<sup>6</sup> The public sphere then corresponds to discursive formations of reform and conclusions, and hybrid developments that are socially inclusive in their constituent and politically inclusive in their concern. It is therefore distinct from the public domain, whose hegemonic discourses in 'developed political systems' demonstrate all the characteristics of 'willing particular maxims' as the interests of one faction or identity as 'general laws'. It is in the commercially dominant institutions of the public domain that can be found the anti-democratic and causal processes of privatism. A distinct conception of the public sphere is essential to a distinctive theory of civil society. If it blurs into the public domain, as a normative category of *publicity*, then the only democracy that will arise out of it will be a representative system of private interest. Cultural production compounds the condition of political alienation by manipulating the concerns of the subjects of 'developed political systems'. The freedom of expression that the norm of *publicity* is specifically concerned with becomes a freedom of access to the product of cultural industries, and succumbs to the homogenising effects this has on *privacy*.

Parallel to the commercial-cultural production of the public domain is the 'political-cultural production'. The political discourses in the public domain are full of references to political idealism through, largely, the vocabulary of liberalism and the norms of *legality*. In the contemporary conditions of 'developed political systems' political discourse is met with the cynicism of the politically alienated and disillusioned. The language of rights, rationality, neutrality etc. is the moral appeal for politicians in 'the free world'. An amalgam of these norms, discursively shrouded as *legality*, then provides a moral

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<sup>6</sup> J.Habermas *Moral Consciousness and Communicative Action* Cambridge.Mas. The MIT Press 1990 p.67

authority to actions that would be considered, by those who subscribe to a 'politics of conscience', as unconscionable. The finality that *legality* presents, not merely as 'law' (or public power), but as being a unique form of law whose authority is *internal*, contradicts the *idea* of civil society. However, *legality* (as a public power) claims a theoretical universality that a democratised civil society must maintain. There are therefore certain ambivalences with regard to the 'norms' explicitly laid down by Cohen and Arato and embraced by all theory sympathetic to civil society.

Although civil society represents the only feasible locus of democracy, it carries with it a number of conditions and qualifications. It cannot, first and foremost be placed in a dualistic social theory of state and society. Inclusion of economic institutions, including private corporations, as agencies of civil society loses all claim to any difference to liberal society of any theoretical foundation. Civil society must be theorised as distinct from all economic-corporate categories which includes both 'state' and 'economy'; it can only be a useful tool for democratic theory if it is. Reclaiming some control over the conditions of existence of a 'publicly oriented *self*', whose recognition of its own contingency is an awareness that this control can only be reclaimed *publicly* or democratically, means an antagonistic relation to the powers of 'the state' and 'the economy'.

For reasons applicable to both state and economy, 'the private' cannot be retained by civil society theory. It is the first point of departure from the philosophy of the individual to a distinctive radical democratic theory. Cohen and Arato's locating of 'the private' in the consciousness of the *self* is no less problematic than the inclusion of the (private) commercial institutions in civil society. 'The private' is still retained in their theory. It prevents a distinct notion of democracy from that of liberal representative institutions, its

central point remains within this formal political sphere (of state) not in society. Their idea of democracy seems to be little more than an attempt at a more effective version of the representation of *private* interest. This and their analysis of social movement are the two fundamental flaws of their theory of civil society, if it is to be read as democratic theory which is their intention.

The cultural phenomena of privatism, their production and reproduction in the public domains of 'developed political systems' are a necessary part of the analysis for democratic theory. Privatism should be one of the primary concerns political and social theory, and not hived off into media and cultural studies that miss the full political implications. The processes of privatism are inextricably and unavoidably related to politics. If democracy is to be anything, there cannot be a disconnection between a privatised *self* and the privileges of choice that it enjoys, and the *legitimate* use of state violence (which it in part pays for) in areas of the world that are of no apparent relevance to that *self*. It is incumbent on the democracy of civil society to question such action, and disclose the relevance of some of these areas around the world to the preservation of the privatised life of 'developed political systems'. Theories of democracy that identify the area of primary concern as the state, overlook this problem of legitimacy without accountability (but which is conditional on preserving the private orientation of political agenda). For those theories of democracy that emphasise the *involvement* of a demos, as an assumption of democracy or political empowerment, the problem of privatism must be the first and foremost to be considered.

Civil society is, however, not bounded by the concerns of the nation-state, it transcends this economic-corporate entity. Its trajectory is 'global', representing the

democratic will among the multi-form processes of globalisation. It links trans-national networks that can articulate an opposition, in global terms to the expansion and entrenchment of commercial society. The opposition to the dominant processes of globalisation (those of commercial expansion, economic exploitation and cultural homogeneity), arises from movement of culturally specific forms of democracy (as the will to create the conditions of ones own existence) but also claims a universality. Discourses that propose a re-establishment of the 'sovereignty of the nation-state' or hold an atavistic yearning for some romantically conceived form of existence, contradicts the developmental condition that civil society must be. Neither would be desirable, even if either were possible. However, both elements represent a threat to civil society, by offering ideological alternatives to the politically alienated *self* that is also then alienated from its own possibility. Rather, the *opposition* of civil society to the dominant processes of globalisation is derived from common bases of struggle that includes protest against economic exploitation in Mexico and violence in the Middle East.

If the feasibility of *political development* is doubted or dismissed, then as the privatism effected by political alienation shows, the doubt would then become a self-fulfilling prophecy. Moreover, democratic theory would not be able to drag itself sufficiently far away from the liberal representative form to analyse any such developments, and then address the problem of continued consent for systems that are in democratic crisis. Democracy must become a form of *praxis* in society, and only a radically reconstructed notion of civil society can provide the theoretical element to the fluidity of its social formations and the absence of any terminal point to its objectives. Civil society is, as Cohen and Arato put is 'normatively necessary' and 'empirically possible', it is perhaps

even 'politically necessary'. A democratised civil society is the *political development* necessary to prevent a slide into catastrophe under a political leadership that is itself directed by an increasingly well defined 'black and white', 'with us or against us' world view.

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