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**Comprehensive Understanding of Civil Society: the
condition of equilibrium**

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Introduction*

SHUR aims at the understanding of the complex dynamics related to the intervention of civil society in “new conflicts”. In particular, the project explores the interrelations among civil society, human rights and new conflicts, with reference to the impact of civil society movements on human rights. This research is based on three assumptions.

Firstly, the massive and systematic violation of human rights is a key-factor in the dynamics of the ethno-religious conflicts, i.e. the so-called “new conflicts”.

Secondly, new civil society organisations and movements intervene in various ways in new conflicts. There are, at least, two levels of civil society engagement in conflict. At a first level, there are organisations and movements engaged in positive actions such as humanitarian intervention, peace-building and democratic transition. There is, however, at the second level a dark side of this intervention, i.e. the so-called activity of un-civil society. In general, these movements that have a cultural connotation, based on religious or ethnical features, take part to the conflict and alternate different methods of actions, from mobilisation by means of media to open violence, as in the cases of ethnical cleansings and terrorist attacks.

Finally, the protection of human rights is a necessary condition for peace. In this perspective, the protection of human rights by civil society turns out to be the crucial factor for building human security and for constructing peace.

Thus, the key-question concerns the complex role of civil society in new wars. Until now (see the working papers SHURwp01/07, SHURwp03/07, and SHUR 05/07), two crucial issues concerning the nexus civil society-human rights-conflicts have been emphasised. With regard to the first and the third assumptions, a concept of securitisation has been developed, as a tool for analysing the human rights- new conflicts nexus. In addition, SHURwp03/07 developed an approach to civil society with a specific focus on the context of conflict. A specific kind of civil society organisations has emerged, Conflict Society Organisations. Such an approach studies the determinants of CoSOs’ impacts on conflicts-human rights. In this work, I will focus on the second assumption; my aim is to investigate the meaning of civil society, in its normative acceptation, and its impact on conflicts and human rights. But, in order to face the challenges raised by *un-civil societies*, we need to clarify adequately the concept of civil society and the major features involved in it.

This essay offers a reconstruction of the notion of civil society in the light of its philosophical tradition. The core idea is to formulate a comprehensive notion of civil society that has a clear normative claim: it will represent the model of reference for analysing the concrete situations of conflict. My proposal is that in order to ensure an effective role for civil society in conflict resolution and democratic consolidation the sphere of civil society has to guarantee a crucial equilibrium among economic, cultural and political forces. Contemporary approaches to civil society tend to distinguish these three spheres, giving, in turn, the priority to one of them over the others. As I will show in the following sections, such approaches are not able to grasp all the instances involved in the sphere of civil society. Furthermore, taking a normative perspective, it seems that these approaches run the risk to deny civil society itself. Civil society is the realm of conflicting interests and values. It is the space, in which

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individual identities meet collective claims and *affiliations*.¹ In such a context, the equilibrium among cultural, economic and political forces is crucial in order to overcome the conflict and preserve civil society as the domain of freedom. In situation of conflicts, this characteristic of civil society becomes particularly relevant. The positive impact of civil society in ensuring a bottom up approach to conflict resolution and in constructing a legitimate political authority depends crucially on the preservation of this inclusive attitude.

Civil society and new conflicts: the problem of context

The current *renaissance* of civil society represents a decisive phenomenon of the contemporary age. The overcoming of the Cold War confrontation, the emergence of a globalised market, as well as the weakening of the Westphalian system of national state have made room for new subjects and new models of social integration both at local and at global level. In the last two decades, in fact, huge varieties of different non-state actors have emerged. Religious and ethnical movements, non-governmental organisations, and national and trans-national social movements represent the contemporary expression of civil society. The impact of these actors seems to be more relevant in contexts in which the *vacuum* deriving from the failure of the nation state model is more evident. With reference to this, the context of the conflicts seems to be particularly significant. In fact, while the effectiveness of the nation-state intervention in conflict decreases, an intimate link between civil society and conflict emerges.

In the literature, it is possible to distinguish two different approaches with regard to the role of civil society in conflict. On one hand, a normative approach has emerged, which considers civil society as the arena in which values, identities, rights can be negotiated. The positive developments of NGOs and social movements' engagement in conflict prevention and resolution suggest a relevant role for civil society in conflict. In this perspective, civil society actors are driven by the values of solidarity, democratic participation, liberty and tolerance. Such assumptions presuppose a normative understanding of civil society that derives from the liberal Western tradition. In this perspective, civil society is a pattern that comprehends both public and private elements, but it is independent both from the market and from the state. In general, this notion refers to all those political self-organised organisations and movements – NGOs, Social Movements, etc. – that in a certain way contribute to create an autonomous public sphere. Today, we can observe some peculiar features of the new civil society movements. Civil society seems to be a sort of political project, a sphere through which it is possible to put pressure or influence, but also to resist and combat, both the state and the market. In the context of a conflict, civil society movements can be seen as essentially non-violent and resisting to violence through human solidarity and the protection of human rights. They facilitate community integration and promote community security by addressing common human values that go beyond ethnic religious and political boundaries. The engagement of civil society in peace-building activities seems to be essential in order to foster the establishment of a legitimate political authority, and in order to guarantee a bottom-up approach to conflict resolution and institution building.²

¹ See Sen, A. (2006). "Identity and Multiculturalism", in *Identity and Violence: The illusion of destiny*. New York- London: W.W. Norton & Company.

² U.N.D.P., *Evaluation for Human Security: UNDP assistance to conflict affected countries*. London: LSE-Centre for Global Governance.

Nevertheless, on the other hand, the experience of conflict and the management of violence reveal a dark side of civil society. Some authors refer to an *un-civil society* with reference to those movements – often based on cultural and religious features-, which play a relevant role in increasing the escalation of violence.³ In some cases, these movements seem to take part to the conflict alternating different methods of actions, from mobilisation by means of media to open violence, as in the cases of ethnical cleansings and terrorist attacks. Some authors, then, stress the ambivalent role that the supposed “good” actors of civil society, non-governmental organisations, can play in situations of conflict. These authors raise, at least, three fundamental criticisms. The first argument refers to the lack of the presumed independence of many civil society organisations. Civil society organisations, operating in context of conflict, are not *independent*, but often state-driven because financed by public funding. This condition questions the effectiveness of actions driven by external state, rather than derived from effective needs raised by people. The second criticism introduces the neo-liberal tendency to see such organisations as part of the “Third Sector.” In this perspective, non-profit organisations are often seen as mere commercial service providers, so they are not able to respond to social needs emerging in situation of conflict. The third argument introduces the cultural perspective. According to this perspective, normative scholars ignore that western tradition of civil society is often bearer of values and principles unacceptable, or, at least, inadequate for other social and cultural realities. This perspective is particularly relevant with regard to the link between civil society and human rights protection. In its approach to conflict, western civil society appeals to a universal understanding of human rights, conceived as essential body of human values. This approach is challenged from the relativistic point view, especially in cases in which conflicts have a strong religious connotation.⁴

These criticisms introduce, at least, three kinds of issues that have to be clarified. The first problem refers to the very idea of “*un-civil society*”. From the theoretical point of view, it seems hard to make sense of a concept of “un-civil society.”⁵ This concept would deny the idea of civil society within it-self. More plausibly, it seems to be possible to distinguish a normative understanding of civil society from a mere idea of society as multitude, when some political, cultural and economic conditions are satisfied. This argument introduces the second issue that concerns what is meant by civil society. In order to avoid the idea of an “uncivil society”, many scholars tend to identify civil society with the emerging sphere of international and local NGOs and social movements, ignoring other relevant actors and social interactions that are historically involved in the idea of civil society. Indeed, the notion of civil society has a long and complex tradition in western political and philosophical thought. This leads us to rethink civil society in the light of such a tradition and to try to formulate a univocal notion of civil society able to include the most relevant concerns involved in it. Finally, even excluding the un-civil side of society, it emerges an ambivalent role of civil society actors in some conflict situations. Can a normative approach be useful in order to study the impact of civil society in conflict contexts? It is difficult to neglect the empirical evidence of certain conflict-cases in which the intervention of civil society movements and organisations not only seems to be ineffective in order to achieve a stable peace, but also a factor of polarisation of conflicts. Nevertheless, these empirical facts have a relevant outcome in theoretical terms.

³ See Anheier, H.E., Kaldor, M. and Glasius M. (eds) *Global Civil Society 2006-2007*. Oxford: Oxford University Press; Kaldor, M. and Muro, D., (2003). *Religious and Nationalist Militant Groups*, in Anheier, H.E., Kaldor, M. and Glasius M. (eds) *Global Civil Society 2003*. Oxford: Oxford University Press

⁴ See Fisher, M., (2006). *Civil Society in Conflict transformation: ambivalence, Potentials and Challenges*, Berlin: Berghof Research Centre for Constructive Conflict Management. (pp.8-10)

⁵ Many scholars, as Keane or Falk, exclude violent or intolerant groups from the definition of civil society at the global level.

Rather than denying the idea of civil society in itself, they suggest examining how civil society ought to be, in order to evaluate and to intervene in concrete situations.

This essay represents a first attempt to develop a normative account of civil society, which could represent an instrument for evaluating concrete contexts. Such a proposal is based on a peculiar idea of equilibrium, able to preserve individual freedom on one side, and a pluralistic integration, on the other. Despite the relevance of context in which civil society is embedded, already highlighted in SHURwp03/07, a normative perspective imposes on us to construct a conception of civil society relatively independent of specific situations/contexts.⁶ Of course, the validity of such a proposal depends essentially on its empirical testing to conflict-case, but the empirical application of the model will be developed in a further work.

Freedom and Civil society⁷

It is possible to discover a huge variety of meanings historically assigned to Civil Society.⁸ From a theoretical point of view, in fact, there is no agreement on the content and the extent of Civil Society. It follows the overall disagreement on the definition of the subjects and the domain of civil society.

Despite its popularity across society of different levels and across all ideological hues, the concept of civil society seems to be confused and confusing. In order to reconstruct the content of this notion and its evolution, I propose to analyse civil society from the point of view of the most relevant aspect involved in it. Since ancient times, in fact, the debate about civil society has been constructed around a fundamental political issue concerning the role of freedom in the political realm. Whatever has been the approach to society, and its relations to political, cultural and economic implications, the relations between public and private as well as between public ethics and individual interest have represented key features of modern political thought.

Theories about civil society have been developed about a fundamental political issue concerning the way in which freedom can be realised in the modern world. Starting from the twentieth century, a controversy has emerged about civil society between political liberals and communitarians. At the centre of this debate there has been a fundamental political issue concerning freedom. In this context, the idea of civil society has assumed different connotations, depending on whether the idea of freedom should have been explained in the light of individual rights or of the norms shared by community. On one side, liberal view has considered the respect for individual rights and the principle of political neutrality as the paradigm for legitimacy in constitutional democracy. On this view, human beings own moral rights that would represent a constraint on government and on other individuals. These rights are not considered on the grounds of some social convention or utilitarian principle. The justification of these rights is based on the idea that individuals have some “property” – moral autonomy, human dignity, etc. – that makes them as bearers of rights. On the other side, the communitarian critique focuses on such an individualist assumption of the rights thesis. In particular, the communitarian account questions the universalistic claim of the liberal perspective. According to them, individuals are embedded in an historical and social context;

⁶ Marchetti, R. & Tocci, N. *Conflict Society and Human Rights*. Rome: SHURwp03/07.

⁷ For an illuminating discussion, see Taylor, C. (1995) “Invoking Civil Society,” in *Philosophical Arguments*. Cambridge MA: Harvard University Press. (pp.204-224)

⁸ See Edwards, M., (2004) *Civil Society*. Cambridge: Polity.

it means that they derive from the community their individual and collective identity. Thus, it is possible to speak about a priority of the social over the individual.⁹

Today, we are facing a revival of the concept of civil society. Moreover, it is an empirical phenomenon. Religious and ethnical movements, NGOs and no-profit organisation, social movements and groups of individuals represent the renewed expression of civil society today. From a theoretical point of view, it seems to be possible to resume three kinds of approach to civil society in contemporary usage. First, a “post-colonial” version of civil society has been put forward, with a strong cultural connotation. Second, closely connected to the Scottish Enlightened tradition and enriched of Toquevillean reminiscences, a “neo-liberal” version of civil society emerged. Finally, a new normative approach to civil society came out in Western Europe, with a more or less evident cosmopolitan trend. The last account intends to reconcile the traditional idea of an existing close link between civil society and constitutional democracy with a trans-national idea of justice “beyond territorial borders.”

In this section, I will have a look of the theoretical framework of the concept of civil society as developed in classical tradition. My aim is to emphasise the central role played by freedom, intended as the major feature of the notion of civil society. Thus, I will bring the theoretical background again to the present revival of civil society. I will analyse the three contemporary approaches and in the last section, I will introduce my comprehensive proposal.

Western tradition and civil society

The present revival of civil society seems to have a close connection with the early modern Western philosophical tradition. Despite the presence of factors significantly new, such a *renaissance* highlights some relevant features of continuity with the western-liberal traditional understanding of civil society, with reference to its determinations and scopes. It is possible to recognise some peculiar elements that have created a common ground for the modern understanding of civil society. According to the circumstances and the different points of view, the notion of freedom related to the enquiry about society has assumed different connotations and nuances during the centuries.

The first context in which it is possible to recognise an original acceptance of civil society seems to be the ancient Greek political thought.¹⁰ Aristotle defines man as a ζῷον πολιτικόν (*zoon politicon* = *political animal*) and πολις (*polis*) as the most perfect form in which this natural τέλος (*telos*) of human being can be realized. In such a context, the notion of πολιτικόν κοινωνήμα (*politicon koinonema* = *political community*) represents a close equivalent of the Latin *societas civilis*. With such an expression Greeks, and later Romans, intended to highlight the virtue implicit in law-governed societies, as *locus* of public goods. In these societies, freedom is realised only in the πολιτεία (*public sphere*). In other terms, the *polis*, as well as later the Empire, represents the place in which the priority of the public good overlaps with the notion of civilisation, thus the content of society is defined by its political organisation.¹¹

⁹ See, Cohen J., Arato, A. (1994). *Civil Society and Political Theory*. Cambridge MA:MIT Press, (p. 8-10)

¹⁰ At this level, the idea of civil society has to be understood in a broad sense. In general, it corresponds with political society.

¹¹ With reference to this acceptation of Greek public space it can be useful to look at the work of Hannah Arendt. Although she can hardly be defined as theorist of civil society, in her work she emphasises the relevance of the public space and of the specific kind of communicative power that this space generates. Her idea of public space has a clear connection with the ancient idea of *politeia*. See Arendt, H. (1958) *The Human Condition*. Chicago: University of Chicago Press. See also, Spini, D. (2006) *La società civile postnazionale*, Roma: Meltemi.

This way of interpreting civil society comes back into use when philosophers begin to contemplate the foundation of the emerging absolute states.¹² First, Thomas Hobbes formulates his idea of Civil Society in terms of *Commonwealth (political society)*, in which people thanks to the *pactum subjectionis (contract of subjection)* accept to be governed by an absolute king. The main idea of Hobbes is to oppose the right-based society, founded on the contract, to the *state of nature* where the life of man is solitary, poor, nasty, and violent. According to the interpretation offered by Hobbes, people, accepting to live in a civil society, renounce freedom. Individual freedom, in fact, is a peculiar attribution of the state of nature.¹³

It is no difficult to understand the reason why Hobbes makes the distinction between a *free* state of nature and a *safe* civil society governed by an absolute king. Since the early Middle Ages, in fact, it was developed a notion of (civil) society where political authority was *singulis maior sed universalis minor (one organ among others)*. The first relevant attempt to differentiate an idea of community/society from the political organisation is represented by the crucial feature of Latin Christendom, which considered the Church as an independent society and postulated the separation between two powers/societies, temporal and spiritual.¹⁴ A further development in the medieval western tradition is represented by the communal organisation of the state in the late Middle Ages. A typical example of medieval structure of power presented a sort of diarchy: on one side, a monarch that governed in a decentralised manner very huge territories; on the other side, several cities/territorial authorities, relatively independent and self-governed. This scheme guaranteed a relative freedom for the subjects of the medieval empires. In the light of this, the idea of sovereignty developed by Hobbes has to be interpreted as a way to undermine the medieval understanding of society as a relatively free space.¹⁵

After Hobbes, the defence of the notion civil society as distinct from the political organisation becomes a fundamental argument of the counter-absolutist thinkers.¹⁶ Locke offers a first example in this direction. Although his idea has still the connotation of political society, Locke introduces two new elements: one referred to the state of nature and another to the contract. With reference to the first aspect, the idea of state of nature, expressed by Locke, is characterised by “an embryonic notion of humankind as a pre-political community”¹⁷, in which the respect of others compensates for freedom and self-interest¹⁸. It appears as the state of the economic progress, which raises its peak with the emergence and the development of private property.¹⁹ According to the second point, then, a further differentiation emerges. Society, in fact, is seen as existing before government in virtue of an original contract (*pactum unionis*). Only after the first contract, society operates a second agreement that grounds the government on a basis of a fiduciary relationship with community. Thus, even if presenting elements of the ancient tradition, Locke opens the channels for a revival of society as locus of freedom. Two important implications follow from his work. Firstly, it is given a new relevance to the economic progress (capitalism), seen as the basis for a new individualism and

¹² See Taylor in *Invoking Civil Society*.

¹³ “The right of nature, which writers commonly call *jus naturale*, is the liberty each man hath to use his own power as he will himself for the preservation of his own nature; that is to say, of his own life; and consequently, of doing anything which, in his own judgement and reason, he shall conceive to be the aptest means thereunto”. Hobbes, T. (1651-first edition), (1968), *The Leviathan*, Harmondsworth, Middlesex, UK: Penguin Books. Chapter XI.

¹⁴ According to Gramsci, the Church represents the example *par excellence* of civil society of the Middle Ages. About this point see also, Taylor in *Invoking Civil Society*.

¹⁵ Taylor, C., *Invoking Civil Society*, (pp.211-212).

¹⁶ *Ivi*.

¹⁷ *Ivi*, p.213.

¹⁸ See Locke, J., (1680-1690 first edition), (1988) *Two Treatises of Government*, ed. P. Laslett, Cambridge: Cambridge University Press, chapter II, § 6 , 8 , 9.

¹⁹ *Ivi*, chapter V.

a right-based society. The second idea is that individuals, organised in a society/community, can determine, or at least influence, the course of state policy. A clear distinction between civil society and political society will be formulated later, first with the contribution of the Scottish Enlightenment thinkers and later, by Hegel and Tocqueville.

The formulation of civil society as articulated by Ferguson and Smith maintains and elaborates Locke's intuition about the importance and the autonomy of the economic sphere. Both authors developed a representation of society as an *economy*, that is to say the domain of the private sphere.²⁰ The content of economy, in this context, has a direct connection with the Aristotelian idea of οἰκονομία (*oikonomia* = household law). The Scottish Enlightenment conceives of civil society as a sort of *natural order* that derives from the division of labour. It is the realm of freedom seen as in opposition to the *artificial order* of the State, which represents the product of a rational choice of individuals.²¹

Civil society, as realm of particular interests, represents the starting point of the Hegelian investigation.²² In fact, only with Hegel the typical antithesis state of nature/ civil society is overcome. For Hegel, this antagonism is substituted by a new, distinct, but not necessarily opposed, couple of concepts: the *bourgeois society (civil society) and state*. In this frame, *bourgeois society* is the sphere of particular interests: it represents an intermediate step between family and state. Rather than denying the state, civil society represents a precise moment of the Hegelian dialectic: civil society generates universal principles in the ethical juridical sphere; it represents the content of the state itself. The Hegelian formulation has significant implications for the modern notion of civil society. *Civil society* is not the market, but it is the realm of the capitalistic division of labour. At the same time, it differs from the state, but it comprises a public space, politics and juridical system. While Aristotle distinguishes πολίς from οἶκος in which only the first represents a public domain, Hegel elaborates three terms: *family, civil society and state*.²³ Civil society is a pattern that comprehends both public and private elements, but it is independent from both market and state. On this point, Taylor rightly argues that, in his concept of civil society, Hegel uses independent associations for non political purposes but “[...] their significance is not that they form a non-political social sphere, but rather that they form the basis for fragmentation and diversity *within* the political system. [...] Thus the different elements of Hegel's political society take up their role in the state, [...]. In this way we avoid both the undifferentiated homogeneity of the general will state, which Hegel thought must lead inevitably to tyranny and terror, and also the unregulated and ultimately self-destructive play of blind economic forces, which then seemed to be menacing England”²⁴

This embryonic notion of defence of freedom from tyranny and from market rules is even clearer with Tocqueville. According to him, the proliferation of free associations,

²⁰ Taylor, C., *Invoking Civil Society*, (p.215).

²¹ With reference to this point, it can be particularly relevant the notion offered by Adam Smith of “invisible hand”. According to him, in fact, the disposition of the things in society is seen as arising not out any collective will or common decision, but in virtue of an “invisible hand”, a sort of providence. See Ferguson, Adam (1767-first edition), (1995), *An Essay on the History of Civil Society*. Ed. Fania Oz-Salzberger. Cambridge: Cambridge University, and Smith, A., (1776- first edition), (1976) *An Inquiry into the Nature and Causes of the Wealth of Nations*. Chicago: University of Chicago Press,

²² With regard to this liberal understanding of Hegelian Civil society see also Rawls, J. (2000) *Lectures on the History of Moral Philosophy*, Cambridge MA: Harvard University Press. “[...] I interpret Hegel as a moderately progressive reform-minded liberal, [...]. I shall look at how Hegel thought the concept of freedom was actually realized in the political and social institutions at a particular historical moment.” p. 330.

²³ This point is rightly expressed by Cohen and Arato when they argue “[...] the Hegelian theory is crucial because it reconstructs civil society in terms of the three levels of legality, plurality and association, and publicity and because Hegel sees a link between civil society and state in terms of mediation and interpretation [...]”.Cohen, J., Arato, A. (1994). *Civil Society and Political Theory*. Cambridge MA:MIT Press.

²⁴ Taylor, C., *Invoking Civil Society*, (p. 222).

spontaneously formed by people for the achievement of common purposes outside the state, represents the only guarantee against the tyranny of the majority. With Tocqueville the spirit of voluntary associations becomes a significant aspect of the concept of civil society. Such a *democratic expedient* allows avoiding despotism and protecting individual freedom.

To conclude this short historical excursus, the distinction between civil society and state holds a pivotal position in the western tradition as an argument in defence of liberty. As shown before, it arose as necessary instrument of defence when the democratic rule of majority could undermine individual freedom in democratic societies.²⁵ In the light of this tradition, it is possible to define civil society with the three following propositions. Civil society appears as something distinct from state as well as from the market, but it includes political and economical features. It is the realm of the public space but it is not politically organised. It represents the space for the associational life.

The transposition of the issue of freedom in the further developments of the notion of civil society will lead to the definition of two different roles for civil society in the political realm. On one side, starting from Tocqueville, some authors have developed a concept of civil society intended as tool of stabilisation of democratic regimes. According to this perspective, civil society indeed seems to be a *democratic expedient* in a specific way. It is the structure on which the *Public Sphere* relies. In the public sphere, freedom of expression allows the emergence of *Public Opinion*. In turn, it is able to modify or, at least, correct the democratic directions of politics.

On the other side, starting from the idea of the ethical content of civil society as distinct from the state, an idea of civil society of an anti-political kind has been developed. This perspective introduces the counter-hegemonic dimension of society. It is considered as means of rebellion or, at least, contestation against the state. In this context, the importance of *culture* as a tool for a counter-hegemonic power able to challenge the constituted power emerges.

Theories of the public sphere

The notion of public sphere occupies an important position in contemporary debate about civil society.²⁶ Theorists of the *public sphere* – to quote only few names, Jürgen Habermas, Jean Cohen and Andrew Arato – look to Tocqueville as to their primary sources. According to them, “modern civil societies are characterised by a plurality of form of life, they are structurally differentiated and socially heterogeneous. [...] Thus, to be able to lead a moral life, individual autonomy and individual right must be secured. In this view, it is democracy, with his emphasis on consensus, or at least on majority rule, that is dangerous to liberty, unless suitably restricted by constitutionally guaranteed basic rights.”²⁷

The core idea of Tocqueville’s analysis is characterised by the priority given to free and voluntary associations in the public space. Tocqueville considers the existence of an active voluntary sector the *condicio sine qua non* in order to provide a check on state power. Although he does not use the term civil society, he assumes a closely connection between the existence of a self-regulated and autonomous public sphere and democracy. In this context, his

²⁵ Tocqueville, A. (1835-1840 first edition) *Démocratie en Amérique*. Translation, (1995) *Democracy in America*. London: David Campbell.

²⁶ See Habermas, J. (1998). *The Inclusion of the Other: Studies in Political Theory*. Cambridge MA: MIT Press Edition. Habermas, J. (1996). *Between Facts and Norms Contributions to a Discourse Theory of Law and Democracy*. Cambridge MA: MIT Press Edition. Chapters . 7, 8. Habermas, J. (1989). *The Structural Transformation of the Public Sphere: An Inquiry into a Category of Bourgeois Society (Studies in Contemporary German Social Thought)*. Cambridge MA: MIT Press Edition.

²⁷ Cohen, J., Arato, A. *Civil Society and Political Theory*. (p.10.)

argument about the value of “associational life” represents a central issue in systematic studies of the links between democracy and public space.²⁸

Theorists of public sphere, as Tocqueville, see civil society as the setting for the associational life of individuals. Governed by rule of Law, it sustains the formation of *public opinion* which represents a crucial tool able to restrain the state. The rejection of the Hegelian position is at stake in this notion of civil society.²⁹ In first instance, they reject the notion of civil society as *bourgeois society*. Their point “is that only a concept of civil society that is properly differentiated from the economy (and therefore from *bourgeois society*) could become the centre of a critical political and social theory in society where the market economy has already developed [...] its autonomous logic.”³⁰ They also challenge the Hegelian dialectical division of social space into civil society versus the external state. They argue that the historical changes having already occurred in Western societies (media developments, the science of public opinion engineering, etc.) have altered any easy division of state versus society.³¹

These authors conceive of civil society a “sphere of social interaction between economy and state.”³² They include in the general notion of public sphere above all the intimate sphere (family), the sphere of associations (in particular, voluntary associations) social movements and forms of public communication (media in general). The public sphere represents the communicative structure of reference for civil society. According to Cohen and Arato, the fundamental elements that characterise the normative model of civil society are: plurality, publicity, privacy, legality. It is important to underline the necessity of a system of rights in this design of civil society (legality). These rights are intended to protect the inviolability of the private sphere and the effective participation of citizens. Civil society plays a key role in the democratic procedure. It represents the basis for an autonomous public sphere, which correspond to one of the most important guarantees for a vivacious and reliable democracy. The public spheres is where people can discuss matters of mutual concern, and learn about facts, events, opinions, interests, and perspectives of others. Discourses on values, norms, laws, and policies generate politically relevant *public opinion*. Public opinion is meant to influence the debates within political institutions. It brings under informal control the actions and decisions of rulers and lawmakers. This perspective implies that openness of access and parity of participation (equal voice) are the ideals underlying every institutional arrangement claiming democratic legitimacy.

²⁸ Regarding this point, see Chandhokhe, N.,(2005) What the hell is “Civil Society”? *Open Democracy*, March 2005, Cohen, J., Arato, A., *Civil Society and Political Theory*. Cox, R. W. (1999). Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order, *Review of International Studies*, No. 25, 3-28. Putnam, R.D. (1995), Bowling alone: America’s declining social capital, *Journal of Democracy*, 6:1, 65-78.

²⁹ Hannah Arendt is the first that attacks the concept of society as an intermediate realm between private and public. In her understanding “society” is definitely a public space. This achievement allows her to elaborate her theory of public space and the specific kind of communicative power that such a space produces. However, Arendt considers the realm of social as *inferior* to that of politics. See Arendt, H. (1958). *The Human Condition*. Chicago:University of Chicago Press.

³⁰ Cohen, J.& Arato, A. *Civil Society and Political Theory*, p. 8.

³¹ Their understanding of the Hegelian notion of civil society is deeply different from the reading suggested before. According to us, in fact, the Hegelian state contains and overcomes civil society. In this way, a purely formal universality becomes an organic reality. In this context, it becomes very difficult to affirm that in the Hegelian view civil society/state is an antinomy; rather it seems to be a dual concept in which the two terms influence each other.

³² Cohen, J., Arato, A., *Civil Society and Political Theory*, pg. 9.

Civil Society and Cultural Direction

Further developments of the notion of freedom, implicit in the conception of civil society, have led to an idea of civil society as means of contestation against state power. The core idea of this anti-political notion of civil society is already present in the idea of the right to rebellion that Locke assigns to society.³³ Locke considers the political structure as an emanation of the society. In turn, it has been seen as already political, because, in virtue of the first contract, people have put in common their power to enforce the Law of Nature, though they do not yet have an institutional system of power. It is possible to distinguish in this scheme a pre-political life and unity of the civil society. The Government represents a further step in the Lockean analysis. Political structure derives from a free choice of society, in order to guarantee the safety of the citizens. But, society maintains the right and power to make and unmake the government. This right becomes crucial when Government fails to serve its mandate. According to Locke, Government is dissolved when the legislative violates the trust placed in it by citizens. When this trust is violated, the Government is dissolved and the people earn a right to resist further governmental efforts to exert its power.³⁴

Locke's idea, of a right to rebellion, introduces a notion of society as instrument to preserve the power of Government or, *vice versa*, to resist it. Gramsci is the author that has better synthesised this idea of civil society, as tool of *consensus* or of contestation.³⁵ According to him civil society, in fact, seems to have a double function. On one side, it seems to be the realm of the morals and culture on which existing order is grounded. But, on the other side, it seems to have autonomy and priority over the state. For this reason it can also be intended as the sphere on which a new social order can be founded. Gramsci highlights the emancipatory potential of civil society. It seems to be an agent of stabilisation, when it is in agreement with the political structure; but it becomes a potential agent of transformation, when it is in conflict with the constituted power. Civil society consists of any kind of social and cultural interactions that represent a sort of wedge between the state and the class-structured economy. This notion of civil society recovers some Hegelian arguments. Thus, in opposition to the Marxist assumption that considers bourgeois society as part of the economic structure, the Italian theorist considers civil society in the light of the superstructure. As Hegel, Gramsci assigns to civil society a crucial role: it represents the ethical content of the state. A state without civil society is a *dominio* without hegemony, that is to say a dictatorship.³⁶

But Gramsci adds something more to the Hegelian perspective. A further important element of this notion of civil society consists in the role of culture and of intellectuals. Civil society is an ethical political moment distinct from political society. It is the sphere in which ideology emerges and develops. For ideology, Gramsci intends the primary moment of the history. The *political direction*, peculiar of the political structure, comes only after the *cultural direction*, which implies an intellectual and moral reform. The moment of the cultural direction coincides with the creation of a strong ideology. This moment is crucial in order to create the necessary consensus for the hegemony.

³³ See also the idea of *civil disobedience* proposed by Cohen and Arato in Cohen, J., Arato, A., *Civil Society and Political Theory*. (Chapter 11, pp.564-604).

³⁴ See Locke, J., (1680-1690) *Two Treatises of Government*, chapter XVII, §206, 207,208.

³⁵ Gramsci, A. (1947). *Lettere dal Carcere*, Torino: Einaudi. Translation in English, (1971) *Selections from the Prison Notebooks* (ed. and trans. Quintin Hoare and Geoffrey Nowell Smith), London: Lawrence and Wishart.

³⁶ About this point, see Bobbio, N. (1976) *Gramsci e la Concezione di Società Civile*. Milano: Feltrinelli, Translation in English, "Gramsci and the Concept of Civil Society" in J. Keane, ed. (1988). *Civil Society and the State. New European Perspectives*. London: Verso; Bates, T. (1975). Gramsci and the Theory of Hegemony. *Journal of the History of Ideas*, vol. 36, No. 2, 351-366.

The constitution of a strong ideology is also crucial in order to resist and subvert the established order. Studying the Italian case, Gramsci highlights that strategy for Italian Communist Party is to gain positions in civil society to challenge the hegemony of the bourgeoisie. He sees the revolutionary potential of civil society of dislodging the bourgeoisie. Civil society is able to create a strong counter-hegemony. As stressed by Cox, “the concept of civil society in this emancipatory sense designates the combination of forces upon which the support for a new state and a new order can be built.”³⁷ Thus, in the light of this conception of hegemony, it is possible to conclude that freedom is realised in the political realm when civil society is consistent with political society.

To conclude, despite the difficulties in defining the notion of civil society, I have tried to offer an organic reconstruction of its content. As starting point of the analysis, I have considered that any investigation about civil society has been about the possibilities to realise freedom in the political realm. According to the present investigation, it is possible to define three fields of interest of civil society: economy, politics and culture. Nevertheless, civil society appears as something distinct from family, state and market. It is the realm of a right-based public space, but it is not politically organised. It is the space in which an emerging public opinion represents a democratic expedient of control on institutions and rulers. It is a field of power relations, in which the emergence of a strong ideology is functional to sustain the hegemony of state or market, or, to create counter-hegemony able to fight against state or market.

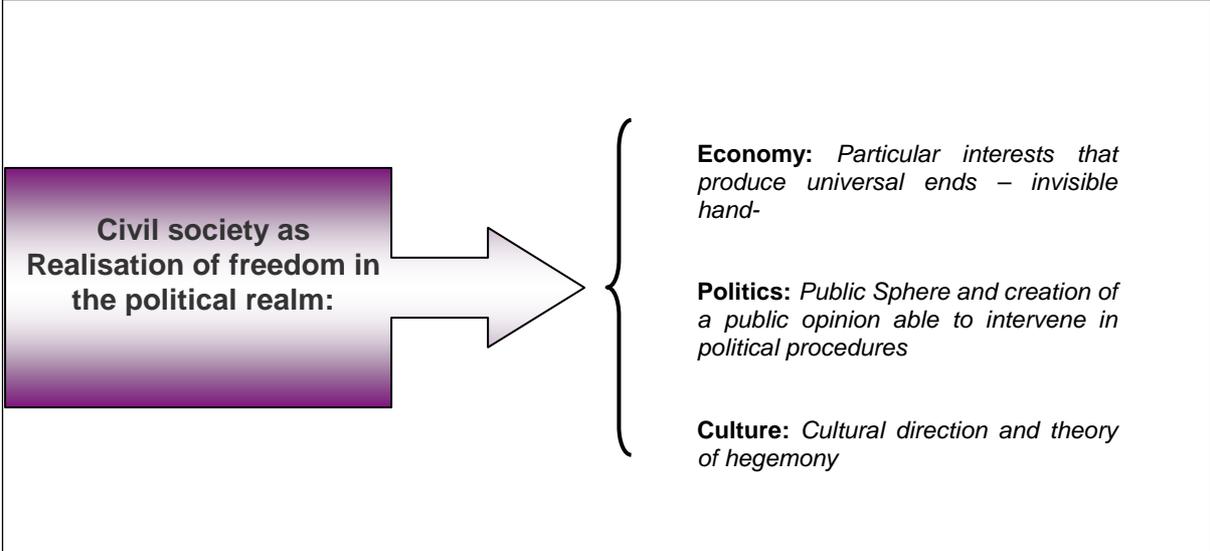


Table 1- Notion of civil society in modern tradition

The contemporary approaches to civil society

The emergence of many different non-state actors highlights the necessity to pay new attention to civil society. Religious and ethnical movements, non-governmental organisations, and social movements represent the renewed expressions of civil society. The new content of civil society reflects the profound changes intervened, during the last two decades, in the categories of politics, economics and culture. In this perspective, the present *renaissance* of civil society indicates not only the continuity of an emerging political paradigm with

³⁷ Cox, R. W. *Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order.* (p.5).

fundamental tendencies of modernity. It also refers to something significantly new.³⁸

On one side, contemporary formulations of civil society reflect the relevance of the modern western tradition. The idea of freedom and the issues related to its realisation into the political realm represent once again the crucial question for any approach to society. On the other side, contemporary scholars have enriched the notion of civil society of new contents in order to adapt it to the new paradigms of the so-called “post-national era.” It is possible to summarise at least three different approaches to civil society. Each approach considers one side of the phenomenon as basis for further investigation. Two of these approaches are well synthesised by Mary Kaldor, the post-modernism (here, post-colonialism) and the neo-liberalism.³⁹ Then, the third refers to an emerging European approach to civil society, characterised by a quite evident cosmopolitan trend.

It follows a brief description of the main instances proposed by the three approaches. In the next section, I will introduce a comprehensive understanding of civil society able to include all the instances proposed by contemporary authors. It will constitute the starting point for a normative proposal of civil society.

*Post-colonial approach to civil society*⁴⁰

A first approach to civil society is the “post-colonial.” It offers a cultural-based version of civil society. The authors of the post-colonial approach emphasise the limits of a western-oriented notion of civil society, as postulated by the modern thinkers Locke, Ferguson, Smith and Hegel. Civil society, outside the West, cannot be easily identified with a sphere of private interests and individual freedom based on voluntary and autonomous associations. Only in a few big cities, it is possible to identify a sphere of civil society as conceived in western tradition.⁴¹ In general, the liberal state in these contexts is simply an export of Western colonialism that lacks the pluralistic forms of civil society that check its power in the West, then the question arises whether associational forms exist outside the Western tradition, which can fulfil this role.

The neo-modern myth⁴² of civil society assumes new connotations and nuances and it leads post-colonialist scholars to discover “a chronologic epic of ideas and authors”⁴³ of a purely non-western civil society. According to this approach, starting from Gramscian reminiscence about the role of culture in constructing the identity and consensus, a counter-hegemonic (post-colonial) version of civil society has emerged. Despite the differences among the cultural backgrounds of the authors, this “cultural sensitive” acceptance of civil society would represent an alternative to western theorisations. The core idea of many of these authors

³⁸ Cohen, J., Arato, A., *Civil Society and Political Theory*. (p. 29).

³⁹ See Kaldor, M. (2003). *Global Civil Society: An Answer to War*. Cambridge, Polity, (pp.8-9 and 38-44).

⁴⁰ With regard to this approach see: Nawaf, S. (2002), *Civil Society in the Arab World, the Historical and Political Dimension*. Cambridge MA: Harvard University, Occasional Paper. Comaroff, J & Comaroff, J. (1999). (Edited by). *Civil Society and the Political Imagination in Africa*. Chicago: University Press, Comaroff, J & Comaroff, J. (1993). (Edited by). *Modernity and its Malcontents, Ritual and Power in Postcolonial Africa*. Chicago: University Press. Lewis, D. (2001). *Civil society in non-Western contexts: Reflections on the “usefulness” of a concept*. London: LSE Working papers 13. Norton, A.R. (1995). (Edited by). *Civil Society in the Middle East*. New York: E.J. Brill. Sajoo, A., B. (2002). (Edited by). *Civil society in the Muslim World, Contemporary Perspectives*, London: I. B. Tauris Publishers. Mamdani, M. (1996). *Citizen and Subject, Contemporary Africa and the Legacy of Late Colonialism*. Princeton NJ: Princeton University Press. Kaviraj, Suddipta and Khilnani, Sunil (2001). *Civil Society: History and Possibilities*. Cambridge UK: University Press. Obadare, E. (2004). The alternative Genealogy of Civil Society and its Implication for Africa. *Africa Development*, vol. XXIX, N° 4, 1-8.

⁴¹ Mamdani, M. (1996). *Citizen and Subject, Contemporary Africa and the Legacy of Late Colonialism*.

⁴² Comaroff, J & Comaroff, J. (1999), *Civil Society and the Political Imagination in Africa*. (Introduction).

⁴³ *Ibidem*.

resides in considering the existence of traditional groups and organisations, based on religion, ethnicity or kinship, as an alternative public space. In this context, instead of the notions of voluntarism and autonomy the ascriptive criteria of kinship or religion⁴⁴ are applied, producing a “mixture of communitarian corporatism and libertarianism.”⁴⁵

The crucial condition for maintaining the existence of this public space is the inclusion of the tolerance. For some islamists, for instance, the model of the Ottoman Empire and its *millet* system would represent the best example in this way.⁴⁶ A way in which tolerance can be realised in the public space is through the effort of public intellectuals. Many scholars, arguing the post-colonial version of civil society, entrust a relevant role to intellectuals.⁴⁷ As in the Gramscian understanding, intellectuals with their critical function should offer a direction to political, religious and ethical issues within and beyond national frontiers. According to some scholars, their role is fundamental not only in order to challenge the abuse of power, but also in order to offer a more tolerant interpretation of religious, cultural and moral precepts.

*Neo-liberal approach to civil society*⁴⁸

The second approach to civil society can be defined “neo-liberal version.” Political scientists and sociologists have developed such a version by taking US system as model, during the last two decades. These scholars emphasise the relevance of an emerging “Third Sector”, distinct from both State and Market, in the structure of contemporary democratic states. They stress the role of the non-profit organisations in providing social service and a check against the abuses of state.⁴⁹ In their view, non-profit sector can be described as a “*lassaiz-faire* politics,”⁵⁰ a sort of market in politics.

The core idea is to consider the emergence of a strong voluntary non-profit sector as a way for creating comparative advantages for the other sectors, market and state. On one hand, a neo-liberal perspective of minimising the role of state in order to have more efficiency in the market emerges. On the other, this approach emphasises the Tocquevillian idea of the fundamental link between the existence of a strong associational and voluntary sector and the democratic functioning of contemporary states.⁵¹ This approach considers the Third Sector not as an isolated phenomenon floating freely in social space but as a fundamental part of the

⁴⁴ See Obadare, E.(2004). The alternative Genealogy of Civil Society and its Implication for Africa.

⁴⁵ Zubaida, S, *Civil Society, Community and Democracy in the Middle-East*, in Kaviraj, Sudipta and Khilnani, Sunil (2001). *Civil Society: History and Possibilities*. (p. 239).

⁴⁶ Kaviraj, Sudipta and Khilnani, Sunil (2001). *Civil Society: History and Possibilities*.

⁴⁷ Arkoun M., *Locating Civil Society in Islamic Contexts*, in Sajoo, A., B. (2002). (Edited by). *Civil society in the Muslim World, Contemporary Perspectives*.

⁴⁸With regard to this approach see: Anheier, H. E. (2000). *Managing Non-profit Oorganisations: Toward a New Approach*. London: LSE CCS Working papers collection, n.1. Fukuyama, F. (1999). *Social Capital and Civil Society*. Washington, D.C: IMF, Seminar for the Institute of Public Policy, George Mason University, October 1. Putnam, R.D. (1995). Bowling alone: America’s declining social capital. *Journal of Democracy*, 6:1, 65-78. Putnam, R.D., Pharr, S.J. (2000).(Edited by). *Disaffected Democracies, what’s troubling the trilateral countries?*. Princeton NJ: Princeton University Press. Salamon, L. M.& Anheier, H. (1997).*Defining the Nonprofit Sector*. Manchester: Manchester University Press. Salamon, L. M., Sokolowski, S.W., Lis, R. (2003). *Global Civil Society, An Overview*. Baltimore:Center for Civil Society Studies Institute for Policy Studies, The Johns Hopkins University. Salamon, L. M. & Anheier, H. (2000). *Social Origin of Civil Society, An Overview*. Baltimore: Working Paper of John Hopkins Comparative non-profit sector project.

⁴⁹ Kendall, J., and Knapp, M. (2000). *The third sector and welfare state modernisation: Inputs, activities and comparative performance*. London: LSE Civil Society Working Paper, n.14. Salamon, L. M.& Anheier, H.(1997). *Defining the Nonprofit Sector*. Putnam, R.D.(1995). *Bowling alone: America’s declining social capital*.

⁵⁰ Kaldor, M. (2003). *Global Civil Society: An Answer to War*. (p. 9).

⁵¹ Kaldor, M. (2002). *Civil Society and Accountability*. Human Development Report Office, UN: Occasional paper, Backround paper for HDR 2002. (p.8)

social system of reference, closely connected to the economic and political dynamics.

Related to the notion of *third sector*, a conception of social capital has been developed. According to Putnam, it is possible to consider social capital as “features of social organisation such as networks, norms, social trust that facilitate coordination and motivation for mutual benefit.”⁵² In this perspective, social capital is conceived as the economic outcome of the third sector, the sector of the relational networks. As Putnam and Fukuyama have argued, social capital encourages the emergence of social trust, which represents a fundamental resource for modern liberal democracies. On one hand, in fact, it powerfully influences the quality of public life and the performance of the social institutions. On the other, it is a crucial element in order to improve the efficiency of market, through the reduction of the transaction costs associated with formal association mechanisms.

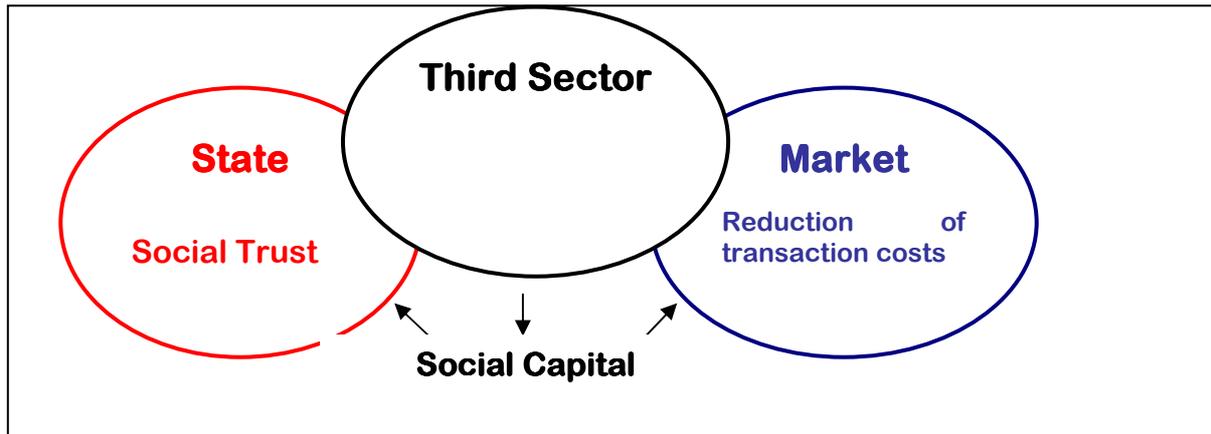


Table 2_ Social Capital

*Cosmopolitical approach to civil society*⁵³

A last emerging version of civil society is what I have defined “cosmopolitical approach”. This approach has recently been developed by European scholars. It combines features of political philosophy with international relations theories. In this third understanding, the new idea of civil society appears to be connected to the political sphere. In a context in which national-states does not have any longer the authority for defending their citizens, new civil society movements and organisations would represent a sort of interface between the individual and the State.

According to these scholars, the current *renaissance* of civil society represents a new

⁵² Putnam, R.D.(1995). *Bowling alone: America’s declining social capital*. (p.67).

⁵³ With regard to this approach see: Anheier, H.E., Kaldor, M. and Glasius M. (eds) *Global Civil Society 2001-2006*. Oxford: Oxford University Press. Boaventura de Sousa Santos & César A. Rodríguez-Garavito (eds). (2005). *Law and Counter-Hegemonic Globalization: Toward a Subaltern Cosmopolitan Legality*. Cambridge: Cambridge University Pres. Chandhoke. N. (2005) How Global is Global Civil Society? *Journal of World-System Research*. XI, 2, 355-371. Chandler, D. (2005) *Constructing Global Civil Society*, Palgrave Macmillan Edition (introduction). Cox, R. W., *Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order*. Falk, R.(1995) *On Humane Governance: Towards a new global Politics*, University Park, P.A.: Pennsylvania State University Press. Falk. (2002). *Trends towards Transnational Justice: Innovations and Institutions* Human Development Report Office,UN: Occasional paper, Background paper for HDR 2002. Habermas, J. (2001). *Post-national Constellation*. Cambridge MA: MIT Press Edition. Kaldor, M. (2003). *Global Civil Society: An Answer to War*. Kaldor, M., Joenniemi, P., Lodenius, L; Oberg, J. (1999). *From Peace Movements to Cosmopolitan Networks*. *Peace*. Work for the Next Millennium. R. A. I. P. I. Jasson. Kaldor, M. (2003). The idea of global civil society, *International Affairs* 79, 3, 583-593. Kaldor, M., (2002). *Civil Society and Accountability*. Keane, J.(2003). *Global Civil Society?*, Cambridge: Cambridge University Press. Keck, M.E. and Sikkink, K. (1998) *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca Cornell University Press.

crucial political paradigm.⁵⁴ They date back this revival to the democratic transitions of the 80s in Eastern Europe and Latin America.⁵⁵ In these two regions, the democratic transition was characterised by the emergence of a new type of social movements and non-governmental organisations. In both cases, civil society conducted a sort of “war society”⁵⁶ against two different enemies, totalitarianism in Europe and military dictatorships in Latin America. Although there was no communication between them, these movements fought against the regimes emphasising their autonomy and their civic efforts to create “islands of civil engagements.”⁵⁷ A new strategy of struggle was elaborated based on new values: peaceful opposition and human rights protection. Civil society, in this perspective, implies pluralism, mutual trust, solidarity and co-operation, but moreover it can provide a framework within which the resistance of the individual against the State can be mobilised.

In this perspective, civil society has a normative content: it is conceived as a project to be realised at a global level. Global civil society has become the paradigm for a new approach to politics in the post-Westphalian era. New non-state-based and border-free expressions of political community challenge territorial sovereignty as the exclusive basis for political community and identity. In this perspective, theorists conceive of Global Civil Society as a normative category that should be promoted and fostered on a global scale.

This notion recovers from the Modern tradition its moral content. The global reproduction of civil society is understood as able to provide the agency necessary to the democratisation of the institutions at the global level. It embodies the liberal values in the trans-national dimension, “global civil society [...] is about ‘civilising’ or democratising globalisation, about the process through which groups, movements and individuals can demand a global rule of Law, global justice and global empowerment.”⁵⁸ It has emerged a new notion of a global/trans-national justice based on a trans-national moral solidarity that links individuals, non-governmental organisation, social movements and global institutions. Thus, next to the modern idea of freedom, a broader view of civil society as source of global justice *from below* is emerging.

More than a global representative democracy, this approach endorses a notion of global civil society as “functional equivalent”⁵⁹ to democracy.⁶⁰ As Kaldor states, “Global civil society cannot claim to ‘represent’ the people in the way that formally elected states can and do.[...]NGOs have a voice not a vote. But the fact that global civil society is in principle voluntary and open to all individuals offers the possibility of participation and deliberation at global levels.”⁶¹

⁵⁴ See Kaldor, M. (2003). *Global Civil Society, an answer to war*. Falk, R. (1995). *On Humane Governance: Towards a new global Politics*. Falk. (2002). *Trends towards Transnational Justice: Innovations and Institutions*. Cox, R. W. *Civil Society at the Turn of the Millennium: Prospects for an Alternative World Order*.

⁵⁵ See Huntington, S. (1991). *The Third Wave: Democratization in the Late Twentieth Century*, Norman: University of Oklahoma Press. Kaldor, M. (2003). *The idea of global civil society*. Kaldor, M. (2003). *Global Civil Society: An Answer to War*. Michnik, A. (1985) 'The New Evolutionism' in *Letters from Prison and Other Essays* California: California University Press.

⁵⁶ Kaldor, M, *The idea of global civil society*, (p.586).

⁵⁷ *Ibidem*.

⁵⁸ Kaldor, M. (2003). *Global Civil Society: An Answer to War*. (p.12).

⁵⁹ Rosenau, J., *Governance and Democracy in a Globalising World*, in Archibugi, D., Held, D. and Kohler, M., Eds. (1998). *Re-imagining Political Community: Studies in Cosmopolitan Democracy*. Stanford, CA: University of Stanford Press.

⁶⁰ See also, Kaldor, M. (2003). *Global Civil Society: An Answer to War*.

⁶¹ Kaldor, M. (2003). *Global Civil Society: An Answer to War*. (p.140-41).

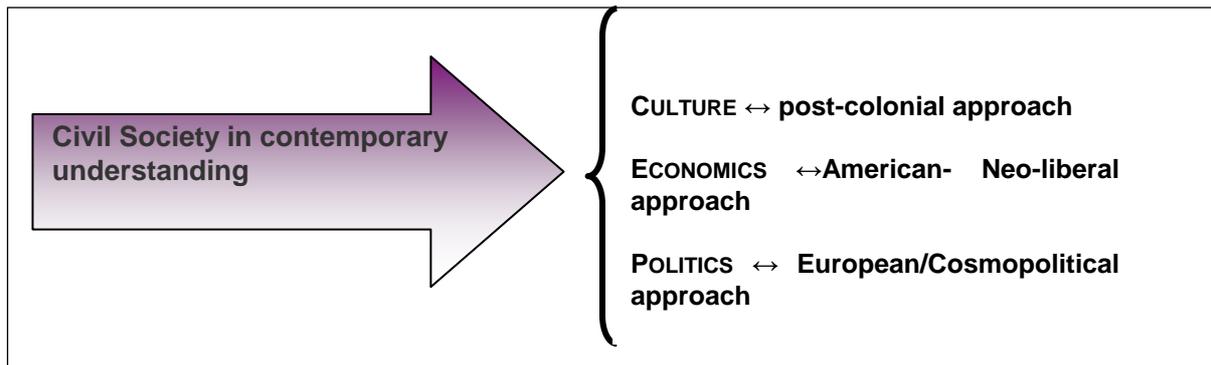


Table 3 – Contemporary approaches to Civil Society

A comprehensive understanding of civil society: a normative proposal

In the present work, I suggest a notion of civil society as the sum of the three categories: Culture, Economics and Politics. The normative idea of civil society in contemporary multi-structured societies depends crucially on the coexistence of, and the equilibrium among, these three categories.

In order to reconstruct the comprehensive notion of civil society, it is useful to come back to the modern tradition. In the previous section, I have identified the domains of civil society. I have concluded that the issue of freedom implies three dimensions for civil society in the political philosophical understanding: Culture, Economics and Politics. These three domains have to be in equilibrium. The equilibrium is fundamental in order to realise freedom, and for maintaining civil society as a realm distinct from the state. Furthermore, this notion of equilibrium allows a pluralistic coexistence among individuals based on the recognition of both individual and collective claims. The best way for clarifying this point is to refer to Hegelian understanding of civil society.

In paragraph 182 of *Philosophy of Rights*, Hegel introduces his idea of civil society:⁶²

The concrete person, who as particular is an end to himself, is a totality of wants and a mixture of necessity and caprice. As such he is one of the principles of the civil society. But the particular person is essentially connected with others. Hence each establishes and satisfies himself by means of others, and so must call in the assistance of the form of universality. This universality is the other principle of the civil society.

Hegel recognises three institutions of ethical life: family, civil society and the state. The Hegelian formulation of civil society includes cultural, political and economical features in a peculiar way. Civil society includes three parts: the system of needs (*Bedürfnisse*), the administration of justice (*Rechtsflege*), the police (*Polizei*), and corporation (*Korporation*). Let's focus on the first and the third part.

The system of needs represents the economic side of Hegelian Civil Society (§189).

The particularity, which is in the first instance opposed to the universal will (§60), is subjective want. It gets objectivity, i.e., is satisfied (a), through external objects, which are at this stage the property of others, and the product of their needs and wills, and (b) through active labour, as connecting link

⁶² See Hegel, G.W.F, *Grundlinien der Philosophie des Rechts* (published in 1820) translation in English, *The Philosophy of Right*, by S.W.Dyde, originally published in English in 1896, London: Prometheus Books.

between subjective and objective. Labour has as its aim to satisfy subjective particularity. Yet by the introduction of the needs and free choice of others universality is realized. Hence rationality comes as an appearance into the sphere of the finite. This partial presence of rationality is the understanding, to which is assigned the function of reconciling the opposing elements of the finite sphere.

As Rawls argues, the system of needs is the “economy in which individuals exchanges goods and services to fulfil their needs and wants [...]. Individuals and families recognize that they are interdependent.”⁶³. According to Hegel (§191),

The satisfaction of want and the attainment of means thereto become a realized possibility for others, through whose wants and labour satisfaction is in turn conditioned. The abstraction, which becomes a quality of wants and means, helps to determine the mutual relation of individuals. This general recognition of others is the element which makes the isolated abstract wants and means concrete and social.

With regard to the third part, Hegel operates a distinction between two categories: police and corporation. (Addition §237).

Police control and provision are intended to intervene between the individual and the universal possibility of obtaining his wants. It takes charge of lighting the streets, building bridges, taxation of daily wants, even of health. Two main views stand out at this point. One view is that it falls to the police to look after everything the other that the police should not interfere at all, since every one will be guided by the need of others. The individual, it is true, must have the right to earn his bread in this or the other way, but on the other hand the public has a right to ask that what is necessary shall be done.

On one hand, *Polizei* implies something wider than the present idea of police. *Polizei* derives from the Greek *πολιτεία* (*politeia*),⁶⁴ and it is more than law enforcement; it covers a wide range of activities that constitute the political life of individuals in civil society, “[...] it covered [...] also the fixing of the prices of necessities, the control of quality of goods, the arrangements of hospitals, street lighting, and much more.”⁶⁵ The administration of justice and the police have a fundamental political function on Hegel’s view: they represent the political constraints that allow self-interested individuals to overcome the system of needs creating a “formal universality”.

On the other hand, Hegel’s corporation is a further instance of particularity (§ 255).

As the family was the first, so the corporation, grounded upon the civil society, constitutes the second ethical root or basis of the state. The family contains the elements of subjective particularity and objective universality in substantive unity. Then, in the civic community, these elements are in the first instance dissociated and become on the one side a particularity of want and satisfaction, which is turned back into itself, and on the other side abstract legal universality. The corporation joins these two in an internal way, so that particular wellbeing exists and is realized as a right.

In the notion of corporation, Hegel includes organisations of groups of workers, religious and cultural associations, as well as town councils. It is neither a trade union nor a genuine political category. It also covers the cultural side of the organisation in civil society. Rather than denying the individualistic content of civil society, such a notion of corporation allows conceiving of a specific kind of individual identity that involves a plurality of cultural attributions.⁶⁶ In civil society individuals share some of these cultural attributions, because

⁶³ Rawls, J., *Lectures on the History of Moral Philosophy*, (p. 344).

⁶⁴ *Ivi*.

⁶⁵ *Ivi*, p. 345.

⁶⁶ See Sen, A., *Identity and Violence*. See also the idea of “identification” proposed by Maffettone in his essay *Psiche e Polis*, in, Maffettone, S. (2006). *La Pensabilità del Mondo, Filosofia e Governanza Mondiale*, Milano: Il Saggiatore.

individuals are embedded in a specific context with a common historical and ethical background. However, the individualistic presuppositions of the system of needs guarantee the intrinsic plurality of these attributions. In corporation individuals perceive themselves as such through the *recognition* of their different cultural attributions. Corporation represents an intermediate step between the “competitive individualism” of the system of needs and the “formal universality” of the administration of justice.

Hegel’s corporation seems to recover the content of Montesquieu’s idea of “intermediary bodies.”⁶⁷ As the “intermediary bodies”, corporations are a means of preserving a sense of place, of local, of religion and identity.⁶⁸ But, while Montesquieu’s intermediary bodies are conceived in the framework of the state, corporation is an attribution of civil society. In this way, the judiciary, the police and corporation make Hegel’s idea of civil society of great importance. As Rawls argues,

[...] civil society, as [Hegel] thought of it, was new to the modern state and characterised modernity itself. His view is distinctive in that he considers many aspects of what had been regarded as elements of the state, as actually elements of civil society. See for example [...] the judiciary, the police and corporation. The *political* state is separate from civil society, while both together are the state in the wide sense.⁶⁹

The idea of civil society, proposed by Hegel, appears as equilibrium among conflicting forces and interests. Hegel aims at creating a stable form of reflective social and ethical life. Again, on Rawls’s account, “civil society and its institutions have an important role in making possible a stable form of reflective social life”.⁷⁰ This stability depends crucially on the equilibrium among forces, which represents the only guarantee for freedom. According to Hegel, the tension among the three dimensions guarantees the realisation of individual freedom and the separation between civil society and state. Furthermore, Hegelian civil society overcomes the classical controversy between individualism and collectivism. In civil society’s arena the individualistic assumption of freedom does not deny that individuals are embedded in historical and social contexts. In this contexts, the balance between individual identities and collective *attributions* guarantees pluralism.

Coming back to the three approaches analysed before, they suggest three different dimensions for civil society in the political realm. It is possible to synthesise three *types* of civil society deriving from these approaches:

1. **Culturally oriented** – where individual freedom is sacrificed for collective identity.
2. **Economically-oriented** – where civil society is a depoliticised and rational private sphere. Individual freedom is preserved in such an enlarged private sphere.
3. **Politically-oriented** – where the universalistic notion of individual freedom risks to deny any space for collective claims. In this case there is a clash between universal values and the possibility of a pluralistic integration, based on the recognition of different collective affiliations.

On this view, each of these cases represents a “degeneration” of the normative model of civil society. In these cases, the lack of “stable form of reflective ethical and social life” appears. The overcoming of one feature upon the others aims at denying civil society itself. The paradoxical outcome of these models is the emergence of features that tend to overlap with the corresponding model of state. In Hegel’s vocabulary, the dialectic progression of family, civil society and state is substituted by two forms of ethical life: family and state.

⁶⁷ Montesquieu, C.L., (*De l'esprit des lois*) *The Spirit of the Law*. T Nugent Ed. (1966). New York: Hafner.

⁶⁸ See also, Mosher, M., A. (1984). The particulars of a Universal Politics: Hegel’s Adaptation of Montesquieu’s Typology. *The American Political Science Review*. Vol.: 78, n.1, 179-188.

⁶⁹ Rawls, J., *Lectures on the History of Moral Philosophy*. (p. 345).

⁷⁰ *Ivi*, p. 346.

Human Rights, Conflicts and the idea of equilibrium

With reference to the present research, it is important to clarify some issues concerning the way in which it is possible to translate Hegelian system of civil society in contemporary words. Firstly, it seems to be implausible to apply categories historically defined, such as the system of needs, the police and corporation and the judiciary, to contemporary contexts. Nevertheless, as shown before, it is possible to draw economical, political, and cultural content from these categories.

A further element concerns the global/ trans-national dimension of contemporary civil society. However, the clear distinction, made by Hegel, between civil society and state allows conceiving a local civil society as well as a trans-national civil society; so the issue will concern the differences to achieve the equilibrium.

Thus, the last issue concerns the idea of equilibrium. It is clear that several points of equilibrium are possible. However, only one point can guarantee the possibility for civil society to be the locus for reconciliation of individualistic and collective claims. It implies that all three forces have to converge at a certain level, in which it is possible to guarantee individual freedom, social and economic rights and a pluralistic integration that takes seriously a set of collective claims perceived as fundamental by society.

Coming back to the nexus civil society-conflicts-human rights, this approach introduces, at least, three relevant issues. First, more than an “un-civil society”, it is possible to have experience of contexts in which society does not achieve the equilibrium that makes it “civil”, as postulated by the theory. This achievement is relevant not only in order to exclude violent societies or groups from the definition of “civil society;” but it also allows understanding why in some contexts the supposed “good” actors seem to have a negative, or an ineffective, impact on conflict resolution. In situations of conflict, when a state does not exist or it is failing, the boundaries between society’s actors and groups (violent and non-violent) become even more indistinct,⁷¹ high levels of fragmentation and discrimination emerge. In these contexts, civil society occupies a larger space and the condition of equilibrium among forces becomes crucial in ensuring a bottom-up approach to conflict resolution and in constructing a legitimate political authority, able to guarantee individual freedom, social and economic rights and pluralist integration. A second outcome of the normative idea concerns the way in which the conflict resolution becomes possible. According to this view, in contexts of conflict the intervention of civil society has to establish a balance among the categories. This means that civil society’s efforts regard sectors and activities that during the conflict were neglected and marginalised. As far as my research is concerned, when the conflict has religious and ethnic connotations, the role of civil society is essential in order to reduce conflictuality among different cultural groups. In this context, civil society has to sustain a serious engagement among different cultural groups, in political and economic activities, that lead to increased understanding, dialogue and respect. A last issue concerns civil society’s impact on human rights. The normative assumption of pluralism introduces a peculiar attitude of civil society toward human rights. It ensures to achieve an appropriate balance between individual and collective rights.

In context of ethno-religious conflicts, a complex issue concerns the identification of rights to be protected: are they collective or individual rights?⁷² From a philosophical point of

⁷¹ See, Marchetti, R. & Tocci, N. *Conflict Society and Human Rights*, (p.5).

⁷²About this point see, Jovanovich, M., A. (2005). Recognising Minority Identities Through Collective Rights. *Human Rights Quarterly*, vol. 27, 625-651. Jones, P. (1999). Human Rights, Group Rights and People’s Rights. *Human Rights Quarterly*, vol. 21, 80-107.

view, such a question poses serious challenges to the idea of rights, as developed in western tradition. The problem is to understand whether moral and legal rights of a group can be considered as inherently collective or can be reduced to the individual moral claims of its members. The debate is developed around two extreme positions: on one side, ontological individualism, which states that all groups are reducible to its members, on the other side value-collectivism, which asserts that a collective entity can have value independently of its contribution to the well-being of individuals and human beings. These two approaches are grounded on opposed views of culture and collective identity. In this essay, I cannot further develop this issue about the meaning of cultural identity, and its implications on the idea of collective rights. At this level, I believe it is important to highlight the empirical evidence regarding violation of collective rights in ethno-religious conflicts. As Tibor Váradi highlights referring to the recent Balkan conflicts, “it is abundantly clear that the targeted victims are precisely the minority groups, rather than citizens and individuals.”⁷³

It implies that civil society even though preserving a universalistic acceptance of human rights, based on the individualistic, addresses an idea of *procedural inclusiveness*, based on the assumption that values as well as rights reflect the particular socio-cultural traditions from which they derive.⁷⁴ As reminded in the last section, the idea of equilibrium introduces an idea of identity based on a plurality of attributions. In civil society individuals perceive them-selves as such through the *recognition* of their different cultural attributions. This process of recognition of individual identity, through the intrinsic plurality of collective attributions, guarantees an approach to rights “cultural sensitive”. Although recognising a certain priority to a set of universal freedoms and rights, such an approach introduces an extensive notion of “human dignity”⁷⁵ compatible with different cultural and social traditions and claims.⁷⁶

Conclusive remarks

This essay presents a proposal for a normative understanding of civil society. It suggests to reconstruct the argument as follows. Civil society is the arena of the associational life operating outside the state, the family and the market. It comprises three crucial dimensions: Politics, Culture and Economy. These three dimensions are combined in a peculiar way that makes of civil society the realm of conflicting interests and values. In such a context, the equilibrium among these three categories guarantees the realisation of freedom and the respect for the condition of pluralism within society.

The essay is part of a wider research project named SHUR. As reminded in the introduction, SHUR program aims at the understanding the complex dynamics related to the intervention of civil society in “new conflicts”, with a particular focus on civil society’s

⁷³Várady, T.(1997). Minorities, Majorities, Law, Ethnicity: Reflections of the Yugoslav Case. *Human Rights Quarterly*, Vol. 19, 9-54.

⁷⁴About the idea of procedural inclusiveness see the essay Orentlicher, D., *Relativism and Religion*, in Ignatieff, M. (2001). *Human Rights as Politics and Idolatry*. Princeton and London: Princeton University Press.

⁷⁵Donnelly, J. (1982). Human rights and Human Dignity: An analytic Critique of Non-Western Human Rights Conception. *Political Science Review*, 76, 303-16. Donnelly, J.(2007) The relative Universality of Human Rights. *Human Rights Quarterly*, vol. 29, p.281-306.

⁷⁶ See also Kymlicka, W.(1995). *Multicultural Citizenship*. Oxford: Oxford University Press.

impact on human rights. In such a context, the notion of civil society we are looking for has to be coherent with SHUR's premises. In other words, the idea of equilibrium aims at the solving some relevant issues deriving from such premises.

The first issue concerns the context of ethnical religious conflicts. This kind of conflict is defined as "a struggle between peoples, self-defined in ethnic terms."⁷⁷ In opposition to peace, conflict involves relevant implications in terms of state legitimacy and regarding the presumed relation between democracy and civil society.⁷⁸ In such a context, in fact, it becomes difficult to recognise a legitimate authority. Very often a state does not exist or it is failing and the boundaries between society's actors and groups (violent and non-violent) become even more indistinct. Sometimes the absence of democratic procedures makes room for authoritarian rules, while, in other cases, the lack of democratic consensus makes stronger the conflictuality among different groups. In these contexts, can civil society be seen as a precondition for restoring a legitimate authority? If so, at what condition? In the essay I propose a notion of civil society able to guarantee a bottom-up approach to conflict. The idea of equilibrium, intended as fundamental condition for a normative interpretation of civil society, introduces three relevant implications. First, although this approach proposes a notion of civil society independent of democratic procedures, the condition of equilibrium guarantees an appropriate balance among rights, individual freedom and social and economic rights and pluralism. Second, it implies a definitive exclusion of the un-civil actors from the realm of civil society. As reminded before, I propose to distinguish a normative understanding of "civil society", granted by the idea of equilibrium, from a mere idea of society as multitude. Finally, it suggests a clear strategy for civil society in conflict resolution, based on the idea of the balance among political economic and cultural forces.

The second issue refers to the very idea of human rights. According to the general framework of the program, systematic violation of human rights represents a key-factor in the dynamics of ethno-religious conflicts. Furthermore, the protection of human rights by civil society turns out to be the crucial factor for building human security and for constructing peace. These assumptions introduce two kinds of problems. First, it becomes necessary to introduce a notion of human rights relatively independent of democracy.⁷⁹ The condition of protection of human rights in context of conflict imposes to link a normative notion of civil society, in which certain rights are protected, with a minimal theory of human rights, compatible with conflict contexts, able to justify the existence and the inviolability of certain fundamental rights. The second problem concerns the identification of rights to be protected. On one hand, the idea of separation between human rights and democracy implies a minimal understanding of human rights, compatible with an idea of human dignity. Such an approach conceives of human rights as a peculiar type of rights: namely, the rights one holds by virtue of being a person. It means that human rights, *prima facie*, have to be conceived as naturally inhering to the human person.⁸⁰ On the other hand, as reminded in the last section, it is important to highlight the empirical evidence regarding the violations of collective and group

⁷⁷ Marchetti, R. & Tocci, N., *Conflict society and Human Rights*. (p. 8).

⁷⁸ See Pia, E. & Diez, T. *Conflict and Human Rights: a Theoretical Framework*. Rome: Shurwp01/07. Marchetti, R. & Tocci, N., *Conflict society and Human Rights*.

⁷⁹ Regarding the debate about the separation between human rights and democracy and minimalist approaches to human rights, see also Cohen, J. (2004). Minimalism About Human Rights: the best we can hope for. *Journal of political Philosophy*, vol.12, 2, 190-213. Ignatieff, M. (2001). *Human Rights as Politics and Idolatry*. Sen, A. (1999). *Development as Freedom*, NY: Alfred A. Knopf. Sen, A. (1999). Democracy as a Universal Value, *Journal of Democracy*, 10, 3-17. Beitz, C., R. (2001). Human Rights as a Common Concern. *The American Political Science Review*, vol.95, 2, 269-282. Langlois, A., J. (2003), Human Rights without Democracy? A critique of Separationist Thesis. *Human Rights Quarterly*, vol.25, 990-1019.

⁸⁰ See, Donnelly, J. (1982). Human rights and Human Dignity: An analytic Critique of Non-Western Human Rights Conception.

rights in contexts of ethno-religious conflicts. Regarding to this problem, the idea of equilibrium guarantees the involvement of a notion of human dignity compatible with some collective claims perceived as fundamental by society.

As shown in the last section, the condition of equilibrium recovers some Hegelian features. Hegel plays a fundamental role for a number of reasons:

1. Civil society without state. Civil society appears as an intermediate step of the ethical life distinct from both family and state.

2. Taking collective claims seriously. On this perspective, civil society is the product of a specific cultural and historical development, which corresponds to the emergence of different collective cultural identity attributions.

3. Civil society as the realm of individual freedom.

Civil society, as proposed in the present work, intends to be a liberal reading of the Hegelian civil society. My aim is to save some Hegelian features that I take as necessary for conceiving of civil society as an intermediate dimension between “family” and “state”. In such a context, civil society is conceived as a bearer of specific cultural and historical developments, and a bearer of individual rights. Instead, the liberal account makes this framework individual-oriented, more than collectivistic-oriented.

This use of civil society leads my proposal out of a liberal-universalistic understanding of politics. Apparently, the choice of Hegel could be useful for a descriptive analysis, because of its historical focus. It is clear that this choice reduces the universality of the proposal. But, the idea of equilibrium is definitely normative and universal. Probably, the point of equilibrium, in this Hegelian understanding, can be different in different contexts. But the conditions for equilibrium are undoubtedly universal: individual freedom, social and economic rights and pluralist integration.