

Civil Society and Its Avatars

What Happened to Freedom and Democracy?

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Analysing the debate around state-civil society relationship in modern western and Indian political discourse, the paper points out the hiatus between the 18th and 19th century political thinking and later 20th century political thought. The second half of the 20th century is characterised by a loss of faith in the institutions of the state and looks towards civil society to preserve essential human and democratic rights. As against this, the paper advocates a return to an earlier rights-based conception of civility by enforcing universal laws through the instrument of the state. Since the state alone can create conditions necessary to protect the institutions of civil society from internal disruptions, the paper argues against detachment of civil society from the state. Instead, the institutions of civil society are very much part of democratic constitutional state, which alone will ensure social equality and non-discrimination along with individual liberty.

IN contemporary social and political theory civil society is almost always associated with democracy. Yet, there continue to exist vast differences of opinion about what is civil society and the precise manner in which it is linked to democracy. For some theorists civil society represents autonomous associations that exist independently of the state; associations which curtail the power of the state while simultaneously allowing individuals and groups in society to manage their affairs directly. By this reckoning civil society is another name for voluntary associations of all types, from football associations and theatre groups to trade unions, churches and caste panchayats. Irrespective of the goals that these associations pursue and without consideration to the way they impact upon the freedom and rights of all citizens, all forms of collectivities are seen as agencies of civil society and weighted positively. What is perhaps equally problematic is that in this framework proliferation of associations and non-government agencies become the hallmark of democracy. Instead of ensuring that the state provides equal rights to all citizens, its retreat from the public arena is presented as being a condition necessary for strengthening and reinventing democracy.

In contrast to this fairly popular conception of civil society there exists another viewpoint: one where the condition of civility is the presence of rule of law. A variety of institutions – from hospitals to schools – that exist outside the state and possess a rational legal structure of organisation constitute the realm of civil society. Here the presence of an open system of stratification along with a stance of neutrality become the primary attributes of civil society. Just why should an open

system of stratification be the distinguishing feature of civil society and not the state? And why should civil society be placed outside the state? These are questions that remain imponderables within this framework. After all democracy challenges existing hierarchies based on status, land and birth, and seeks to institute a more open system based on equal rights of citizenship. Consequently, within a democracy all social and political institutions are expected to abide by this norm of openness. Assuming that civil society heralds the presence of an open and secular system, there is little reason to separate civil society from the state. Why should civil society be placed outside the domain of the state which enunciates the law? Faced with dilemmas of this kind, one needs in fact to ask whether civil society is, or must be seen as, an identifiable zone that lies outside the state? Is it an arena that is equidistant from religious and political institutions? Is it a synonym for voluntary and non-state associations? Is self-management the chief attribute of institutions of civil society? Is civil society the arena of struggle and participation? Above all, why is civil society considered to be an integral and indispensable aspect of democracy? These are questions that need to be addressed if we are to make sense of the concept of civil society and to understand its privileged status within democratic theory.

INDIVIDUAL RIGHTS AS THE CONDITION OF CIVILITY: LOCKE AND HEGEL ON CIVIL SOCIETY

The term civil society became a part of the general political discourse in the 16th and 17th century Europe. At this time

theorists of democracy invoked this concept to define a democratic form of government rooted in the rights of citizens. In the 13th century when the established Roman Catholic Church exercised considerable hegemony over social and political life, the concept 'societas civilis' was coined to depict a zone which was free from papal influence, and was governed by laws that were not of divine origin. As such, civil society symbolised the autonomy of the temporal realm in relation to the ecclesiastical. Within civil society people had the right to choose their king and be governed by laws that pursued the minimum shared interests of the people [Colas 1977: 9-21]. At this stage, civil society heralded the process of secularisation which paved the way for the construction of a democratic polity. It questioned the centrality that was previously accorded to religious institutions and religious explanations, and allowed for the emergence of an alternative pattern of society and government. Later theorists built upon this conception and by the 17th century civil society came to designate a distinct form of political society – one in which the rights of individuals received primacy over all else. This conception of civil society emerged most forcefully in the writings of John Locke, and it formed the basis of much of the subsequent thinking on civil society and democracy.

Writing in the late 17th century, Locke differentiated civil society both from state of nature as well as a political society. At a general level Locke maintained that civil society comes into existence when men, possessing the natural right to life, liberty and estate, come together, sign a contract, and constitute a common public authority. The public authority, or the supreme

sovereign established through a voluntary contract, has the right to promulgate and administer laws that are required to exercise and enjoy rights that are given to men by nature. Locke contrasts this civil society with the state of nature: in the latter, men have equal natural rights but there is no legal authority that can uphold these rights and punish its offenders. Since the natural state of human existence lacks rules and institutions that secure the freedom of rights – bearing individuals, it represents an uncivil condition.

The existence of a publicly recognised political sovereign, an established system of law and a mechanism for punishing the offenders of that law, constitutes the minimum conditions for the existence of civility in society, but by itself it is insufficient for the emergence of a civil society. For Locke, the presence of law and governance in accordance with law transform a collective body into a political society. However, the existence of civil society requires more than the rule of law. Civil society emerges only when the citizen's right to life, liberty and property is guaranteed by law [Locke 1924: 44-62]. To put the same thing in another way, legal recognition and protection of the natural rights of individuals transform a political society into a civil society.¹ A civil society exists for the sake of securing the rights of men, and within it the actions of the sovereign are supposed to create conditions by which individuals can enjoy their rights and liberty fully. Consequently, a political society in which the basic rights of citizens are not recognised or given priority by the sovereign does not constitute a civil society.

Understood thus, civil society is a specific kind of political society: one where the rights of individuals receive primacy over all else. And it is this principle of 'primacy to rights' that distinguishes civil society from other forms of political society, collective bodies, community institutions and associations. Further, as a collectivity predicated on the principle of individual rights, civil society does not stand outside the state. In other words, it is not a domain external to the state, standing against it or trying to curtail its powers. Instead, the presence of civil society announces the emergence of the modern democratic state. As civil society signifies a collective body that cherishes individual rights and legally protects the freedom of its members, it symbolises a condition that is necessary for the existence of a democratic state.

Standing at the head of the liberal democratic tradition, Locke did not advocate universal adult franchise or equal

citizenship rights. However, his theory provided a principle – namely, the primacy of rights – that was subsequently used to challenge existing patterns of social and political discrimination while simultaneously curtailing the arbitrary use of power by the political sovereign. The emergence of a political society that gives precedence to the natural and inalienable rights of citizens, thus heralded the emergence of a secular democratic state – one where the concern for individual liberty could be combined with social equality.

Locke had conceived civil society as a democratic state in which the rights of individuals receive priority. Writing in the 19th century, GWF Hegel reaffirmed this idea albeit by interrogating the liberal Lockean understanding of freedom, law and state. Like his predecessor, Hegel maintained that civil society represents a system of relations that support and enhance freedom of all. However, he disagreed with Locke's negative conception of law and freedom. According to Hegel, Locke counterpoises individual subjective will to universal law. The latter is presented as being external to the self; that is, as an object that constrains the subjective particular will. Hence, in Locke's writings universality enters only as a "negative category" [Hegel 1953: 33] that limits the self-will; and law appears to be in conflict with subjective will and freedom. Hegel challenges this view by questioning the apparent contradiction between particular will and law. Acknowledging the primacy of the subjective particular, Hegel maintains that the universal (embodied in law) must emerge from self-will. Indeed for Hegel the universal law represents "reflective" or "self-conscious" will.

Beginning with this understanding, Hegel defines civil society as a form of ethical life in which the subjective and the objective co-exist in harmony. This harmony is possible because civil society embodies a system of relations built upon the mutual recognition of the rights of the self and the other. Within civil society the self acknowledges the other, forges a link with it and recognises the rights of each subjectivity – the self and the other. This recognition of rights allows for the construction of a system through which the idea of freedom is actualised in the world. Civil society becomes the objective embodiment of the idea of freedom in the world as it represents institutions and structures that acknowledge the mutual rights of the self and the other.

Seen thus, civil society, for Hegel, is a collective body, or for that matter, any

collective body, whose members are conceived as "self-subsistent persons" [Hegel 1953: 148]. The fact that the members of civil society are, and have the status of, distinct self-subsistent individuals, distinguishes this collectivity from the family. Although there are occasions when Hegel refers to civil society as the "universal family" [Hegel 1953: 148], he maintains that it (civil society) "tears the individual from his family ties, estranges the members of the family from one another..." [Hegel 1953: 148]. Underlining the idea that civil society is neither an expanded family nor an extension of the latter, Hegel argues that civil society does not arise out of natural ties of kinship and community. Instead it develops in the "course of the actual attainment of selfish ends" [Hegel 1953: 123].

Since civil society emerges in the pursuit of individual interests, subjective particularity is retained within it and the universal law emerges as a mode of sustaining that particularity. It is the ability to retain and accommodate the subjective particularity that differentiates civil society, as a form of collective life, from ancient political systems and patterns of organisation. "...[F]or example, the allotment of individuals to classes was left to the ruling class, as in Plato's Republic, or to the accident of birth as in the Indian caste system. Thus, subjective particularity was not incorporated into the organisation of society as a whole; it was not reconciled in the whole, and ...it shows itself there as something hostile, as a corruption of the social order. Either it overthrows society, as happened in the Greek states and in the Roman Republic; or else, should society preserve itself in being as a force or a religious authority, for instance, it appears as inner corruption and complete degeneration, as was the case to some extent in Sparta and is now altogether the case in India" [Hegel 1953: 133]. By comparison, in the modern world where civil society exists, "subjective particularity is upheld by the objective order in conformity with it and is at the same time allowed its rights..." [Hegel 1953: 133]. Rights, in the latter context, are granted to individuals and to corporate bodies that arise out of the voluntary associations of individuals.

Further, as was mentioned earlier, in civil society interaction between individuals is shaped by the mutual recognition of the rights of the self and the other. As such, a system of rights links individuals with each other and one group with another. "My individual rights, whose embodiment has hitherto been immediate and abstract,

now similarly becomes embodied in the existent will and knowledge of everyone, in the sense that it becomes recognised" [Hegel 1953: 136]. One might also add that in civil society the rights of the self are postulated without detriment to the rights of the other and encoded in law. Indeed, the law provides "knowledge of what is right, or more exactly, of our legal rights (*Rechtens*)" [Hegel 1953: 136], and it is through law that the abstract right "steps into a determinate mode of being. It is then something on its own account, and in contrast with particular willing and opining of the right, it is self-subsistent and has to vindicate itself as something universal" [Hegel 1953: 140].

For Hegel, the universal (in this instance, the law), can only be vindicated when it is accepted and endorsed in particular cases. Consequently, for him, the administration of justice constitutes an important moment of civil society. The court of justice exists to ensure that, irrespective of private interests, the abstract right embodied in law forms the basis of individual and collective action in society. Given the significance of this task in the life of civil society, Hegel argues that the members of civil society "have the right in *judico stare* and correspondingly, a duty of acknowledging the jurisdiction of the court and accepting its decision as final when his own interests are in dispute" [Hegel 1953: 141]. In other words, in civil society individuals have an obligation to abide by the decisions of the court because by administering law the courts restore rights to their due position in society. And, it is through the administration of justice that the unity between the subjective particular and the universal is achieved in society.

Within the Hegelian framework, rights come with certain obligations for the self and the collectivity. In the case of civil society, for instance, individual members have rights of their own and at the same time they have an obligation to respect equal rights of other members. This obligation compels them to acknowledge the jurisdiction of the courts and accept the decisions of the latter. Hegel elaborates the theme of rights and accompanying duties by taking the case of a corporation – an institution that symbolises, in Hegel's view, the spirit of civil society. Even though members of the corporation are separate, self-subsistent persons, with the right to life and property, the welfare of fellow associates is the responsibility of each member. In fact, for Hegel, the wealthy have an obligation to assist the poorer members. "Within the Corporation the help which poverty receives loses its

accidental character and the humiliation wrongfully associated with it. The wealthy perform their *duties* to their fellow associates and thus riches cease to inspire either pride or envy..." [Hegel 1953: 154]. On the other side, the collective body as a whole is expected to provide for the livelihood and welfare of all its members: it must "protect its members against particular contingencies: [Hegel 1953: 15] and "provide education requisite to fit others to become members" [Hegel 1953: 15]. "Civil society has the right and duty of superintending and influencing education, inasmuch as education bears upon the child's capacity to become a member of society... Similarly, society has the right and duty of acting as trustee of those whose extravagances destroy the security of their own subsistence or their families" [Hegel 1953: 148].

In general terms it is the responsibility of civil society to ensure that all its members enjoy the "broader freedom and especially the intellectual benefits of civil society" [Hegel 1953: 150]. If it fails to fulfil this duty and sections of the population fall below the minimum subsistence level, then it is the task of public authority and wealthier classes to provide assistance to the former by providing them the opportunity to work. Given these attributes, civil society is a special kind of collective body and the institutions within it, such as, the corporation, are special kind of associative bodies. For one, it is governed neither by kinship ties nor by the blind forces of the market. Instead it represents collective bodies, associations and institutions, that are premised on a system of individual rights. Second, the collective entities of civil society exist to secure the freedom and welfare of its members. Even as they allow for the pursuit of individual needs and desires, they seek to ensure that individual goals are pursued in a manner compatible with the rights of all its members. The civil society exists to protect individual life and liberty and it places an obligation upon its members to share that goal and to act to realise it in society. As such, what binds the members of civil society together are not ties of kinship but the common concern for the welfare and freedom of all.

From the 17th to the 19th century most political theorists regarded the right to property as an essential individual right. Locke and Hegel were no exceptions. Like several of their contemporaries they maintained that it was the concern of civil society to protect property. For both of them freedom meant protection of life, liberty and property. Besides defending an

individual's right to property they also upheld the instrument of contract. According to Hegel, contract, unlike simple ownership of property, was a form of relationship based on the mutual recognition of the freedom of the self and the other. In property ownership or possession there exists only the abstract will; that is, the freedom of a single person related only to himself. On the other hand, in the device of the contract we have a situation where two persons exist in their capacity as owners. Consequently, they need to act in conformity with a common will and without detriment to the rights of either [Hegel 1953: 38-39]. Since contract requires mutual recognition of the rights of the different parties, it had a special place in civil society. The defence of contract in the workplace or market and the accompanying defence of the right to property, in the writings of Locke and Hegel, served the interest of the bourgeoisie. In fact their work seemed to suggest that the instruments that were central to the capitalist mode of production were expressions of freedom and compatible with the concerns of civil society. At times, the primacy accorded to the right to property in civil society reinforced the view that the latter was an expression of the bourgeois order: that is, a system in which a rights-based political institutions were coupled with industrial organisation of capital.

There is of course little doubt that the concept of civil society, as it emerged in the writings of Hegel, was compatible with, if not supportive of, the bourgeois system; but what is equally important is that civil society was not a synonym for free market, unregulated competition or the pursuit of mere profit. Hegel, in particular, was emphatic on this count. He maintained that civil society emerges for the sake of satisfying individual needs. However, when people realise that their needs can only be fulfilled by "means of the others" [Hegel 1953: 123], a system of interdependence develops. Within it, "the livelihood, happiness and legal status of one man is interwoven with the livelihood, happiness and rights of all" [Hegel 1953: 123]. Initially single needs are satisfied through work performed by craftsmen, but as division of labour evolves, manufacturing, or mass-production to satisfy particular needs also grows in society. This, in turn, results in the business of exchange, wherein separate utilities are exchanged primarily through money as it "actualises the abstract value of all commodities..." [Hegel 1953: 132]. Hegel recognised the role of producers

and the business class but he also realised that control by public authority was necessary to ensure a fair balance between the interests of the producers and the consumers. In particular, public authority was needed to defend people's rights as purchasers and for "management of goods inspection" [Hegel 1953: 147]. Above all else, "control from above" [Hegel 1953: 147] was needed to ensure that business is not reduced to "mere self seeking" [Hegel 1953: 147, 153], and that all individuals have the possibility of sharing in the general wealth of society. Consequently, the corporation was regarded as a distinct entity and rights were granted to it, but at the same time, it was expected to function "under the surveillance of the public authority" [Hegel 1953: 152].

For Hegel, police or the public authority was an integral part of civil society and there was no question of civil society functioning without the presence and regulation of that public authority [see Pelczynski 1976: 10]. What was designated by the advocates of free market as state interference was seen by Hegel as the principle of universality operating in civil society. Without the presence of public authority, Hegel feared that civil society would cease to be a collective body. It would not be able to secure the rights and welfare of its members. What also needs to be remembered in this regard is that the civil society, for Hegel, embodied the spirit of fraternity. While it allows for the production of wealth and property, it exists to secure the freedom and welfare of all its members; and it is these considerations that place severe constraints upon profit-making and free market. The concern of freedom and welfare also create space for the principle of redistribution to operate in society, thereby ensuring that the ideals of justice and equality permeate the life of civil society.

The writings of Hegel have a special place in the debates on civil society not simply because contemporary discussions take their lead from him, but because he, more than others, elucidates the idea of civil society and reflects upon its relationship with democracy. His analysis gives a systematic and coherent form to the theme that had, in one way or another, been associated with civil society in previous usages: namely, that the idea of 'freedom for all' animates civil society. Tracing the genealogy of the concept of civil society, Dominique Colas points out that all through the 16th and 17th century the concepts of civil society and fanaticism appear together and always in opposition to one another [Colas 1997: 9]. Challenging

the latter, civil society stands for the expansion of individual freedom. At first, the expression of freedom results in the displacement of the theological worldview and attempts to secularise social and political phenomena. Subsequently, Locke links the realisation of freedom with protection of natural, inalienable rights of man. Hegel carries this idea forward and collectively these theorists assert that civil society denotes a structure of relationships in which the rights of individuals receive primacy and are recognised and upheld by law.

In elaborating this view of civil society Hegel clarified that civil society involved the existence of institutional arrangements that were built neither upon the principle of hierarchy nor upon a closed system of stratification. Furthermore, he showed that there was a symbiotic relationship between the state and civil society. The state apparatus, in particular, law and public authority, was a part of civil society, and vice-versa, the spirit of freedom that civil society represents permeates the state. As such, the two moments determine each other. Civil society points to the existence of a particular kind of state and the law promulgated by the state regulates and secures the conditions which give civil society its distinct form.

Hegel had articulated this position most clearly but he was not the only one to stipulate a nexus between the state and civil society. Before him, Locke had used the term civil society to denote a state that endorsed the rights of individuals; and as Knox points out, several theorists of the 18th century used the concept of civil society in contexts "where we would normally speak of the state" [Knox 1953:x]. That is, for them it was an aspect of the state. Hegel distinguished between the state and civil society; however, he saw them as two moments of ethical life that were imbued by the same spirit. In both of them one could glimpse, albeit in different ways, the universality of the idea of freedom.

The close connection between state and civil society postulated in these writings was backed by the assumption that the state symbolised a rational order, "the actuality of concrete freedom" [Hegel 1953: 161]. Within it the "personal individuality and the particular interests not only achieve their complete development and gain explicit recognition of their right... but...they also pass over of their own accord into the interest of the universal" [Hegel 1953: 160]. Like many analysts of the 18th century Hegel did not view the state simply as a symbol of legitimate authority expressing the sovereignty of the ruler, or

as an instrument of coercive power. For him the state signified a structure which upholds and protects the freedom and rights of the individuals. While its law embodies the conditions of objective freedom, its institutions secure subjective freedom that allows individuals to pursue their particular ends. Consequently, for him as well as many of his immediate contemporaries, the state and civil society were closely related. In fact, one was a part of the other; and, more importantly, both were embodiments of the idea of freedom.

DISILLUSIONMENT WITH THE STATE REPRESENTATIONS OF CIVIL SOCIETY IN THE TWENTIETH CENTURY

From the 17th to the 19th century, a limited democratic state, and even a constitutional monarchy, was perceived to be a vehicle of democratisation and secularisation. Based on the consent of the people, however restricted that might be, the democratic state was seen as a symbol of public freedom, challenging closed systems of stratification and traditional forms of organisations rooted in the principle of hierarchy and exclusive privileges. Political philosophers from Locke to Hegel endorsed this conception of the state. However, the second half of the 20th century witnessed a loss of faith in the institution of the state, and this led to a reconsideration of the earlier conception of civil society. Rethinking on the concept of state and civil society occurred in three quite diverse contexts: i) as a corollary of the marxian understanding of the relationship between economic interests and political institutions; ii) in an attempt to revitalise participation of citizens in western democracies; and iii) in totalitarian regimes of socialist societies.

Till the 19th century civil society represented a network of relations – structures and institutions – based on the principle of individual rights. Since the language of rights could be appropriated by subordinated groups to challenge their exclusion from the political arena, it was an important means of empowering individuals. It stimulated the growth of institutions that functioned on the principle of social equality and, at the same time, it protected the individual against abuse of power by another person, a corporation or the state. As a body rooted in the principle of equal rights, civil society represented a collectivity that was committed to the ideal of equal liberty. While it allowed for the pursuit of private interests, its also guarded the common concern for the freedom and welfare of all members. However, this conception of civil society

was seriously challenged within marxism. Within this framework, civil society came to be portrayed primarily as the domain of particular interests and not collective freedom.

In 'The Critique of Hegel's Philosophy of Right', Marx emphasised the nexus between economic interests and political institutions. Focusing on the right to property sanctioned by civil society, he maintained that the latter lacked the ability to express universal interests common to society as a whole [Marx 1977: 81]. Like the capitalist state, it remained the voice of the ruling class. Gramsci developed this idea further, albeit by associating the state with instruments of direct coercion and civil society with the creation of hegemony [Gramsci 1975: 12-13]. While the apparatus of state relies on coercive power to legally enforce discipline on groups, civil society organises "spontaneous consent given by the great masses of the population to the general direction imposed on social life by the dominant fundamental group" [Gramsci 1975: 12]. For Gramsci, the preponderance of civil society over the state allowed western societies to generate consent without relying heavily on direct coercion and domination. By comparison, direct intervention by the state and frequent reliance on the coercive power of the state remained the characteristic features of the east.

The distinction between the east and the west that was postulated here, and endorsed by other marxists [Anderson 1976-77] was subsequently questioned by French sociologists, particularly Pierre Birnbaum. The latter differentiated between western states and argued that in highly institutionalised and differentiated states, such as, France, a "strong" state was accompanied by a relatively "weak" civil society. Here the state dominated over all aspects of social and community life and presented itself as a "machine for dominating civil society" [Birnbaum 1988: 72]. It controlled, regulated and oversaw the activities of the civil society. This enabled a quicker realisation of the ideal of universal citizenship, and, at the same time, created space for collective action directed against the state. In sharp contrast to this, in countries like Britain or America, a less differentiated and "weak" state was attended by a relatively "strong" civil society. In these polities, the institutions of civil society, for example, the trade unions, manage their own affairs by reaching collective agreement with their employers [Birnbaum 1988: 78]; as a result the state is not called upon to rule in disputes. Indeed the state acts as a "locus

for the representation of a range of different interests" [Birnbaum 1988: 186]; it allows pressure groups and associations of all kinds to make themselves heard. Consequently, societal corporatism spreads without clashing with the state. However, pluralism gets limited to some extent as some interests are legitimised at the expense of others [Birnbaum 1988: 187] and the state is able to exercise considerable influence over the members of those socio-economic groups which are favoured.

Birnbaum postulates an inverse relationship between the state and civil society. A highly institutionalised and differentiated state has a weak civil society; it gives relatively less space for the self-management of societal groups and institutions. While a less differentiated and institutionalised state allows greater expression to the associations and interests groups in society. However, what is perhaps significant is that in a weak state strong civil society, collective action is less likely to be directed against the state. The state becomes the direct target of movements in polities with a relatively weak civil society. Since the presence of a strong civil society acted as a deterrent against political mobilisations that oppose the state, Birnbaum argued that the institutions of civil society could not be depended upon to democratise society. Indeed, civil society was just a dependent variable that had to be taken into account while explaining different patterns of political mobilisation and collective action.

In sharp contrast to this perspective, advocates of "associative" democracy [Hirst 1994] invest hope in the agencies of civil society. According to these theorists the centralised and highly bureaucratised modern state does not allow citizens to participate and govern themselves. By locating decision-making in the hands of a few civil servants and experts, it has taken away from the citizens that which must rightfully belong to them in a democracy. To reverse this trend champions of associative democracy seek to limit the state by giving powers of decision-making to "communities of place and interest" [Hirst 1994: 20]. Strong, voluntary communities provide, in their view, the means of "delivering a decentralised welfare state and regenerating regional economies" [Hirst 1994: 26; also see Steward 1996].

Besides, smaller communities allow citizens to debate, discuss and deliberate upon issues that affect their lives and immediate environment directly. They also enable members of the group to build trust

and exchange information that is necessary for proper decision-making [Barber 1984]. The point that needs to be underlined is that the 'new communities' that these theorists seek to build and strengthen have little in common with the traditional communities based on ascriptive identities. Indeed, supporters of associative democracy do not attempt to recreate communities around traditional identities and patterns of loyalty. As such, this model is predicated on the success of the democratic project of social equality. To put it in another way, these analysts begin with the belief that democratisation has dislodged previous social hierarchies and systems of inclusion and exclusion. Consequently, the small communities that they attempt to activate are, in a sense, "new" communities for they are the product of an open rather than a closed system. Furthermore, these new forms of community life acknowledge their members as equal rights-bearing individuals. Thus, the principle of equality permeates institutions at all levels and allows for the creation of a decentralised democratic polity.

The voices of associative democracy are dissatisfied with the centralised, imposing and alienating structures of the modern bureaucratic state. Hence they seek to energise local bodies and associations in the hope of transferring greater degree of decision-making power to the citizens in western democracies. Activating a variety of different institutional structures and forums – from neighbourhood councils to parent-teacher associations and church organisations – is thus seen as a way of enlivening citizenship and limiting the Leviathan. As small, local communities become the main units of democratic governance, it is assumed that the state would withdraw and become a necessary but secondary public power [Barnett 1996].

A third conception of state and civil society emerges in socialist societies faced with totalitarian regimes – the most striking example being Poland. Here the state does not appear as the embodiment of freedom, rather it represents a force restricting and actively curbing civil and political liberties of individual citizens. Under these circumstances, the state is pitted against civil society – an entity that expresses, struggles for, and protects individual rights and freedom [Spulbeck 1996; Hall 1995]. In the struggle for political democracy a variety of diverse associations and bodies, from labour unions to the Catholic church, are placed together under the category of civil society as each of them contribute to the forces that are resisting and fighting against the totalitarian state.

For the critics of the totalitarian state, civil society stands outside the state and exists in sharp contradiction to it. Indeed the task of civil society is to transform the state completely by making it responsive to the rights of the individual. Hence, what identifies the institutions of civil society is their shared perception that the state is the repository of coercive force which is frequently directed against the citizens. The fact that the state is a potential and actual transgressor of individual liberty and that its might must be collectively challenged gives coherence to the otherwise diverse units of civil society. Although a non-hierarchical and open system of stratification is not always a characteristic feature of these institutions and collectivities, yet, each of them endeavour to fight against totalitarianism as it exists in these societies. Consequently, civil society is seen as an instrument of democratisation, a symbol of 'perestroika', that can energise the struggles for individual liberty and assist in the gradual transition to a more open and democratic polity.

As is evident from the discussion above, in each of these three representations the conception of the state is significantly revised. As a result the accompanying idea of civil society is also altered. Although civil society remains a correlate of democracy, it is now represented as a domain that exists outside the state, if not, against the state. Till the 19th century most theorists viewed civil society as a particular form of political community: one in which rights of individuals receive primacy and institutions are based on the explicit recognition and acknowledgement of these rights. As such, civil society embodied a norm that defines the democratic state. Indeed, in this incarnation, civil society was closely associated with the process of democratisation because the principle in which it was anchored – namely, the primacy of individual rights – offered a means of challenging prevailing forms of inter-group inequalities as well as a way of displacing structures of inequality that exist within traditional communities.

In the 20th century, the centrality accorded to rights previously is displaced with the notion of direct participation and self-management. The shift to an associative model of democracy makes civil society the domain of church, family and voluntary associations [Barber 1996: 147]. It reduces civil society to a "space that we occupy when we go about our daily business when we are not engaged in politics (voting, jury service, paying taxes) or in commerce (working, producing,

shopping, consuming)" [Barber 1996: 149]. It is perhaps necessary to underline that this conception of civil society has emerged in a context where traditional structures of loyalty and community identity have, to a considerable extent, broken down; and the principle of formal equality, rooted in the notion of equal rights of citizens and an individualistic ethic, has been widely accepted and incorporated in the practices of the state. The church, for instance, appears as an institution of civil society only when it does not exercise a hegemonic influence over the social domain. Once it is transformed into a voluntary congregation, it appears as an association that can be a vehicle of civil liberties. Thus, in democracies of the west, the shift from a rights-based conception of democracy to an associative one is preceded, or accompanied by the democratisation of state and society. And, it is only with the realisation of the democratic project that associations like the church are able to operate and manage their affairs in conformity with the principles of non-discrimination and equal rights. As a result, even when civil society is placed outside the realm of the formal structures of political power, it continues to be permeated by the ethic of freedom and equal rights that the democratic state is expected to manifest and uphold. Only in totalitarian regimes the civil society and state appear as adversaries, poised against each other.

CIVIL SOCIETY AS AN INSTRUMENT OF HUMANE GOVERNANCE

As was noticed earlier, social and political theory in the second half of the 20th century has been characterised by a loss of faith in the institution of the state. This sentiment is evident not only in western democracies but also in third world democracies, like India. Here too, disenchantment with the state forms the backdrop to the revival of interest in civil society [Gupta 1997]; indeed it is a recurrent and common theme in the writings on civil society. The disillusionment with the state is expressed by marxists and non-marxists alike. For theorists of the marxist persuasion, the post-colonial bourgeois state in India cannot accommodate the interests of the weaker sections of society. The democratic struggles of the people are accordingly placed in civil society. The latter becomes the "leitmotif of movements struggling to free themselves from unresponsive and often tyrannical post-colonial elites" [Chandoke 1998: 30]. Manoranjan Mohanty refers to this domain, where the democratic demands have a

salience, as "creative society". The latter expresses the demands for decentralised, responsive and participatory state [Mohanty 1998: 74]. For other analysts, most notably, Rajni Kothari, the path of development that the state in India has adopted is deeply flawed: the focus on "market efficiency", "profitability", "development" and "national security" [Kothari 1988a:2] has made the Indian state unresponsive, if not hostile, to the basic rights of the common man. Indeed, with a large repertoire of coercive apparatuses the state frequently violates and suppresses the essential liberties of the people. Against such an undemocratic and elitist state, civil society is placed as the arena where the marginalised protest and struggle for their essential human and democratic rights.

In each of these perspectives civil society is the domain of popular participation, albeit outside of the formal institutional structures of the state. Marxists believe that it offers avenues for resisting and challenging the hegemony of the ruling class; while social scientists like Rajni Kothari see it as a way of empowering the common man. In case of the latter, civil society appears as the "take-off point for humane governance" [Kothari 1988a:3]; it includes, within its ambit, a variety of contemporary social movements – such as, human rights movements, ecology movements, women's movements and the peace movement – which seek to restore the principles of good life in the conduct of human affairs. At the same time, the civil society also incorporates a "network of voluntary, *self-governing* institutions in *all walks of life*" [Kothari 1988a: 202; emphasis added]. Collectively, these organisations provide the "grass roots model of *mass politics*... in which *people are more important than the state*" [Kothari 1988b: 212; emphasis added]. Kothari clearly associates civil society with people-centric institutions; consequently, he incorporates within it all those forums in which people participate directly and manage their own affairs. Since the accent is almost exclusively on people's participation, panchayats, even caste panchayats, voluntary associations and NGOs of all hues and colours are regarded as agencies of civil society that strengthen democracy. What brings these diverse institutions together is the fact that they stand outside the state, offering an alternative to state-sponsored and state-managed organisations; in fact they open "alternative political spaces outside the usual arenas of party and government" [Kothari 1988a: 45].

Kothari wishes to empower the institutions of civil society as they offer an alternative to the bureaucratic and unresponsive state machinery. Like several western scholars of the 20th century, his writings on civil society express a loss of faith in the state. To quote him, the "state has lost its role as an agent of transformation, or even as a protector and mediator in the affairs of civil society. In fact, one finds that the whole relation between the state and civil society is increasingly visited by a growing coercion of the state apparatus" [Kothari 1988b: 209]. It is under these circumstances that he pins his hopes on smaller village level bodies, panchayats and non-governmental agencies, and assumes that these institutions of direct participation would "transform the nature and scope of the state" [Kothari 1988a: 142] so that the latter can act in accordance with popular sentiments.

Like many social theorists in the west, Rajni Kothari maintains that a highly bureaucratized state restricts and does not augment avenues of popular participation. Instead of guaranteeing freedom, its authoritarian structure curbs individual liberty. Against this state, civil society is presented as the arena of self-management and active participation. It is perhaps necessary to remember that Kothari pins his hope on civil society because the Indian state has failed: it has belied people's expectations and has been an ineffective agent of social and economic transformation. As such, the move towards civil society is primarily a negative one: prompted mainly by a loss of faith in the state. Further, while searching for an alternative to the state, Kothari postulates a dichotomy between people and state elite; the former are represented as marginalised and subjugated masses. The postulated dichotomy captures the neglect of the village as a unit of economic and political life, but, at the same time, it ignores the conflict of interests that exist in caste and community divided villages. Consequently, the critique of state and centre-managed development ends up postulating a romantic picture of homogenised village communities that are immune to the struggles of power that infest the machinery of the state.

In Kothari's writings civil society emerges as an alternative to the state. Conceived in this form, it is equated with non-state, non-government organisations and associations through which people participate directly and manage their own affairs. Since institutions that are independent of the state and government exist in a variety of different political

systems, civil society does not appear in this framework as a correlate of democracy. Indeed, this perspective suggests that civil society was strong in pre-modern India as it was governed through traditional community institutions that allowed people to manage their own affairs with little interference from the political regime. The fact that Kothari does not distinguish between different kinds of institutions that exist in the social arena fosters the impression that all collectivities, from football clubs and caste panchayats to student unions, Ramlila mandalis and temple organisations, are agencies of democratisation. That some of these bodies operate on the principle of hierarchy and exclusion is a consideration that is almost always left out of the discussion on civil society.

To some extent this confusion exists in most conceptions of participatory democracy. However, in the Indian context the clubbing together of diverse organisations and community structures under the rubric of civil society poses a special problem. In western democracies community identities and institutional structures have either disappeared or been compelled to function in accordance with the minimum framework of democratic equality prescribed by the state. Consequently, social institutions and even religious bodies, like the church, have been transformed into voluntary associations. However, in India, where the task of ensuring inter-group and intra-group equality still remains unfulfilled, empowering all types of social and religious institutions tends to hinder the realisation of democratic equality. What matters in a democracy is the nature of social and community institutions: the principles on which they function rather than their numbers or degree of autonomy is the crucial consideration. The theorists of civil society, from Locke to Hegel, realised this. Hence, they associated civil society with the displacement of traditional identity-based institutions with those that operated on principles of social non-discrimination. By neglecting this dimension, Rajni Kothari indirectly legitimises groups and institutions that do not operate on the democratic principle of equality.

Within a democracy, active and direct participation of citizens in decision-making is a valued good, but it must also be realised that the majority is not the best guarantor of equal rights. Participation allows for the expression of popular will but it also ensures that the decision of the majority prevails. In societies where community membership determines, or at

least shapes, choices, the framework of rights needs to be given priority. If democracy is to function as a system that delinks distribution of political privileges from social ascriptive identities, civil society must rest upon the explicit recognition of equal rights of citizens.

Rajni Kothari does not deny the significance of equal rights and civil liberties in a democracy. In fact he would like to strengthen the framework of citizens' rights. However, in endorsing a participation-based conception of associative democracy, that is currently espoused by several liberals in the west, he neglects the implications of this view in the Indian context. To repeat the argument, participation is intended to energise communities; however, with the breakdown of religious hegemony and older forms of communities based on ascriptive identities, western theorists of democracy assume that new forms of community have emerged in these societies: communities that are not based on the principle of hierarchy and exclusion. Non-state associations, neighbourhood councils and institutions of local self government are sought to be strengthened in this context. The shift from rights to participation poses relatively fewer problems in western societies because of the changes that have already been introduced in the social and public arena. However, in countries like India where ascriptive community identities and institutions are politically recognised and religion plays an important role in the life of the communities, it yields more disturbing results. Here, the emphasis on direct participation in non-state associations, rather than the presence of collectivities that function on the principle of equal rights of citizens, justifies a communitarian ethic that leaves the structures of intra-group inequalities intact.

INTERMEDIARY INSTITUTIONS AND CIVIL SOCIETY

While most social scientists in India associate civil society with voluntary and non-government bodies in the social arena that allow individuals to participate directly and manage their own affairs, Andre Beteille differentiates between the diverse forms of intermediary institutions in order to situate civil society in the modern discourse on individual liberty and social equality. According to him, every society has a number of mediating institutions that link individuals to each other and negotiate between citizens and the state. "A society with only individuals (citizens) at one end and the nation (or state) at the other would

not only be difficult to live in but also difficult to conceive" [Beteille 1996: 14]. Hence, the presence of mediating institutions is a universal feature of all human societies. However, the nature of these organisations and institutions undergoes a fundamental change with the coming of democracy: instead of being closed structures based on the principle of hierarchy and exclusive privileges, they become "open and secular institutions. They are open in the sense that membership in them is independent of such considerations as race, caste, creed and gender; selection to positions of respect and responsibility... are based, at least in principle, on open national competition. They are secular in the sense that their internal arrangements are not governed by religious rules or religious authorities" [Beteille 1996: 17]. The emergence of open and secular institutions is conducive to the growth of civil society.

For Beteille then, the existence or proliferation of mediating institutions per se is not enough. Civil society is dependent upon the strength of those mediating institutions that are open to all categories of citizens and whose functioning is controlled neither by the state nor by religious authorities. Apart from being institutions that are not rooted in relations of kinship, caste or religion, these are arrangements that are, to use a Habermasian phrase, equidistant from state and religion. Their autonomy lies in the fact that they are neither controlled by state nor directed by religious rules. They have a distinct identity of their own which is recognised publicly, and they function in accordance with institutionally prescribed rules and laws that are also known to all its members. In contemporary India, Beteille sees banks, universities, hospitals, municipal corporations, schools, newspapers, professional associations as examples of these new institutions that are conducive to the well-being of civil society.

The merit of Beteille's analysis is that it distinguishes unambiguously between institutions of civil society and other types of mediating institutions in society. Unlike many of his contemporaries in India, he associates civil society with the modern concern for individual liberty within the framework of a secular society [Beteille 1995: 562-64]. Accordingly, the institutions of civil society are valued as free associations of citizens in pursuit of particular ends. To put it in another way, they are not envisaged as units of direct participation or self-management, rather they surface as expressions of individual autonomy. Hence, their presence con-

stitutes an essential moment in the process of democratisation. In linking civil society with individual freedom and social non-discrimination, Beteille tries to return to the ideas that informed the thinking on civil society in the 18th and 19th century. However, he is unable to escape the scepticism that characterises 20th century views on state. Taking a cue from Weber, he sees state as the repository of coercive force, or, at best, an embodiment of sectional interests. Consequently, he separates and distances civil society from state. Indeed, Beteille sees both state and religious institutions as enemies of civil society. He begins his analysis by stipulating that civil society refers to institutions that are neither controlled by the state nor governed by religious norms. This bracketing of state with religious institutions is indeed quite problematic and it poses serious problems in the Indian context. It delegitimises the state and law; and lends credibility to the view that the state must not interfere in the functioning of associations and community bodies – a conclusion that is favoured strongly by the communitarian perspectives in India. In fact, the latter have appropriated the idea of non-interference by the state to defend the autonomy of communities, including religious communities, even when they do not endorse the minimum conditions of equal citizenship [Mahajan 1998: 177-78]. Even though Beteille is interested in protecting the autonomy of open and secular institutions in society, his argument lends support to the communitarian perspective that has scant respect for the latter.

Besides, it must be noted that the policy of political non-interference was particularly relevant at a time when state and church worked closely together to establish the hegemony of one religious group within the nation state. However, once that alliance was fractured and state was compelled to endorse the principle of religious tolerance and formal equality, state played an important role in secularising the polity. In France, for instance, the state became an ally of the non-conformists and religious non-believers in their struggle against the established hegemony of the Catholic church [Acomb 1967]. It also played a crucial role in the secularisation of the educational institutions. In other words, unlike religious institutions that have no interest in augmenting the bonds of citizenship, the democratic state can be, and historically it has been, a catalyst in creating and securing conditions that are necessary for strengthening civil society.

What is needed then is to find ways of compelling the state to perform this task because open and secular institutions cannot be expected to function effectively in a context where the state is hostile to it. To a considerable extent, Hegel recognised this and for this reason he postulated a symbiotic relationship between state and civil society.

Andre Beteille tends to ignore Hegel in this regard. Following de Tocqueville he views the presence of plural public associations in civil life to be the hallmark of a healthy democracy. In his analysis of democracy in America, de Tocqueville maintained that free associations flourish in democratic nations where the principle of equality exists. "The principle of equality, which makes men independent of each other, gives them a habit and a taste for following in their private actions no other guide than their own will" [de Tocqueville 1945: 304]. Consequently, in these societies they have a natural inclination for free institutions. On the other hand, "[I]n aristocratic societies men do not need to combine in order to act, because they are strongly held together. Every wealthy and powerful citizen constitutes the head of a permanent and compulsory association, composed of all those who depend upon him or whom he makes subservient to the executions of his designs" [de Tocqueville 1945: 115]. Beteille does not reflect upon these conditions that allow for the growth of plural associations. Looking through Weberian lenses he assumes that adherence to institutional norms coupled with the existence of a rational-legal structure is all that is needed for institutions of civil society to function effectively. Examining the functioning of civil society institutions in India, he argues that the absence of the latter has prevented these institutions from acquiring a "personality of their own, separate from the personalities of their creators" [Beteille 1996: 20]. These institutions have been ineffective as they have failed to set their own agenda and act in accordance with institutional rules and procedures.

CONCLUSION

While it is true that in an organisation governed by a rational-legal structure, the institution receives priority over the individual, however, the compulsion to enforce this structure, to abide by institutional norms and to retain the open and secular character of institutions can come only from the universality of law. And, universal laws cannot, as Keane points out, emerge spontaneously from

civil society, their formulation and application entails the involvement of the state [Keane 1988]. Besides, the state alone can create conditions that are necessary to protect the institutions of civil society from internal disruptions [Blaney and Pasha 1993]. As such, it is difficult to detach civil society from the state or to conceive it without the latter. Indeed the institutions of civil society are, and must be viewed as, parts of the democratic constitutional state. When this dimension is lost and civil society is presented as rule-governed intermediary institutions, the concern for social equality and non-discrimination falls by the wayside. As Dipankar Gupta points out, there can be rules that "promote rational efficiency but are indifferent to considerations of citizenship" [Gupta 1997: 306]. To make institutions responsible to the claims of equal citizenship, it is necessary to follow Hegel's lead and see civil society as a moment in the ethical life of the democratic state.

To conclude, smaller participatory bodies may provide avenues for greater interaction between the decision-makers and the people and free associations of citizens may allow for the pursuit of diverse particular interest. But to secure individual liberty along with social equality, neither increased participation nor diversity of intermediary bodies is enough. Both remain inadequate in protecting the individual against abuse of power; indeed each of them can be appropriated to sanction majority practices and unequal structures of power. To safeguard against this possibility, it is necessary to go back in history and retrieve a rights-based conception of civility.

Note

1 Reflecting on the transition from political society to civil society Rousseau argues that this move produces a remarkable change in man. "It puts justice as a rule of conduct in the place of instinct, and gives his actions the moral quality they previously lacked" [Rousseau 1968: 64].

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