CHAPTER 2

Real Civil Societies: Dilemmas of Institutionalization

Vital concepts enter social science by a striking process of intellectual secularization. An idea emerges first in practical experiences, from the often overwhelming pressures of moral, economic, and political conflict. Only later does it move into the intellectual world of conceptual disputation, paradigm conflict, research program, and empirical debate. Even after they have made this transition, vital concepts retain significant moral and political associations, and they remain highly disputed. What changes is the terrain on which they are discussed, compromised, and struggled over. The intellectual field, after all, has a very distinctive specificity of its own.

This secularization process created such basic concepts as class, status, race, party, religion, and sect. More recently, we can see a similar process at work with the emergence of such concepts as gender, sexuality, and identity. The subject of this book, civil society, is being subjected to the same kind of secularization today.

Civil society enters into intellectual discourse from the ongoing tumult of social and political life for the second time. We must make every effort to refine it in a theoretical manner so that it will not disappear once again. If we fail, the opportunity to incorporate this idea might disappear from intellectual life for another long period of time. Not only normative theory but moral life itself would be impoverished if this opportunity were missed, and empirical social science would be much the worse as well. There is a new theoretical continent to explore, a new empirical domain waiting to be defined. But we will not be able to make out this new social territory unless we can look at it through new theoretical lenses. Our old conceptual spectacles will not do.

To forge these spectacles is the aim of this book. Its ambition is to develop a set of concepts that can illuminate a new kind of social fact and open up a new arena for social scientific study, one much closer to the spirit and aspirations of democratic life.

Civil society has been conceived in three ideal-typical ways. These have succeeded one another in historical time, though each remains a significant intellectual and social force today. After situating these ideal-types temporally, and evaluating them theoretically, I will introduce the analytical model at the core of this book, a model which aims to define the relationship between civil society and other kinds of institutional spheres. Only by understanding the boundary relations between civil and uncivil spheres can we push the discussion of civil society from the normative into the empirical realm. And only by understanding civil society in a more "realist" manner can we lay the basis for a critical normative theory about the incompleteness of civil society in turn.

Civil Society I

It is well known that in its modern, post-medieval, post-Hobbesian form, "civil society" entered into social understanding only in the late 17th century, with the writings of figures like Locke and James Harrington.[1] Developed subsequently by such Scottish moralists as Adam Ferguson and Adam Smith, by Rousseau and Hegel, and employed energetically for the last time by Tocqueville, "civil society" was a rather diffuse, umbrella-like concept referring to a plethora of institutions outside the state. It included the capitalist market and its institutions, but it also denoted what Tocqueville called voluntary religion (non-established Protestant covenantal denominations), private and public associations and organizations, and virtually every form of cooperative social relationship that created bonds of trust—for example, currents of public opinion, legal norms and institutions, and political parties.

It is vital to see that in this first period of its modern understanding, civil society was endowed with a distinctively moral and ethical force. As Albert Hirschman showed in *The Passions and the Interests*, the civilizing qualities associated with civil society most definitely extended to the capitalist market itself, with its bargaining and trading, its circulating commodities and money, its shopkeepers and private property. Identified by such terms as *le doux commerce*, the processes and institutions of the capitalist market were benignly conceived—particularly by the progressive thinkers of the day—as helping to produce qualities associated with international peace, domestic tranquility, and increasingly democratic participation. Capitalism was understood as producing self-discipline and individual responsibility. It was helping to create a social system antithetical to the vainglorious aristocratic one, where knightly ethics emphasized individual prowess through feats of grandeur, typically of a military kind, and ascriptive status hierarchies were maintained by hegemonic force. Montesquieu provided high ethical praise for capitalism in this early phase.[2] Benjamin Franklin's influential *Autobiography*, which identifies public virtue with the discipline and propriety of market life, might be said to provide an equally important example of a more popular, more bourgeois, but perhaps not less literary kind.[3]

The decidedly positive moral and ethical tone that CS I attributed to market society underwent a dramatic transformation in the early middle of the nineteenth century. The development of capitalism's industrial phase made Mandeville's famous fable of capitalism's bee-like cooperation seem completely passé.[4] The pejorative association of capitalism with inhumane instrumentality, domination, and exploitation first emerged among radical British political economists like Thomas Hodgskin in the 1820s and 1830s.[5] Marx encountered this Manichean literature in the early 1840s, and he provided it with a systematic economic and sociological theory. His voice, while by far the most important in theoretical terms, was for contemporaries only one among many.

The emerging hatred of capitalism, its identification with all the evils of feudal domination and worse, was expressed among a wide and growing chorus of utopians, socialists, and republicans. It is noteworthy that, for their part, the new industrial capitalists and their liberal economic spokesmen did not shy away from this new view of capitalism as an antisocial force. Brandishing the doctrine of laissez-faire in a decidedly un-Smithean way, their motto seemed to be, "society be damned!" There exists no better representation of this self-understanding of the supposedly inherent and ineradicable antagonism between an evil, egotistical market, and "society" in the moral and collective sense, than Karl Polanyi's *The Great Transformation*,[6] which dramatically took the side of "society" against the market. Despite its interpretive power and normative force, however, Polanyi's influential book has reinforced the very theoretical understandings I wish to make problematic here.

Civil Society II

In social theory, this dramatic transformation of the moral and social identity of market capitalism had fateful effects on the concept of civil society. As Keane[7] and Cohen[8] were among the first to point out, the connotations of this fecund concept became drastically narrowed. Shorn of its cooperative, democratic, associative, and public ties, in this second version (CSII), civil society came to be pejoratively associated with market capitalism alone.[9] Marx's writings between 1842 and 1845 reflected and crystallized this reduction in a fateful way. Not only does civil society come to be treated simply as a field for the play of egoistical, purely private interests, but it is now viewed as a superstructure, a legal and political arena that camouflages the domination of commodities and the capitalist class. For Marx, industrial capitalism seemed only to consist of markets, the social groups formed by markets, and market-protecting states. Society in the collective and moral sense had dissolved into a morass of particularistic interests. Only the submerged and repressed cooperative ties that defined the proletariat's true economic interest could provide a counter-balancing universalism. Only the collectively-binding social organization of the bourgeoisie's class enemy could sustain a social alternative to selfishness that the ideals of civil society provided only in name.

As Cohen[10] observed in her devastating critique, in Marx's theory of civil society "social, political, private, and legal institutions were treated as the environment of the capitalist system, to be transformed by its logic but without a dynamism of their own." Nothing more clearly illustrates the paradigm shift from CSI to CSII than the accusations Marx made against Hegel, namely, that he had sought, in a reactionary manner, to justify just such a privatized, selfish vision of civil society, that he had identified the civil sphere only with the 'system of needs' that became the mode of production Marx's own work.[11] But Hegel actually never did any such thing. To the contrary, he sought to rework the liberal line of CSI in a more communal, solidaristic way. It is true that the available linguistic resources and the peculiarities of German history had led Hegel, as it had led Kant before him, to translate the English term, civil society, as *Burgerlich Gesellschaft*, literally 'burger' but more broadly 'bourgeois' or 'middle class' society.[12] But Marx's contention that Hegel, and non-socialists more generally, had identified civil society simply with capitalist class structures was an ahistorical distortion reflecting the sense of crisis that marked the birth of industrial society. For Hegel, the civil sphere was not only the world of economic needs but also the sphere of ethics and law, and other intermediate groupings that we would today call voluntary organizations.[13]

It is not surprising that in this social and intellectual situation, in the middle of the nineteenth century, civil society as an important concept in social theory shortly disappeared. If it was no more than an epiphenomenon of capitalism, then it was no longer necessary, either intellectually or socially. In the context of the ravages of early industrial capitalism, social and intellectual attention shifted to the state. Substantive rather than formal equality became the order of the day. Issues of democratic participation and liberty, once conceived as inherently connected to equality in its other forms, became less important. Strong state theories emerged, among both radicals and conservatives, and bureaucratic regulation appeared as the only counterbalance to the instabilities and inhumanities of market life.[14] In the newly emerging social sciences, mobility, poverty, and class conflict become the primary topics of research and theory. In social and political philosophy, utilitarian and contract theories assumed prominence, along with the neo-Kantian emphasis on justice in terms of formal rationality and proceduralism at the expense of ethical investigations into the requirements of the good life.

The legacy of this century-long distortion of the capitalism-civil society relationship has had regrettable effects. Identifying society with the market, ideologists for the right have argued that the effective functioning of capitalism depends on the dissolution of social controls. Secure in the knowledge that civil society is the private market, that economic processes by themselves will produce the institutions necessary to promote democracy and mutual respect, they have labored righteously to disband the very public institutions that crystallize social solidarity outside the market place. Such efforts have continued to this day.[15]

Yet if, for the right, the capitalism-civil society identification suggested abolishing society, for the left it suggested abolishing markets and private property itself. If civility and cooperation were perverted and distorted by capitalism, the latter would have to be abolished for the former to be restored. In this way, the big state became the principal ally of the left, and progressive movements became associated not only with equality but with stifling and often authoritarian bureaucratic control.

This was by no means confined to the Marxist left. For thinkers from Walter Lippman and John Dewey to C. Wright Mills, Hannah Arendt, Jurgen Habermas, and most recently Robert Putnam, the disappearance of public life became axiomatic to any thoughtful consideration of twentieth century modernity.[16] Captives of the historical shift in intellectual presuppositions which I have described as CSII, these influential thinkers were unable to think reflexively about it. They were convinced that capitalism was destroying public life, that in democratic mass societies an all-powerful market was pulverizing social bonds, converting citizens into egoists, and allowing oligarchies and bureaucracies full sway. Capitalism and mass societies were conceived as social worlds in which privacy ruled. That this was, in fact, far from the case had become for even the most acute social observers very difficult to see. Because CSI had given way to CSII, they could no longer draw upon the idea of an independent civil sphere. The social conditions that had triggered the demise of CSI still held sway.

In a paradoxical manner, the civil society thinking of Antonio Gramsci, which differed significantly from the reductive understandings of traditional CSII, actually seemed to buttress these fateful lapses in critical democratic thought, whether liberal or socialist. Drawing on a less reductive reading of Hegel, in the early decades of the 20th century Gramsci had developed his own, thoroughly anti-individualistic and anti-economistic approach to civil society. He defined it as the realm of political, cultural, legal, and public life that occupied an intermediate zone between economic relations and political power.[17] With this idea, Gramsci meant to challenge the evolutionary line of Marxist thinking, which held that socialist revolution would be triggered automatically, by a crisis in the economy alone. Broadening Lenin's earlier critique of economism, Gramsci suggested that civil society itself would have to be challenged, and transformed, independently of the strains created by capitalism's economic base. Yet, even while Gramsci challenged the instrumentalism of Marx's thinking about the civil sphere, he reinforced CSII by insisting that, within the confines of capitalist market society, there would never be the space for institutionalizing solidarity of a more universalistic and inclusive kind. Gramsci did not associate civil society with democracy. It was a product of class-divided capitalism understood in the broad socio-cultural and economic sense. The values, norms, and institutions of civil society were opposed to the interest of the mass of humanity, even if they did provide a space for contesting their own legitimacy in a public, counter-hegemonic way. Civil society was inherently capitalist. It was a sphere that could be entered into but not redefined. Its discourse could not be broadened and redirected. It was a sphere that would have to be overthrown. In this book, my argument is directed in an opposite way.

Return to Civil Society I?

In recent decades a series of social and cultural events has created the circumstances for a renewed intellectual engagement with civil society. Big state theory has lost its prestige, economically with the falling productivity of command economies, morally and politically with the overthrow of state Communism and bureaucratic authoritarian regimes.[18] Within social science, there is now more interest in informal ties, intimate relationships, trust, cultural and symbolic processes, and the institutions of public life.[19] In political and moral philosophy, there has not only been a return to democratic theory, but renewed interest in Aristotle, Hegel, critical hermeneutics and Pragmatism–all marking a return to investigations of the lifeworld ties of local culture and community.[20]

The problem is that this re-engagement with civil society has largely meant a return to CSI. In *Democracy and Civil Society*, a path-breaking work in many ways, John Keane defines civil society broadly as "the realm of social activities," a realm that includes "privately owned," "market-directed," "voluntarily run," and "friendship-based" organizations, phenomena that are by no means necessarily theoretically complementary or practically congenial. Keane goes on to assert, moreover, that such civil activities are at once "legally recognized" and "guaranteed by the state," even as they form an "autonomous [sphere of] social life." Civil society is said to be "an aggregate of institutions whose members are engaged primarily in a complex of non-state activities–economic and cultural production, household life and voluntary association," seemingly private activities that Kane identifies as distinctly "sociable" and at the same time "public spheres."[21] Similarly, when Andrew Arato[22] first employed civil society in his important articles on the Solidarity movement in the early 1980s, he suggested that the civil sphere in its Western form was tied to private property, a traditional understanding that not only contradicts the broad range of references employed by Keane but threatens to render the concept useless for distinguishing democratic from nondemocratic capitalistic societies. A decade later, in their major philosophical rethinking of civil society theory, Cohen and Arato[23] severed this connection, and in its place they offered a substantially improved three-part model of society that went well beyond CSI and CSII. Nonetheless, perhaps by relying so heavily on Hegel, this major work failed to define the civil sphere as distinctive vis-a-vis such arenas as family life, and neglected entirely the relation between the civil sphere and such arenas as culture, religion, ethnicity, and race.[24] Here they were following Habermas, who insists on separating rational discourse in the public sphere from the traditions of cultural life.[25]

The same tendency toward diffuseness marked Alan Wolfe's[26] identification of civil society with the private realm of family and voluntary organization, and Adam Seligman's[27] insistence that it corresponds to the rule of reason in the Enlightenment sense. Carole Pateman[28] claims civil society to be inextricably linked to patriarchal family relations, and Shils[29] and Walzer[30], while disagreeing with Pateman in virtually every other way, likewise revert to an understanding of civil society that reflects its earlier diffuse and umbrella-like form. Victor Perez-Diaz[31] argues, indeed, that only such a 'maximalist' approach to civil society can maintain the necessary linkages between a democratic public sphere and particular forms of economy, state, family, and cultural life. Though Robert Putnam's model for strengthening democracy through voluntary associations does not focus explicitly on the civil society idea, this neo-Tocquevillian approach looks backward to CSI in very much the same way.[32]

It is most definitely a good thing that the destructive and overly narrow understandings of CSII have been undermined by the recent revival of democratic thought. But social life at the beginning of the twenty-first century is much more complex and more internally differentiated than the early modern societies that generated CSI. The old umbrella understanding will no longer do. We need a much more precise and delimited understanding of the term. Private property, markets, family life, and religious ideals might all be necessary at some point or another to create the capacities of the civil sphere, but they are by no means sufficient to sustain it. Rejecting the reductionism of CSII, but also the diffuse inclusiveness of CSI, we must develop a third approach to civil society, one that reflects both the empirical and normative problems of contemporary life.

Toward Civil Society III

We need to understand civil society as a sphere that can be analytically independent, empirically differentiated, and morally more universalistic vis-à-vis the state and the market and from other social spheres as well. Building upon important directional signals from empirical theoretical traditions in sociology and normative traditions in political theory and philosophy–which I have discussed in chapter 1 and will elaborate further in chapter 3—I would like to suggest that civil society should be conceived as a solidary sphere, in which a certain kind of universalizing community comes to be culturally defined and to some degree institutionally enforced. To the degree that this solidary community exists, it is exhibited and sustained by public opinion, deep cultural codes, distinctive organizations—legal, journalistic and associational—and such historically specific interactional practices as civility, criticism, and mutual respect.[33] Such a civil community can never exist as such; it can only be sustained to one degree or another. It is always limited by, and interprenetrated with, the boundary relations of other, non-civil spheres.

The solidarity that sustains the civil sphere amidst the complex and highly conflictual spheres of contemporary life draws from long-standing cultural and institutional traditions that have sustained individual and collective obligation. CSII theories were quite mistaken to link not only individualism (its emergence) but the collective sense of social obligation (its decline) with market society. The individuality that sustains civil society has a long history in Western societies, as a moral force, an institutional fact, and a set of interactional practices. It has a non-economic background in the cultural legacy of Christianity, with its emphasis on the immortal soul, conscience, and confession; in aristocratic liberty and Renaissance self-fashioning; in the Reformation's insistence on the individual relation to God; in the Enlightenment's deification of individual reason; in Romanticism's restoration of expressive individuality. Institutions that reward and model individuality can be traced back to English legal guarantees for private property in the eleventh century; to the medieval parliaments that distinguished the specificity of Western feudalism; to the newly independent cities that emerged in late medieval times and played such a powerful historical role until the emergence of absolutist states. The economic practices of market capitalism, in other words, did not invent either moral or immoral individualism. They should be viewed, rather, as marking a new specification and institutionalization of it, along with other newly emerging forms of social organization, such as religious sect activity, mass parliamentary democracy, and romantic love.[34]

Just as individualism in its moral and expressive forms preceded, survived, and in effect surrounded the instrumental, self-oriented individualism institutionalized in capitalist market life, so did the existence of "society." Civil ties and the enforcement of obligations to a community of others were part of the fundamental structure of many British towns centuries before the appearance of contemporary capitalist life.[35] The notion of a "people" rooted in common lineage, of the community as an ethnos, formed the early basis for an ethically binding, particularist conception of nationhood from at least the fifteenth century.[36] Karl Polanyi well described the "double movement" that characterized the emergence of industrial capitalism in the nineteenth century, pitting "moral forces" representing "the moral entity 'man' " against the egoistical, impersonal, and degrading practices of the market. The upshot of this struggle was that the "general interests of the community" created "protectionist measures" regulating the conditions of land, labor, and productive organization inside the very bowels of economic life. "Once we rid ourselves of the obsession that only sectional, never general, interest can become effective," Polanyi writes, "as well as the twin prejudice of restricting the interests of human groups to their monetary income, the breadth and depth of the protectionist movement lose their mystery."[37] Still, Polanyi is wrong to describe this "countermovement" as of a "purely practical and pragmatic nature," as producing measures that "simply responded to the needs of an industrial civilization with which market methods were unable to cope."[38] The protectionist movement did not simply grow naturally in response to a moral violation that was there for all to see. Rather, this defensive moral response emerged precisely because there had already existed strongly institutionalized and culturally mandated reservoirs of non-market, non-individualistic force in Western social life. It was from these sources that there emerged protests against capitalism on behalf of "the people."[39]

To identify civil society with capitalism (CSII) is to degrade its universalizing moral implications and the capacity for criticism and repair that the existence of a relatively independent solidary community implies. The civil sphere and the market must be conceptualized in fundamentally different terms. We are no more a capitalist society than we are a bureaucratic, secular, rational one, or indeed a civil one. Yet, to suggest the need to acknowledge the environment outside of economic life is not to embrace the kind of relativism that the pluralism of CSI implies. Michael Walzer has argued eloquently that there are as many spheres of justice as there are differentiated social spheres.[40] Luc Boltanski and Laurent Thevenot, in a parallel argument, suggest that complex societies contain several "regimes of justification," each of which must be respected in its own right.[41] As these American and French theories persuasively remind us, no social sphere, not even the economic, should be conceived in anti-normative terms, as governed only by interest and egoism. They have immanent moral structures in their own right. It remains vital, nonetheless, to specify and differentiate the "regime of justification" or the "sphere of justice" that makes a clear and decisive reference to the common good in a democratic way. This is the criterion of justice that follows from ideals that regulate the civil sphere. The codes and narratives, the institutions, and the interactions that underlay civil solidarity clearly depart from those that regulate the world of economic cooperation and competition, the affectual and intimate relations of family life, and the transcendental and abstract symbolism that form the media of intellectual and religious interaction and exchange.

When the domination of one sphere over another, or the monopolization of resources by elites within the individual spheres themselves, has been forcefully blocked, it has been by bringing to bear the cultural codes and regulative institutions of the civil sphere. This, at least, is the thesis that informs this book. Civil and noncivil spheres do not merely co-exist in a kind of harmonious interchange, as functionalist theories of differentiation from Spencer and Durkheim to Parsons and Luhmann imply. It is not only the pluralization of spheres that guarantees a good society, nor the free play and good will of interlocutors willing to compromise their interests in the face of competing and persuasive claims for moral justification. To maintain democracy, and to achieve justice, it is often necessary for the civil to 'invade' noncivil spheres, to demand certain kinds of reforms, and to monitor them through regulation in turn. In modern times, aggrieved parties have demanded justice by pointing angrily to what they come to see as destructive intrusions into the civil realm, intrusions whose demands they construct as particularistic and self-serving. In response, the forces and institutions of civil society have often initiated repairs that aim to mend the social fabric.

In terms of the normative mandates established by democratic societies, it is the *civil* sphere of justice that trumps every other. The universality that is the ambition of this sphere, its demands to be inclusive, to fulfill collective obligations while at the same time protecting individual autonomy—these qualities have persistently made the civil sphere the court of last resort in modern, modernizing, and postmodernizing societies.[42] For the last two centuries explicitly, and implicitly for many centuries before, it has been the immanent and subjunctive demands of the civil sphere that have provided possibilities for justice.

As we will see in our later analysis of the tense and shifting boundaries between civil and uncivil spheres, CSIII allows us to revisit the 'capitalism problem' in a more productive way.[43] When exploitation leads to widening class conflict, it signals strains and inequalities in economic life. When class conflict leads to wide public discussion, to the formation of legal trade unions, to urgent appeals for sympathy and support, to scandals and parliamentary investigations, such expansion signals that market conflicts have entered into the civil sphere. In such situations, the mandate of solidarity, the presumptions of collective obligation and autonomy, come face to face with the demands for efficiency and hierarchy. These conflicts are not accidental; they are systematic to every society that opens up a civil sphere, and they make justice a possibility, though not in any sense a necessary social fact. In real civil societies, extending solidarity to others depends on the imagination. As I have suggested in chapter 1, the counter-factual "original position" that inspired Rawls' philosophy of justice is assumed in fantasy, as an idealization, via metaphor and symbolic analogy, not through pragmatic experience or logical deduction. It is a matter of cultural struggle, of social movement, of demands for incorporation, of broken and reconstructed dialogue, of reconfiguring institutional life.

Such tense and permeable boundary relationships between capitalist markets and the civil sphere, barely visible during the early reign of CSI, were denied in principle by CSII. Only if we develop a new model, CSIII, can we understand why capitalistic and civil society must not be conflated with one another. If these realms are separated analytically, we gain empirical and theoretical purchase, not only on the wrenching economic strains of the last two centuries, but on the extraordinary repairs to the social fabric that have so often been made in response. Markets are not, after all, the only threats or even the worst threats that have been levied against the democratic possibilities of civil life. Far from the mere existence of plural spheres providing the skeleton key to justice, each of the diverse and variegated spheres of modern societies has created distortions and undermined civil promises. Religious hatreds and repression, gender misogyny and patriarchy, the arrogance of expert knowledge and the secrecy of political oligarchy, racial and ethnic hatreds of every sort–each of these particularistic and anti-civil forces has deeply fragmented the civil domain. The identification of capitalism with civil society, in other words, is just one example of the reductive and circumscribing conflation of civil society with a particular kind of non-civil realm.

Social and cultural movements of every kind, whether old or new, economic or religious, have organized to expose the pretensions of civil society and the hollowness of its promises. The theorists and ideologists who have led these rebellious and critical movements have often concluded, in their desperation and frustration, that civil society has no real force at all. Whether such radical arguments focus on class, gender, race, or religion, their argument is much the same. Justice is impossible; revolution and flight are the only options left. In this book, I will suggest that these radical, and radically despairing, arguments for emancipation from civil society are not empirically accurate, even if they are sometimes morally compelling. Generalizing from distorted and oppressive boundary relations, they draw the false conclusion that the civil sphere must invariably be distorted in this manner, not only now but in the future as well. Building on this faulty line of reasoning, they have outlined utopian projects that reject universalizing solidarity as a social goal or have proposed a reconstructed social order in which only peaceable relations will reign. I will suggest in the chapter following why the aspiration to universalism simply cannot be dispensed with, and in Part II of this book I will explain why continuous conflicts over the structuring of solidarity are the inevitable result. There is no way to avoid conflicts over boundary relations. They reflect the pluralism and complexity that mark modern and postmodern life, especially in its democratic forms. Between civil society and the other social spheres there is a theoretically open and historically indeterminate relation. Sometimes, the power of noncivil spheres has overwhelmed the universalistic aspirations of the civil sphere. At other times, its relative autonomy has provided the possibility for justice.