



# **Reconstituting Democracy from Below**

**New Approaches to Civil Society  
in the New Europe**

*Ulrike Liebert and Hans-Jörg Trenz (eds)*

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## New Approaches to Civil Society in the New Europe

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Hans-Jörg Trenz (eds)

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Cover picture: Demonstration by environmental groups outside the European Parliament to call on politicians to adopt ambitious climate policies, including a moratorium on the construction of over 50 new coal plants across Europe, 7 October 2008. © European Parliament 2008



## Preface

Reconstituting Democracy in Europe (RECON) is an Integrated Project supported by the European Commission's Sixth Framework Programme for Research, Priority 7 'Citizens and Governance in a Knowledge-based Society'. The five-year project has 21 partners in 13 European countries and New Zealand, and is coordinated by ARENA – Centre for European Studies at the University of Oslo.

RECON takes heed of the challenges to democracy in Europe. It seeks to clarify whether democracy is possible under conditions of pluralism, diversity and complex multilevel governance. See more on the project at [www.reconproject.eu](http://www.reconproject.eu).

The present report is part of RECON's work package 5 (Civil Society and the Public Sphere), which analyses how civil society and the public sphere shape the democratic reconstitution of Europe. Adopting a cross-national and cross-sectoral comparative perspective, it explores the conditions and dynamics of *democratisation from below*: the scope of media communication and debates and the mobilisation of citizens' support and resistance to evolving forms of European governance.

Erik O. Eriksen  
RECON Scientific Coordinator



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Ulrike Liebert  
Hans-Jörg Trenz

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<sup>1</sup> See RECON Online Working Paper 2008/01: ‘Polanyi in Brussels: European Institutions and the Embedding of Markets in Society’, James Caporaso and Sidney Tarrow.



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# Introduction

Ulrike Liebert and Hans-Jörg Trenz

*CEuS, University of Bremen and ARENA, University of Oslo*

RECON seeks to clarify whether democracy is possible under conditions of pluralism, diversity and complex governance. It aims at understanding the prospects for reconstituting democracy within the multilevel configuration that makes up the EU, and, in particular, the options for citizens' empowerment with special attention to gender equality within an enlarged Europe. RECON assesses which approach to democratic reconstitution is most viable – in empirical and normative terms – through analyzing the EU's constitutionalisation process; the institutional complex at the EU, member state and regional/local levels; the role and status of gender within the enlarged Europe; the democratic quality and governing capacity of the Union within tax/fiscal and foreign/security policy; and the multilevel configuration of civil society/public sphere. The project enhances knowledge of the enlargement process: the transition and consolidation of democracy in the new Member States and of the overall challenges posed by globalization to established democracies. It identifies strategies through which democracy can be strengthened and participation of citizens increased, and provides a set of concrete policy recommendations in line with these. It enhances the state of the art by developing and testing a theory of deliberative democratic supranationalism.

The more specific goal of WP 5 – “Civil society and the public sphere” is to explore the processes that translate democratic norms and principles into citizens' practices. Accordingly, we analyse the changing roles of *civil society* in relation to the *public sphere* as the social and communicative infrastructure of an unfolding European polity. Different scenarios for reconstituting

democracy can be expected to evolve, depending on the dynamics of politicisation, of post-functional integration and constitutionalisation in the enlarged Europe with the varying political opportunity structures these processes offer for social inclusion and political participation.

The relevance of European civil society within this RECON research framework derives from the spectacular changes in the European Union over the past two decades: developing from what was still a Western European Community of 12 longstanding democratic member states in 1989 into a 27-member community by 2007, successfully incorporating ten post-communist states, with their only recently established democratic regimes and market economies. The EU is considered the world's most advanced regional multilevel polity with effective governance capacities in a broad range of public policy fields that do not rely on a supranational state. More particularly, we contend that without a normatively reflexive and analytically differentiated understanding of civil society, important dynamics will be missed that have been – and are still – reshaping the reconstitution of the European polity after 1989. Over the past two decades, civil society has played a pivotal role in Europe, from the demise of Communist rule and the third wave of democratisation and economic transformation of half a continent – East Central Europe – to the end of the Cold War, and from the dissolution of the iron curtain that divided Europe for over four decades, to the reunification of Europe followed by the expansion of the single market to the reconstitution of democracy in the enlarged European Union.

This report brings together seven contributions aimed at mapping the current state of the art in civil society research in theoretical, interdisciplinary and empirical terms. The present compilation reflects “work in progress”, namely an effort to bring together normative democratic theory, legal, political and sociological analysis as well as empirical social scientific case studies and comparative analyses. The contributions to this report are clearly at an experimental stage. They do not yet offer a coherent framework but rather take stock of a range of different perspectives, problem definitions and experiences that need to be taken into account in view of a more truly integrated research programme. Thus, considering the limited ambitions of this report at the present stage of our research endeavour, the reader should not expect to find theoretically consistent and empirically validated lessons about the viability of “reconstituting democracy from below” in Europe. Rather, this report seeks to stimulate conversations among different accounts of what role civil society may play, from the transitions to and consolidation of democracy in the new member states, to the reconstitution of democracy beyond the nation state, in the diverse contexts of “old” and “new Europe”. Conversations about civil society in post-enlargement Europe are certainly an important field for mapping the intellectual, disciplinary, political cultural and

social boundaries that continue to shape – and fragment – contemporary Europe.

Summarising the key issues of these explorations, we argue – and the contributions to this report issue will develop this in more depth – that in the enlarged EU, the normative foundations and political functions of civil society have undergone profound changes that have generated new problems and questions, but also driven the search for conceptual clarifications and theoretical innovations, in three respects. First, the question why in East Central Europe, a new civil society discourse has constituted one of the preconditions for the demise of state socialism, hence, the role of organised civil society has been that of a pivotal agent of some of the historically most outstanding transformations that have marked our contemporary social and political life over the last two decades, whereas post-communist civil society has been depicted as weak and underdeveloped, compared to the West (see Guasti, Huszar and Heller et al. in this volume). Second, in the wake of European enlargement new concepts of EU governance have been coined, experimenting with forms of civil society consultation and participation in the initiation as well as implementation of public policies, but without clarifying the normative and conceptual foundations of different roles assumed by diverse sectors of civil society (see Liebert and Trenz in this volume). Third, normatively more refined concepts and critical theories are needed for capturing the contemporary predicaments – the deep tensions and contradictions – inflicting the current legal frameworks as well as practices of civil society, from the power asymmetries and social inequalities that are the consequences of market driven, socially disembedded processes of globalisation, to the challenges of “uncivil society” towards democracy and social integration (see Liebert, Serdynska and Heller et al. in this volume).

Since a more realistic and normatively reflected theorizing of civil society depends on conceptual innovations to capture the transition from civil society in the context of the democratic nation state (conventionally held in the Western part of the hemisphere) to the realms of non- or semi-democratic, executive governance beyond the state, our contributions aim at critically discussing and correcting traditional assumptions and preconceptions regarding civil society in the following respects:

- The belief that civil society is necessarily defined by the territorial scope of the state and bounded by national identities. By contrast, in the past decades we have witnessed civil society expanding beyond national boundaries to the transnational, regional and global realm, yet not necessarily carrying with it the societal “roots” that are required for developing its legitimation potential;

- The idea that civil society will be synonymous with self-government or responsive, democratic governance and its participation will therefore engender legitimacy; instead, civil society may bring critical and even delegitimising edges into the political process, thus constraining rather than empowering states and executive agencies and pressing for democratic/democratisation reform;
- The normative expectation that self-organised civil society is necessarily “good”, that is, civic, peaceful, in the public interest and committed to cosmopolitan, including international human rights values – in contrast to practices, such as the emergence of violent, xenophobic or anti-Semitic networks, or varieties of outright particular or even anti-public interest associations that can be observed travelling under the white banner of “civil society”;
- The assumption that civil society needs to be independent and autonomous rather than interdependent vis-à-vis government or governance arrangements.

## Outline of the report

The following section gives an overview on the major theoretical reflections, conceptual revisions and propositions as well as empirical findings that the contributors to this report have reaped from recent civil society debates and experiences in different fields, illuminating the range of our understandings of the role of civil society in the reconstitution of democracy.

In the first chapter, the editors explore the state of the art in the field of research on civil society and the public sphere. Liebert and Trenz give an overview of the controversial questions that have sparked theoretical debates on how the European social space is linked to the issue of democracy. The democratizing/legitimizing potential of civil society and the public sphere is analysed from four different angles, each focusing a set of crucial issues in the European civil society debate, namely different conceptual presuppositions for relocating civil society and the public sphere from national to European and global sites. These issues include (1) controversies regarding the participatory promises of civil society and the public sphere as alternative, more inclusive venues compared to liberal or representative democratic processes; (2) the neglected global and European dimensions of civil society and the public sphere; (3) the comparison of top-down activated vs. bottom-up actively mobilizing types of civil society and the public sphere and (4) the scope and measurement of the Europeanisation of civil society and the public sphere. Embedded in this larger field, in the final section, Liebert and Trenz highlight in more detail what novel contributions RECON can offer for European civil society research in view of future research.

Petra Rakusanova Guasti, in Chapter 2, engages with the question of what the study of civil society in Central and Eastern Europe may contribute to discussions and research on the subject of a European civil society. In order to highlight the relevance of CEE civil society research for understanding European civil society, the article starts with a critical evaluation of the extent to which Western concepts and analytical categories are applicable to the study of civil society in the CEE region. In her assessment of recent contributions to the former body of research, she challenges and qualifies conventional wisdom regarding civil society in the context of East Central Europe, namely the allegedly embedded “weakness of civil society” in the new member states. Secondly, she turns to the “normative trap” into which empirical studies of civil society participation in EU governance often fall by selecting only organizations which are perceived as supporting the established mode of governance. Here she suggests that civil society should not be conceived too narrowly but broad enough to encompass areas for the articulation and realization of common interests, as well as arenas for the struggle between particular interests. Thirdly, the analysis goes on to assess the relationship between post-communist citizens and organized civil society. The author argues that the benefits to be gained from incorporating the study of CEE civil society into the study of the emerging European civil society can be found in five respects: (1) the insights it affords into the interplay between organized civil society and the public sphere; (2) the critical focus on the role of the state and (3) the further illumination of the relationship between the state and civil society, as well as (4) the state and the citizens. Finally (5), studying the tensions between active citizenship and a liberal approach to democratic citizenship – as they can be observed in Central and Eastern Europe – might also play out in a better understanding of European level struggles about true civic dialogue where different social groups enjoy equal recognition (comparable to the social dialogue).

In Chapter 3, Hans-Jörg Trenz proposes that civil society also offers a key to understanding the structure of democratic representation in the multilevel system of the EU. Political representation has been primarily analysed in relation to the role of parliaments and political parties in mediating between a common European and particular national interests. This mediating function is also taken up by civil society stakeholders, who claim to speak in the name of particular constituents. Bringing back political representation in relation to organised civil society does not only shed light on a central mechanism of interest mediation in the multilevel setting of the EU but also helps us better understand new ways of imagining common interests, identity and solidarity. The chapter spells out how political representation works as a creative practice that accounts for the integration of the emerging EU-polity in relation to its social constituency.

In Chapter 4, Ulrike Liebert adopts a “bottom-up” view of the origins and sources of European integration. This view, she suggests, is needed for explaining inherent contradictions of the integration process, such as the EU’s constitutional treaty reform process that is torn between the objectives of furthering democratic legitimacy on the one hand and contentious practices of real civil society on the other hand. Taking critical issue with the Tocquevillean civil society thesis of democracy, she submits that in the post-national constellation, civil society will be “Janus faced”: Under contemporary conditions of predominantly negative integration civil society will be contentious or even polarised rather than united in support of a half-way democratic Union. For instance, in the emerging European civic sphere – broadly understood as a configuration of asymmetric linkages between the market, society and the EU multilevel polity – some social actors may strive for political influence, representation and participation geared towards supranational democratic procedures, while others will resort to national democratic resources for mobilising counter movements opposing European integration and democratisation. The chapter develops this argument theoretically and by means of empirical illustration. To illustrate the claim that European real civil society should not be conceived as homogeneous but rather as polarised and contentious vis-à-vis European integration, the case of the women’s organisations is inspected in more detail. This case is not only paradoxical, it also can be considered as a particularly crucial one, given the persistent gender gaps in public support for Constitutional Treaty as well as Lisbon Reform Treaty ratification; in both, proportionately more women tend to be Eurosceptical than men. The chapter concludes by outlining some conditions under which a contentious civil society can be expected to promote democracy beyond the state.

In Chapter 5, Joanna Serdyska examines the difficulties that have hindered the EU so far in agreeing on a shared legal civil society framework, notably a treaty basis for new entities such as the “European Foundation” and the “European Association”. Her analysis provides a comprehensive comparative mapping of legal provisions on civil society in the European multilevel polity. While The Commission has adopted a broad definition, in most EU member states domestic legislation acknowledges a range of different “forms” of civil society organisations, with two basic legal forms: associations and foundations. The chapter starts with clarifying the general principles on which “non-governmental organisations” are based. It then maps the legal form of “foundation” and the laws on “foundation” in the framework of different national rules, covering states that have been included in RECON WP 5 research (Bulgaria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Norway, Poland, Spain, Sweden, The Netherlands, Turkey and UK). She also covers projects of European civil society law at the EU level. One of the most striking findings of her systematic comparison is that across member states the non-profit sector is

incredibly diverse, heterogeneous and populated by organisations with hugely varied goals, structures and motivations. How can an over-arching policy on the European level be possible towards such a “loose and baggy monster”? Thus, following Serdyska, it is no surprise that there is a lack of shared understandings across member states as to what the concept of civil society actually means and what it should embrace. The author concludes nonetheless with a moderately optimistic outlook: “Enabling a legal framework for European civil society is perhaps not impossible but surely very tedious”.

Akos Huszar, in Chapter 6, explores the institutionalisation of civil society in a new member state, Hungary. Although also Huszar finds the concept quite vague, he identifies a layer of meaning resulting from the experiences of anti-communist opposition movements over recent decades. By drawing on Habermas, Cohen and Arato, Szabó and others, Huszar emphasizes civil society’s roots in social theory. He then examines the regime transformation by providing empirical evidence on civil society activism, asking to what degree “the utopia of civil society can be considered an effective utopia”. Assuming that the most important expectation of civil society, which can also be tested empirically, is that of an “operational society in which citizens actively participate in public life”, he finds that East-Central European evidence over the past twenty years does not corroborate this claim. He argues that the institutional change following the transition of 1989-90 multiplied the opportunities for citizens to participate in political processes. However, Huszar finds that contemporary Hungarian citizens, unlike those in the civil society theory, remain distrustful of government institutions and parties, a constellation that again leads to increased apathy rather than an increase in political participation.

In their jointly authored Chapter 7, Maria Heller, Akos Huszar, Borbala Kriza and Agnes Renyi analyse civil society as will and imagination. In light of Hungarian experiences, they trace back the discovery of the emancipating role of civil society in conceptual history to arrive at an account of civil society as a political actor in (post-)modern societies. They show that this modern use of the civil society concept as a sphere of autonomy which is separate from – or even in opposition to – the state has been highly influential in the period of regime change in Central- and East-Central Europe. The article proceeds with an illustrative analysis of “civil society representations” in key texts and discourses that have marked the Hungarian transition period. It concludes with a thorough overview of the expanding “civic sector” in Hungary and a warning remark on the new challenge of “uncivil society”.

In the concluding chapter, the editors draw a summary of what we have learned about the role of civil society in the reconstitution of democracy in

Europe. Regarding the key issues of debate, Liebert and Trenz argue that in the enlarged EU, the normative foundations and political functions of civil society have undergone profound changes generating new problems and questions, but that have also driven the search for conceptual clarifications and theoretical innovations. This exploration is motivated by the distinctions found between the different discursive images and heuristic uses of the notions of civil society and their function as referents for empirical inquiry. Especially in this latter respect, they find the conception of a European civil society still decidedly wanting.<sup>1</sup>

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<sup>1</sup> For further theoretical and conceptual clarifications, see the contributions by Klaus Eder, Beate Kohler-Koch, Carlo Ruzza, Stijn Smismans and Hans-Jörg Trenz to a forthcoming issue of *Policy and Society: "New Approaches to Civil Society in Europe"*, edited by Ulrike Liebert and Hans-Jörg Trenz (2009).

# Chapter I

## European civil society and the public sphere State of the art

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### Theory: Main approaches, key concepts and controversial debates

The concepts of “civil society” and the “public sphere” have surged to a prominent place on the European research agenda. They reflect attempts to better understand and assess the nature of the evolving European social space and how this is structured by networks of communication and civic participation, social norms and popular sentiments that are concerned with European integration and governance. In the traditional terms of Western democracy, civil society and the public sphere have been seen as the social and communicative infrastructure of the democratic state. More recently, in East Central Europe, they served as habitats for societal opposition against the authoritarian state and became engines for democratisation. After the reunification of Europe in 2004, the ideas of a “European civil society” and a “European public sphere” claim a doubly prominent role on the conceptual and empirical map of European integration research: From a normative point of view, the ideas of a European civil society and public sphere promise better governance, improved legitimacy and citizen’s participation in the European polity. In empirical terms, exploring and testing expectations about the manifestations and presence, patterns and dynamics, conditions and consequences of a European civil society and a European public sphere – help us put controversial normative ideas to a reality check. Ultimately, empirical

research on the practices of European civil society and the European public sphere aims at assessing opportunities for and constraints on a democratic Europe.

There are two sets of controversial questions that have sparked theoretical debates on how the European social space is linked to the issue of democracy:

- How to conceptualise civil society in relation to the family, the state and the market? Is a European civil society possible and what are its prerequisites? How and under what conditions can civil society promote democracy in Europe – for instance, in view of the gap between organised and unorganised civil society? Depending on what kind of social capital? Regarding the delimitation of civil society from uncivil society? Concerning the presence of a European public sphere?
- What normative requirements should a democratic public sphere fulfil? How to promote a European public sphere that transcends the boundaries of the national communication community, given that the European Union lacks preconditions such as a common language and media system? In which ways does the public sphere require a developed civil society?

Contributions to these debates stand for the multi-disciplinary research field that confronts us with very different theoretical and practical questions of a European civil society and a European public sphere:

- *Historians* look for precedents and traditions of a European civil society and public sphere (Kälble 2002; Kocka 2004).
- *Cultural sociologists* analyse attitudes and public opinion in relationship to European integration that are shaped by media discourse (Diez Medrano 2003; Bruter 2004, 2005).
- *Political sociologists* analyse the scope of legitimacy and legitimation of a new political order (Eder 2003; 2004; Trenz 2005) or focus on the role of language and communication in relationship to identity and community building (Kantner 2004; Kraus 2004).
- *Communication and media scientists* apply new methods of transnational content analysis and deliver first empirical insights into the functioning of the European media landscape and the scope and quality of news coverage on the EU (Koopmans and Statham 2002; Koopmans and Pfetsch 2003; Kevin 2003; de Vreese 2003),

- *Social movement analysts* investigate the contentiousness of European integration in relation to new opportunities for collective action and mobilisation (Imig and Tarrow 2001; Ruzza 2004).
- More classically oriented *political scientists* investigate the openness and transparency of European governance and EU-decision-making (Kohler-Koch 2007; Kohler-Koch and Finke 2007).
- *Normative political theorists and constitutional lawyers* design new procedural rules of democracy and anticipate a European constitution (Eriksen 2005a; Preuss 2004; Peters, B. 2005; Peters, A. 2001).

This new and still largely unexplored terrain is exemplary for the kind of difficulties that imprint this new generation of European integration studies, especially in the context of enlargement. For obvious reasons, such a multidisciplinary debate also risks mutual misunderstandings. It is therefore time to review our repertoire of theoretical ideas, compare it to what we actually know about the practices of European civil society and the European public sphere.

## European civil society: concepts, forms and legitimacy

### *Three concepts of civil society in Europe*

The concept of c.s. refers to a collective of free citizens who organize their common life in an autonomous and co-operative way. Similar to the case of the public sphere, the meaning and historical dynamic of the concept of civil society in modern Europe has been trapped in methodological nationalism and its assumption of a congruence between state and society (for overviews see Gellner 1991; Cohen and Arato 1992; Alexander 1997; von Beyme 2000, Klein 2001; Kocka 2004). Depending on their varying focus on state and market, three ideas of civil society with different historical roots still animate the contemporary theoretical debate (see Forst 2007).

The Aristotelian idea of *societas civilis* refers to a political community of free and equal, virtuous citizens, bound together by a willingness to advance their common interest by means of political self-rule aimed at protecting their liberty against both despotism and anarchy. This conceptual tradition has inspired the understandings associated with communist and post-communist civil society: Following the exponents of the dissident movement, civil society is an integral part of everyday life, a lifestyle of “anti-politics” (György Konrad) that constitutes “power of the powerless” (Havel 1990). Civil society is a project, vision and program placed in direct opposition to the state and its totalitarian apparatus; it is founded on norms such as the ethical imperative for action, belief in humanism and non-violence, support for human rights, the autonomy of the individual, and the defence of human dignity (Bryant

1993; Kumar 1993; 1994; Bryant and Mokrycki 1995; Tarrow and della Porta 2004; Ost 2005).<sup>1</sup>

In the tradition of the Hegelian and Marxian notion of *bürgerliche Gesellschaft*, civil society is conceived of to reflect the differentiation and at the same time interdependence of the three spheres of society, the economy and the state. Here, civil society refers to an autonomous realm for the pursuit of individual interests and freedom, where social co-ordination is achieved through the market that is conceived as a “conversation” that contributes to civility, to the public sphere and civil society at large” (Perez-Diaz 2006).

Finally, from Montesquieu, Ferguson and de Tocqueville to Habermas, civil society has been conceived as a public realm of action in the triangle between the state, the economy and the private sphere, constituted by autonomously created associations and organisations through which civic interests are formed, self-government is learned and exercised, thus ‘taming’ economic and political powers (Habermas 1996). The advantage of this relational model of civil society is that it may reconcile libertarian and republican traditions and, at the same time, provides a descriptive-analytical mode (Cohen and Arato 1992; Gosewinkel et al. 2003). Furthermore, the differentiation of an autonomous sphere of collective action and communication of free and equal citizens may translate into polity-building – the allocation and constitutionalisation of political authority within a given territory. It is debatable, though, whether and to what extent this process will put constraints on free market forces, which, in turn, remain dependent on individual liberties and free associationalism within civil society (cf. Nanz and Friedrich 2007; Nanz and Steffek 2007). For instance, for the post-communist context it was argued that the transformation of the communist regimes, the dismantling of the centralist state apparatus, and the privatisation of the economy and market building, had fostered the emergence of a civil society of the Tocquevillean kind as an intermediary sphere of organised interests, comprising the non-profit and voluntary associations of the so-called third sector beyond the state and the market. Although civil society was not any more a motor of peaceful revolution and transformation it did not necessarily turn into an engine of democratic polity building: due to its endemic weakness (Howard 2003; contrary: Petrova and Tarrow 2007), its burdens by the post-communist heritage (Hildermaier et al. 2000; Kubik 2000), the dominance of the economic over the civil (Obradovic 2005) and the reframing of the meaning of civil society by post 1989 liberal intellectuals, from a democratically inclusive project to “little more than the building of market economy”, ultimately leaving the articulation of economic discontent to illiberal politics (Ost 2005: 191-2).

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<sup>1</sup> See also Adam Michnik, ‘Notes from the Revolution’, *The New York Times* 11 March 1990.

*The neglected global and European dimensions of civil society*

It would be misleading to introduce the European civil society as a new and revolutionary concept that breaks with the nation state-centric tradition in political and normative thinking. Rather than auger a conceptual revolution, the notion of a European civil society points to a renaissance of a key term in political and scientific parlance (Richter 1997; Rumford 2001). The neglected global dimension of civil society (Delanty and Rumford 2005: 171) refers to the civic elements of collective action, and to an unfolding “civic practice”, which necessarily has a cosmopolitan dimension (Rucht 2005). European civil society is thus seen as part of the global transformation that support the emergence of a cosmopolitan civil society (Held 1995; Beck and Grande 2005; Walzer 1995; Anheier et al. 2002). Common to contentious movements, NGO’s and the third sector in the old EU as well as to the re-emerging civil society in the new member states, civil society organisations and discourses are increasingly shaped by transnationalisation and global networking.

*European civil society and democratic legitimacy*

European civil society came to a broader attention through what is now generally referred to as the normative turn in EU-studies (Eriksen 2005a; Kohler-Koch and Rittberger 2007). First, civil society was linked to new governance approaches that shifted the focus from hierarchical and technocratic decision-making to a new partnership model that supports the inclusion of social and economic actors, experts and specialised groups within horizontal decision-making (Frey and Eichenberger 1999; Hooghe and Marks 2001). In this context, Kohler-Koch and Finke (2007) distinguish three generations of EU-society relations: the extension from “consultation” (1960 and 70s) to “partnership” (1980 and 90s) and “participation” (1990s and 2000). Civil society is thus considered as a central ingredient of “good governance” in the EU (European Commission 2001; Joerges and Dehousse 2002). Second, taking the democratic deficit of the EU serious, many authors have pleaded for alternatives to national as well as to European models of (semi-) parliamentary democracy. Models grounded on civil society include “participatory democracy”, “associative democracy” and “deliberative democracy” (Nanz and Steffek 2007; Smismans 2007; Hüller forthcoming). All of them have in common to argue that European civil society building correlates with polity and market building in the European Union (Fossum 2005; Fossum and Trenz 2006). European civil society is expected to correct unbound political power and market forces. Some observers would contend that mistrust with political institutions and markets has become a driving force for the evolving European civil society, without assuming that pre-existing ties of trust and solidarity must necessarily hold the Europeans together. A European civil society thus is seen as a mechanism of social

integration in an increasingly differentiated and heterogeneous polity (Ruzza and della Sala 2006).

However, it has remained controversial whether it is realistic to expect citizens' participation in EU democratic polity building (Moravcsik 2006) and how to enact it in procedural terms; whether a *principled conception* of participation would be sufficient according to which the openness and inclusiveness of government is a sufficient indicator of the democratic quality of the participatory process; or whether a *functional conception* requires participation to amount to more than preference aggregation and also add an epistemic value to government and governance on the basis of good reasons and justifications provided by the participating actors and institutions (Kohler-Koch and Finke 2007).

### The public sphere

For normative and empirical accounts alike, the nation state is seen as the paradigmatic container of a public sphere that would rely on a common language, territory and authority and where communication would be restricted to distinctive spaces of meaning and discursive exchange. Public sphere research is consequently biased in favour of the *national* public sphere. Nation- and public sphere building is seen as co-evolutionary through the differentiation of a well functioning system of mass communication (Deutsch 1953; Gellner 1991; Anderson 1991).

#### *Conceptualising the European public sphere*

The debate about the European public sphere is about whether to model it (1) after what we presume to know about the national public sphere or (2) whether one should assume that it will significantly differ from that (Gerhards 2002). The first position would start from the taken for granted reality of the national public sphere, taking it as a critical yardstick against which to measure the European case. Many authors continue to stick to the classical Habermasian notion of the public sphere as a critical space of intermediation and communication that is open to the participation of everybody, in which issues of common concern are discovered, discussed and proceeded and in which a specific communicative power is created that holds government accountable (Habermas 1996; Neyer 2003; Eriksen 2005a; Hüller 2005). For constitutional lawyers like Preuss (2004) the public sphere is a constitutive feature of political community, the "incarnation of the *res publica*" (p. 49) that binds the public good to collective will formation. For sociologists like Eder (2004: 66), the public sphere unfolds as a discursive universe that becomes institutionalised in the process of nation-building. Some political scientists are concerned with the normative requirements for the public sphere to control governance. Landfried (2004: 125) develops a model of interwoven public spheres that through the positive experience of difference

discover topics of shared relevance. For Risse (2004: 149), the public sphere is first of all a discursive community that allows for the recognition of actors as legitimate participants in political discourse and constructs its collective identity as a political community. Finally, media and communication analysts like Kevin (2003), Norris (2000) and Díez Medrano (2003) are most pragmatic equating the public sphere simply with the (national) media system.

A minimalist definition of the European public sphere on which most might agree, denotes an open communicative space that is linked to the approval and critics of evolving forms of European governance. This kind of European public sphere produces visible communications about the performance of European political actors and institutions. It is a *political* public sphere as it refers to the normative expectations, attitudes and opinions expressed in the sphere of politics (Eder 2004; Trenz 2002, 2005).

#### *Segmented Europeanisation of national public spheres*

However, the majority of authors would discard the possibility of an encompassing European public sphere built along the template of the national public sphere (Gerhards 1993, 2000; Schlesinger 1994, 2003). Most importantly, its major precondition – a pan-European media system – is held to be difficult, if not impossible. Furthermore, given the diversity of languages, media cultures and traditions, European audiences are expected to remain segmented along national lines. Finally, it is argued, political communication in Europe will continue to be channelled through national civil society organisations, parties and elected representatives. As a result, the practices of news production with regard to the EU are likely to remain segmented. European actors and European issues will appear, if at all, in domestic and not in European debates (Preston and Horgan 2006: 37). This conceptualisation of the “European public sphere light” has shifted the research agenda to the *Europeanisation* of public and media communication. Here, the national public sphere and European communications are coupled either through intensified exchanges between different national public spheres (horizontal Europeanisation) or through the infiltration of European actors and issues in national public spheres (vertical Europeanisation; Koopmans and Erbe 2004).

#### *Tackling the European democratic deficit by promoting the public sphere*

Research on the public sphere in Europe – either modelled at the European level after a strong or a lighter version of the national public sphere, or conceptualised in terms of horizontal or vertical Europeanisation of national public spheres – is deeply entrenched with the normative debate about the reallocation of democracy in Europe (Trenz and Eder 2004). This is at the heart of the RECON project: Our research on the European public sphere is driven by concerns about the normative deficits of European integration: the so-called “EU – citizen gap” grounded on a communication deficit.

Unarguably, the EU seeks to promote its legitimacy by fostering public accountability, openness and participation, in other words: democracy (European Commission 2006). It is surprising in a context that calls for democratic accountability and transparency in the EU, that the European Parliament – compared to the Commission – thus far has attracted considerable less interest in its search for power and influence by improving public communication (Morgan 1999; Liebert 2007b).

## Empirical overview

### Current political developments in the field

European civil society and the European public sphere did not originate as analytical concepts. Their importance is rather fruit of normative concerns with the deficits of European integration. Nevertheless, both concepts stimulate a new, rapidly expanding empirical research domain, aimed at explaining current developments of European integration, institutional reform and governance (Franzius and Preuss 2004; Schlesinger and Fossum 2007). A look at the recently concluded Conventions for the Chartering of Fundamental Rights, the drafting of an EU Constitutional Treaty, examples from the institutionalisation of a European Social and Civil Dialogue or the implementation of structural policies demonstrate how normative expectations and empirical research resonate, in exploring ongoing processes of deliberation, negotiation, and communication in the EU (Eriksen et al. 2003, 2004; Liebert et al. 2006; Kohler-Koch 2007; Steffek et al. 2007).

### Confining the European civil society in empirical research

#### *The top down approach to European civil society*

If we conceive of European civil society as a structured intermediary space that depends on European institutions and decision-making procedures (Eising and Kohler-Koch 2005), the key questions of empirical research becomes whether, how often and under what circumstances the EU provides associational actors with opportunities to express their demands in the on-going policy process (Peterson 1997). Analyses of issue advocacy coalitions and networks have explored how these interact directly with European institutions (Ruzza 2004). The emergence of a European civil society – explained as a top-down process – requires, first, that European institutions provide opportunities for civil society to establish associational structures at the European level. Second, it requires civil society actors to adapt to the specific European opportunity structure. Civil society associations are seen as the dependent variable, as actors which change their strategies and mobilize behavior in reaction to European governance and integration. In a more positive vein, Justin Greenwood finds the EU institutions to have created a “particularly vigorous neo-pluralist regime” by which they “actively create and develop as well as empower citizen interest groups”, thus “effectively

mitigating the asymmetries of power between different types of organized civil society interests (Greenwood 2007). Yet, from our literature overview, we are able to describe four general trends in how civil society evolves:

- *From territorialisation to sectoralisation.* One adaptive strategy of civil society actors who want to turn to Europe consists in de-territorialising conflicts or, better, in generalising territorial conflicts through sectoral logics. Tarrow describes the effects of this strategy as follows:

The shift of regional mobilization and potentially territorial claims to sectoral objects and claims through the brokerage of EU officials and national governments buffers the territorialisation of regional cleavages that might produce territorial ‘exit’ and renders them divisible into budget items that can be negotiated over, compromised, and traded off for gains or losses in other areas of policy.

(Tarrow 2004: 23)

- *From social to civil dialogue.* Based on her comparison of the civil and the social dialogue in the European Union’s system of governance, the Dutch lawyer Daniela Obradovic finds that the economic dialogue prevails over the much weaker civil dialogue in the European Union (Obradovic 2005). Although the civic dialogue was launched to counterbalance the involvement of the sphere of production in the European governance, the prevailing procedure of the civil dialogue complements rather than counterbalances the social dialogue (ibid: 322). She concludes that so far, the involvement of interest groups in EU governance has not dramatically increased the efficiency of the EU governance, since organised civil society – unlike the social partners – is perceived as a diffuse, unstable partner. This is also supported by Ruzza and Fella (2005) for the various roles of the organized civil society in European governance, including: 1) raising support for decision making activities (enhancement of output legitimacy); 2) input in policy-making through information gathering and monitoring; 3) mediation and conflict resolution, counterbalancing organized interests; and 4) development of new forms of civil society interest aggregation (ibid).
- *From protest to involvement.* Marks and McAdam (1996, 1999) have observed the strategic adaptation of non-state actors within the political opportunity structure of the EU. They describe a division of labor within multi-level civil society, with local activists taking the protest part and supranational representatives involved in consultation and co-decision. They conclude that Europeanisation reinforces a

general trend from contention to alignment and cooperation, which is not limited to the European arena but unfolds at all policy levels. As a result of the Europeanisation of civil society, NGO's have also taken the role of agents of political socialization (Warleigh 2001).

- *From participation to representation.* Data on collective action in the EU confirm a general trend towards the formation of representative structures of civil society at the European level (Eising and Kohler-Koch 2005). This is explained by one simple reason: Only a few actors can be physically present in Brussels and can interact with the Commission or other supranational institutions. Large national associations usually delegate some professional activists as stable representatives to European umbrella organizations. The new attitude of openness on the part of European institutions to civil society for participation and consultation requires them to develop representative structures (Aspinwall and Greenwood 1998; Mazey and Richardson 2001; Balme and Chabanet 2007).

Many authors criticise the insufficient and ineffective participation of organised civil society in the Constitutional process, despite public hearings and online forums held by the Convention (Andreev 2006: 7; Puntischer-Riekmann and Wessels 2006). It is stated that the more top-down the process of Europeanization is, the less civil society actors seem to gain access to the public (Della Porta and Caiani 2006).

#### *The bottom-up approach to European civil society*

Recent comparative and transnational research on civil society in Eastern and Western Europe has emphasized different trends to that respect:

- Delanty and Rumford (2005) claim that European civil society is rooted in individual national civil societies since these serve as a bulwark against economic globalization, thereby establishing the basis for maintaining the integrity of the nation-state.
- In Central Europe, civil society has often been the only ideological alternative to foreign hegemony (Seligman 1992; similarly cf. Walzer 1995; Nardin 1998; cf. Rakusanova 2005, Rakusanova and Staskova 2007]; this heritage comprises the struggle of dissident movements with authoritarian regimes, the forced participation in mass communist movements, as well as informal social networks (cf. Howard 2003; Kubik 1994; 2000; 2002; Ost 2005).
- From the perspective of national civic associations, lack of participation in the constitutional process as well as a missing link

with European associations has been found. Major EU level groups and platforms which regularly submit contributions to the Commission's consultation process do not undertake any measures to promote participation by their members or supporters in preparing these submissions (Obradovic and Vizcaino 2006). Following Greenwood (2003: 77) the internal structure of European-level organizations is more detached from unorganised civil society than the EU institutions themselves. Almost all European associations are organized as confederations, i.e. associations of national associations that do not admit individuals as members. This denotes a structural remoteness from the grass roots interests they represent.

The question of whether and how civil society at the national level is affected and reacts to the building of a European polity, has not found conclusive answers by empirical studies yet, although the EU's constitutional project has triggered mobilization (Vetters et al. 2006). As Imig and Tarrow (2001a: 7) have critically commented: "We know much more about participation in consultative committees in the five square kilometres of Euroland in Brussels than we do about contention over the effects of their decisions among the 375 million people who have to live with their consequences."

### Confining the European public sphere in empirical research

Empirical research on the European public sphere has generally proceeded pragmatically in disaggregating the concept of the national public sphere, and focussing at the scope, the mechanisms and the effects of the Europeanisation of *national media systems*.

#### *The scope of Europeanisation*

The scope of the "many faces of Europeanisation" (Olsen 2001) in the domain of media communication is analysed in different dimensions. A first group of researchers was devoted to the analysis of the dynamics of European news-making, agenda-setting and diffusion.<sup>2</sup> The scope of Europeanisation is determined by analysing the inputs, throughputs and outputs of political communication on the EU (Neidhardt 2006):

- *The scope of political communication.* The role of European actors and institutions as the *initiators* of debates on Europe and their agenda-setting strategies is taken into account. This includes the analysis of media and communication policies of the EU (Brüggemann 2005; Hüller forthcoming), the role of public intellectuals and media

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<sup>2</sup> Within the European research field, contributions within this research area were provided, in particular by the FP6-funded project "Adequate Information Management in Europe", <<http://www.aim-project.net>> (accessed 10 December 2008).

entrepreneurs (Lacroix 2005), the contestation within political parties (Eijk and Franklin 2004), or the referenda on the EU Constitutional Treaty (Mokre et al. 2006; Liebert 2007a).

- *The scope of mediation.* This comprises the information management through journalists as the *mediators* of Europeanisation in the Member States. Research has so far focused mainly on the organisational capacities of journalism and the media. Field studies were carried out to analyse the performance of EU-correspondents and the agenda-setting and control function of the Brussels *corps de presse* (Meyer 2002; Siopera 2004; Slaatta 2006; AIM research consortium 2007).
- *The scope of public reception and resonance.* This includes research on the changing attitudes and preferences of the publics as the *receivers* of political communication on the EU (Bruter 2004; Hooghe 2003; see Page and Shapiro 1987). Attentive structures and the knowledge of European citizens are regularly surveyed through Eurobarometer, which becomes the common reference point for institutional actors as well as for the European research community to observe European publics.

A second group of researchers has mainly promoted content analysis of European news coverage.<sup>3</sup> The public sphere is not seen as an arena of contention but as an arena of framing discourses and identities. Accordingly, research has focused on the contents of unfolding debates, on general issue structures and modes of interpretation:

- *Europeanisation of attentive structures.* The scope of Europeanisation is measured here in the general level of media attention for political news from the EU or other member states. Accordingly, vertical Europeanisation refers to the general visibility of Europe measured in the extent to which European events, actors and issues are covered by national news media. Europe is thus conceived as an observatory space in which attentive structures for ongoing events are symmetrical and political debates are synchronised (Tobler 2005).
- *Europeanisation of meaning structures.* The scope of Europeanisation is measured here in the degree to which issues are discussed under a common frame of interpretation, which allows to identify problems of shared relevance (Kantner 2003; Risse 2002). Europe is thus conceived as an interpretative space in which meaning structures

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<sup>3</sup> Within the European research field, contributions within this research area were provided, in particular by the FP5-funded project EUROPUB <<http://europub.wzb.eu/>> (accessed 10 December 2008).

converge, common standpoints are crystallised and a collective self develops (Diéz Medrano 2003; Risse 2004)<sup>4</sup>.

- *Europeanisation of interactive structures.* The scope of Europeanisation is measured here in the degree to which communication binds participants of different provenience together. Europe is thus perceived as an interactive space in which people of different national provenience become engaged in common discourse (Wimmel 2006, Brüggemann et al. 2006; Liebert 2007b).

Last but not least, the effects of Europeanisation of public and media communication can be measured in terms of opening a meta discourse on European integration providing collective representations of the community of European citizens. The effects of Europeanisation on identity formation are traced back in ongoing debates that reflect upon the collective self and belonging. In these terms, Kaelble (2002) and Giesen (2002) come to very similar findings in their historical reconstruction of a European self-understanding enshrined in a specific form of discourse about the commonness of the Europeans. Both point out the role of intellectuals as key persons to carry on such semantics about Europe's unity and unification. Also Kantner (2006) analyses the emergence of a shared ethical self-understanding of the Europeans that develops through conflict and debates about issues of common relevance.

## Situating the focus of RECON in relation to the literature and debates

RECON's work package 5 analyses how civil society and the public sphere support the democratic reconstitution of Europe. Adopting a cross-national and cross-sectoral comparative perspective, it explores the conditions and dynamics of democratisation from below. The guiding question is whether political practices foster those kinds of civil society and the public sphere that are considered constitutive for a democratic Europe. Alternative scenarios for the democratisation of the EU are derived from RECON's three theoretical models:

- Are "civil society and the public sphere" constrained to the preservation or reconstitution of national democracies?
- Do they take part in the construction of a federal polity through the emergence of representative structures and multi-level public spheres?

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<sup>4</sup> Within the European research field, the Europeanisation of meaning structures has found wide attention. From a historical perspective and a perspective of cultural sociology, see, in particular, the FP5-funded project EMEDIATE <<http://www.iue.it/RSCAS/research/EMEDIATE>> (accessed 10 December).

- Do they promote a novel, post-national and deliberative democracy embedded in global civil society and world discourses of justification?

In WP 5, RECON's central research hypotheses about the conditions for and dynamics of democratisation in a compound polity are tested empirically. Contributions of the public sphere and civil society to enhancing the reconstitution of democracy in Europe and Europe's projection of democratic principles beyond its borders are evaluated along dimensions that are set by the RECON models. We choose the post Laeken process of constitutional treaty reform – from drafting, negotiation, to ratification, reflection and renegotiation – as the empirical domain and opportunity structure for assessing the preconditions, quality and effects of civil society and the public sphere in practice. In this context, all three models of democracy are explored in political practice, in terms of their preconditions and impediments and possible gains in terms of legitimacy. This empirical assessment of controversial theoretical ideas in practice is then linked back to reformulate normative theory.

With its comparative empirical approach to civil society and the public sphere, WP 5 supplements the institutional perspectives of WP 2 – Constitutional Politics and of WP 3 – Representation and Institutional Make-up. Analyses of constitutional claims-making, civil society re-organisation and citizens' attitudes and preferences in the context of EU constitution making will provide the basis for a media and civil-society observatory with regard to the EU and its long-term constitutionalisation process. Within WP 5, empirical data sets are collected on:

- The articulation of democratic norms and practices in mass media debates about EU constitutional treaty reform politics;
- The role of civil society networks and sectoral publics in structuring public opinion and will formation and decision-making;
- The convergence vs. divergence of media discourses with citizens' sentiments and attitudes towards a democratic Europe;
- The role of public intellectuals in framing European democratic issues and debates;
- Representations of traditional and new collective identities and citizens' preferences and attitudes on European integration.

Based on these data sets, WP 5 will make contributions to the theoretical debates with respect to three questions. How do non-state actors from the member states perform (a) in giving voice to the “silent majority” (unorganized civil society) in the public sphere; and (b) as agents in the process of European integration? How are “civil” and “uncivil” kinds of

European social capital distributed across member societies? And, last but not least, what is their impact on the promotion of what kind of a democratic Europe?

Methodologically speaking, WP 5 conducts comparative surveys of selected countries, aimed at a cross-sectoral as well as a cross-country comparison of political discourses, citizens' cognitions, and (un)civic social networks. In cooperation with other RECON work packages, the final aim is to observe long-term trends in the development of a (trans-)European public sphere and civil society and their democratising impact within and outside of Europe.

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# Chapter 2

## What does Central European organized civil society contribute to European civil society?

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### Introduction

Civil society is many things, a concept, an issue of debate as well as a social reality commonly encountered in the media, in academic debates and in everyday life. Civil society can be compared to a black box. The contents of this box and its use change according to actors' interests or value-orientations. In normative theory, which is integrally linked to civil society, civil society is an image of the ideal democratic community – the imaginary correlate of democracy. Civil society, then, can be both an area for the articulation and realization of common interests, as well as an arena for the struggle between particular interests. In the Central and Eastern Europe (CEE), as well as in the authoritarian regimes of Latin America civil society was also a vital counterpart to the existing regimes and a significant if not major actor in dismantling these regimes. The empirical evidence available from the CEE region is particularly vital, as it underlines the general conceptual problems of pluralism in both conceptual understandings of and normative expectations with regard to civil society. What can the study of civil society in Central and Eastern Europe contribute to our understanding of European civil society? And how can we comparatively evaluate the impact of EU accession on the transformation and consolidation of Central European civil society?

Civil society in Central and Eastern Europe, as well as in general, is a

dynamic concept, the meaning of which is constantly changing and which is associated with changing values, actors and opponents.<sup>1</sup> Furthermore, this conceptual ambiguity reduces the capacity to adopt a comparative approach and causes critical inconsistencies (Alexander 1997). In order to reduce the theoretical complexity of the field and to link theoretical claims with comparative empirical findings this chapter employs the notion of pluralistic representative democracy and reduces the object of the analysis to organized civil society. For the purposes of this chapter, I thus propose to define civil society as an intermediary space between the area of private interests and the state, and to concentrate on organized civil society (as one component of civil society). Civil society is a vital part of participatory democracy, and as such is located outside the spheres of market, state and private life. It is in the sphere of civil society that active citizens become conscious of the interconnectedness of what the modern sociology calls the “lifeworld”. In this sense, our concept of civil society closely corresponds to Arendt’s, Kubik’s and Habermas’ definitions of civil society as a ground for public sphere, or identical with public sphere (Arendt 1998; Kubik 2000, 2002; Habermas 2003).

Within the system of European Governance, civil society is conceived as a normative project aimed at improving both governance (efficiency) and democracy (legitimacy) (Meehan 2000; Bellamy and Warleigh 2001; Delanty and Rumford 2005). Authors such as Meehan also acknowledge civil society as a useful framework for studying active (European) citizenship. Nonetheless, it is precisely the state of European civil society and the overall weakness of the European public sphere which is often identified as barrier hindering an emerging sense of European citizenship. This view is supported by Delanty and Rumford who depict European civil society as predominantly rooted in – and fragmented by – individual national civil societies. Predominantly national civil societies serve as protective shields against economic globalization by maintaining the integrity of the nation-state (Delanty and Rumford 2005).

This chapter challenges a number of preconceptions regarding the allegedly embedded weakness of its civil society (Howard 2003) and qualifies them for the CEE context. Contrary to Howard, I contend that the CEE’s tradition of civil society is not only negative because of issues such as enforced

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<sup>1</sup> A deeper analysis of these discussions goes far beyond the scope of this chapter – we acknowledge Kumar’s observation that the dynamic character of civil society often restricts our ability to unambiguously define the concepts (Kumar 1993). For controversial definitions and concepts of civil society in academic discussions see the debate e.g. between Christoph Bryant and Krishan Kumar in *The British Journal of Sociology* (Kumar 1993; Bryant 1993; Kumar 1994; Bryant 1995; Neocleous 1995; Keane 1988; Gellner 1991; Seligman 1992; Alexander 1997; Waltzer 1998; Habermas 2003).

participation, but also has positive elements such as the valuable contributions of various dissident movements. The present chapter proposes two solutions to the problems facing the study of civil society thus far: The study of civil society is defined in empirical terms as the analysis of organized civil society, incorporating “uncivil” society. Furthermore, my comparative empirical assessment of the sustainability of civil society in CEE suggests that the promotion of citizens’ participation is just one of several functions that civil society has come to assume in CEE. Thus, organized civil society in the new member states provides novel insights and important contributions that can be used to develop the emergence and the role of a European civil society.

The present chapter aims to answer the question formulated at the outset: What can the study of civil society in Central and Eastern Europe contribute to discussions and research on the subject of European civil society. This chapter proceeds by mapping out an analytical research framework for the comparative evaluation of the EU accessions’ impact on the transformation and consolidation of Central European civil society. In order to highlight the relevance of CEE civil society research for further developing general debate, the chapter starts with a critical evaluation of the extent to which Western concepts and analytical categories are applicable to the study of civil society in the CEE region (1). Secondly, I turn to the theoretical puzzle of the ‘normative trap’ into which empirical studies of civil society participation in EU governance often fall by selecting only organizations which are perceived as supporting the existing mode of governance (2). Thirdly, the analysis goes on to assess the relationship between post-communist citizens and organized civil society. Drawing on extensive empirical research in the field, I present a summary of the three outlined points – applicability of the concept in CEE; clarification of the “normative trap”; and assessment of the link between post-communist citizens and organized civil society – in order to establish firm ground for the empirical evaluation of CEE civil society outlining general as well as specific problems facing civil society in post-communist countries.

## Capturing the specificities of communist and post-communist civil society

To what extent are Western concepts and analytical categories applicable to understanding the role and evolution of civil society in the CEE region? In his book *The Weakness of Civil Society in Post-Communist Europe*<sup>2</sup> American scholar Marc M. Howard (2003) claims that organized civil society and participation in the CEE region was at a lower level of development compared to Western Europe, going on to explore the causes of this. In his

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<sup>2</sup> Howard chose Russia and the former DDR as his cases, and some generalization he makes about the CEE region as such are negatively affected by this case selection.

core argument he makes two points: first, a low level of citizens' organized involvement and participation indicates the shallow, procedural and formal character of democracy in Central and Eastern Europe (Howard 2003). Howard predicts that this pattern demonstrates a high level of instability and creates the conditions that foster anti-democratic and anti-system attitudes and ideologies. His second, more optimistic argument is that the absence of advanced civil society does not hinder the development of (liberal) democracy in CEE. Comparing current trends in participation and civil society in CEE and Western Europe, Howard concludes that post-communist countries have skipped over the phase of participatory democracy. According to this perspective, the low level of conventional political participation by citizens is not necessarily an indicator of a weak democratic regime, but rather hints at a problematic relationship between citizens and the state (Howard 2003).

Considering the importance of these claims, I will start with a brief examination of the nature, origin and evolution of the concept of civil society within post-communist states in the historical context the last two EU accession waves (2004 and 2007).

From the 1970s on, the term as well as the concept of civil society itself has played an important role in opposition against the communist regimes in Central and Eastern Europe (CEE). Together with Latin America, the experiences of CEE countries have contributed to the revival of the term and to its revival as a focus of social theory. The main authors who have influenced the understanding of civil society by CEE dissidents include the Hungarian philosopher Georgy Konrad, Polish journalist and writer Adam Michnik and Czech playwright Vaclav Havel. For supporters of dissident movements, civil society was an integral part of their everyday life, it was a lifestyle. The dissidents' understanding of civil society was based on a number of core normative concerns: an ethical imperative for action, belief in humanism, support for human rights, opposition to the state, the autonomy of the individual and the defence of human dignity (Reichardt in Keane 2006: 140, compare also Michnik 1990; Ost 2005).

In this context civil society was a form of "anti-politics," a term coined by Konrad in the 1980s, or "parallel polis" as Petr Pithart put it at about the same time. Havel's essay *Power of the Powerless* also played a very important role. In this essay he accentuated the ethical imperatives of action and coined the term "living in truth" as the antithesis of everyday life under an authoritative regime. For Havel and other dissidents across Central Europe, civil society was a project, vision and program which did not so much exist in a separate social sphere from the state as in direct opposition to it and its totalitarian apparatus (Havel 1990).

A very important feature of how civil society was conceived within the dissident intellectual circles was their strong opposition to the use of violence. This is similar to how the idea developed in Latin America where, under the influence of Antonio Gramsci, civil society strived not only for the elimination of military and semi-military regimes, but also for the transformation of society – especially the overthrow of the capitalist class (Reichardt in Keane 2006). An example of the rejection of violence in the Central Europe can be seen in the public campaign entitled “Give the policeman an orange!” organized in Poland in 1980s, during which protesters presented on-duty policemen with scarce tropical fruit. Another similar example was one of the key slogans used by the protesters in Prague on 17 November 1989 “We have bare hands!” The main goal of these actions was to highlight the non-legitimate use of violent force – a power that was concentrated in the hands of state.

Here it is important to note that in communist countries, this dissident notion of civil society existed alongside official as well as semi-official activities (Kubik 2000). Kubik presents a typology of civil society actors within communist regimes and connects this typology to a theory of path dependency. In doing so, he establishes viable typology of post-communist civil society. To summarize Kubik’s points, conceptually the post-communist heritage with regard to civil society is a rather complex one; it has a strong normative loading and is full of (discursive) contradictions.

The discursive controversy surrounding the notion of civil society mirrors the ideological struggle between the proponents of an active merging of civil society and politics (in CEE one of the most active promoters of this approach is the former Czech president Vaclav Havel) and their liberal counterparts (represented in the CEE most vocally by the current Czech president Vaclav Klaus). The liberals view civil society as a dispensable surplus to (elitist) representative democracy, wishing to reduce citizens’ participation solely to elections (Klaus 2002). However, the core of this dispute is deeper – it concerns the delineation of state and civil society spheres.

In CEE the confrontation between these two approaches is especially contradictory and crucial – based on historical experience, the prevailing notion of civil society is that of the opposition to the all-encompassing power of the state (Arato and Cohen 1988 in Kumar 1993); according to Seligman CEE civil society was historically often the only ideological alternative to the power dominance of the state (Seligman 1992, see also Walzer 1998; Nardin 1998). Consequently, post-communist countries as well as Europe are currently facing discursive conflicts about the meaning and role of civil society. Current research in the field (Rakusanova 2007) demonstrates that the controversy reaches beyond opposing interests or power positions vis-à-

vis civil society. Rather, the clash over the notion of civil society is an important manifestation of rival theoretical conceptualizations of democracy. As such, this clash is directly related to current debates about the nature of democracy in the emerging European polity.

With regard to a potential European-wide civil society, Howard's work raises important questions by establishing a strong fault line between the old and new EU member states in terms of civil society and participation. Current comparative empirical research in the field supports this divergence (Zimmer and Priller 2004; Ruzza et al. 2005). However, the theoretical interpretation of these empirical findings raises questions, given the fact that they rest on two questionable normative assumptions: namely that civil society and participation are necessarily linked and that the absence of this link indicates "shallow democracy". This normative reductionism is embedded in certain streams of civil society literature (Muller 2008). Here civil society is often understood as an "ideal polis" – a project for organizing society that encompasses only those forms of civic participation that contribute to the building of democracy. This normative reductionism creates a disjunction between theoretical and the empirical studies of civil society (for a more detailed discussion of normative reductionism see Muller 2008). One possible solution for overcoming this normative bias in civil society research is the incorporation of the concept of uncivil society into mainstream research on "real" civil society (Kopecky and Mudde 2003a, 2003b). In my study of European civil society, this means including the mostly excluded Eurosceptic organizations and comparatively assessing their role and impact within the larger field of an emerging European civil society.

The main aim of this section was to underline the multifaceted character of the term "civil society" in contemporary East Central Europe and to open the currently quite restricted normative lenses of comparative research to encompass a broader analytical framework. Past Central and Eastern European experience of civil society gives rise to normative and ideological clashes, which should be reflected rather than omitted by scholarly research on the subject. Adding to its long and diverse traditions, an enlarged European civil society will have to encompass and internalize this heritage of dissident movements and their struggles with authoritative regimes, forced participation in mass communist movements, as well as the frequently antagonistic relationship between citizens and the (communist/postcommunist) state. As a consequence, variation in citizens' involvement in civil society and in formal as well as informal social networks should be interpreted in light of this enlarged framework which would also include contentious, Eurosceptics, protest and other "uncivil" movements (compare Howard 2003; Kubik 1994, 2000, 2002; Ost 2005).

## The impact of EU accession

### Comparative examination of the non-profit sector in Central Europe

Based on the “enlarged” framework described in the last section, the following section evaluates the initial impact of EU accession on organized civil society in Central and Eastern Europe. Going beyond the assessment of organised civil society membership data, I propose to use the NGO “sustainability index” introduced by USAID, and to analyse empirical data for the period from 1998 to 2005. A comparative perspective is adopted here, and the strengths and weaknesses of organized civil society in four countries (Czech Republic, Hungary, Poland and Slovakia) are assessed to evaluate the overall dynamics of civil society in Central Europe.

A report based on the “sustainability index” is published annually by the *United States Agency for International Development* and evaluates seven characteristics that are recognized as crucial factors determining the sustainability of civil society organizations:

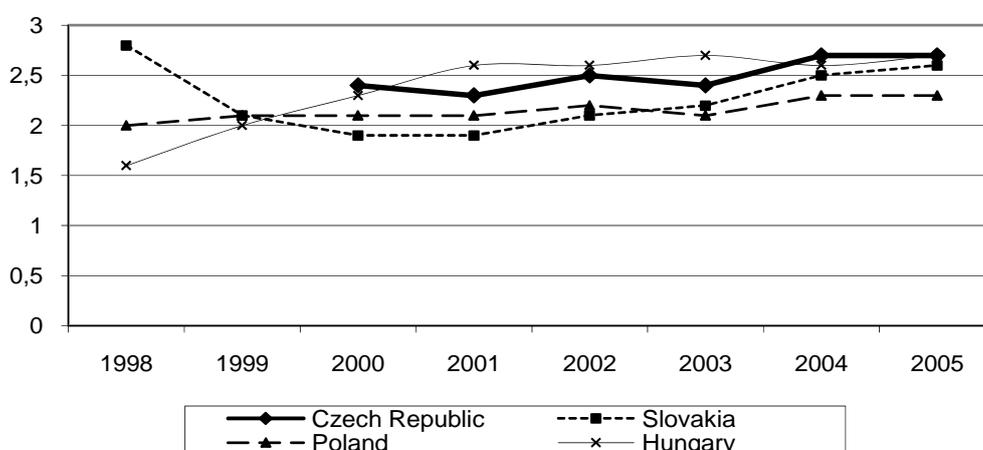
- (1) Financial sustainability
- (2) Organizational capacity
- (3) Public image, advocacy
- (4) Infrastructure
- (5) Legal environment
- (6) Provision of services

Each indicator is qualitatively evaluated by employees and experts of USAID and measured on a seven-point scale, where 1 indicates a very developed civil society and 7 an under-developed civil society (Stuart 2003; Ehmann 2006). In the following I will discuss the findings for each indicator for the countries under study and examine important differences.

The overall development of Central and Eastern Europe’s civil society in the years 1998–2005 hints at a decrease in the sustainability of organised civil society in the Czech Republic as well as in Poland and Hungary. Of the four countries under study, only Slovakia showed an improvement; nevertheless, after reaching its peak in 2001, Slovakia has been slowly regressing to 1998 levels. Nevertheless, the overall relative stability of the index in recent years indicates that civil society has been consolidated in all the CEE countries examined.

*Comparative analysis of individual aspects of the sustainability index*

(1) In the long term, the main weakness of the non-profit sector in Central Europe is its financial sustainability. Accession to the European Union has further widened the gap between organisations capable of adapting to fundamental change in their operational environment and those which are unable to cope with these changes. One aspect that has proven to be critical is the disappearance of foreign donors who consider civil society in Central Europe to have been fully consolidated. Contrary to this perception, the picture painted by the sustainability index for the non-profit sector is a lot less optimistic (Figure 2.1).



**Figure 2.1: Changes in the sustainability of non-profit organizations, 1998-2005.**

Source: USAID 1998-2005.

After accession, the largest financial donors (i.e. USAID, Open Society Institute and American foundations in general) have closed their representations in CEE and have axed a number of funding projects, which have been subsequently moved further East (i.e. to the former CIS). An important exception is the *Trust for Civil Society* jointly established by Atlantic Philanthropies, Charles Stewart Mott Foundation, Ford Foundation, German Marshall Fund of the United States, Open Society Institute and Rockefeller Brother Fund to foster the continuation of targeted programs until 2010. However, so far the majority of CEE civil society organizations have failed to establish a viable independent funding structure. This failure proves to be crucial both in respect to their future operation, but also in view of the fact that the model for funding from the EU mostly assumes additionally financing by their own resources (the EU co-finances projects and does not fully cover all costs; moreover funds are often provided retrospectively within the framework of allocated projects, etc, meaning that the lack of organized civil society's own and independent funding further undermines the involvement in the EU programmes).

Despite certain problems, and thanks in great part to international pressure by departing donors, the EU established a fund in 2005 for “Action in support of civil society in new EU member states”.<sup>3</sup> Two million Euros was put into this fund in its first year. The main objective of the initiative is to support dialogue and cooperation between the European Union and civil society in new member states in the following areas: free elections, separation of powers, rule of law, the creation and/or promotion of a prison system respectful of human dignity, police, transparency, media pluralism and fighting corruption.

It is evident from this list of programme areas, which also continued in 2006, that the fund was tailor-made for watchdog organisations focusing on the quality of democracy and basic human rights. It is precisely the organizations in these areas that were most threatened by the departure of donors. Both existing arrangements (the EU and the Trust for Civil Society) are only temporary measures and a more profound approach to financial viability needs to be adopted to ensure the future of civil society in the CEE region.

With regard to overall EU funding, it is necessary to draw attention to the problem of obtaining resources from various EU funds. In the USAID national evaluations, civil society organisations in Poland, Hungary, Lithuania and Latvia have indicated problems with accessing EU funds. The report outlines that the EU and national states fail to provide training on how to apply for and access EU resources. Furthermore, the application process for EU-funds is criticized for being excessively long, bureaucratic, and not sufficiently transparent (Ehmann 2006; Rakusanova 2007).

Directly linked to financial sustainability is the second weakest aspect of civil society in Central Europe – its organisational capacity. Civil society organizations struggle in personnel politics; it is difficult to get qualified personnel, especially for the management and running of the organisations. The funding schemes of current projects often only allow limited-period work contracts, resulting in a high turnover of employees.

(2) Another problematic issue in terms of the organisational capacity of civil society organizations is the low level of social recognition associated with membership of the supervisory boards or boards of administration of non-profit organisations (Ehmann 2006). It often happens that the organizational bodies delegate their responsibilities to the organization’s management. According to the data available, these problems tend to be most serious in the

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<sup>3</sup> See <[http://ec.europa.eu/justice\\_home/funding/support\\_ngo/funding\\_support\\_en.htm](http://ec.europa.eu/justice_home/funding/support_ngo/funding_support_en.htm)> (accessed 10 December 2008). Within the framework of this fund, a total of 3 million Euro were allocated to 32 different projects from 10 countries in 2006 (Herman in Ehmann 2006: 35).

Czech Republic and Hungary. Both these countries lack both structural solutions to these problems as well as strategic planning. Generally speaking, Hungary and the Czech Republic lack overall longer-term operational perspective for civil society organizations. However, civil society in Poland and Slovakia faces fewer problems with regard to organizational capacity.

Overall, civil society in all four countries is grappling with a lack of modern technology enabling effective communication between and with members, volunteers and citizens. In this respect it is of serious concern that most of the organizations seem to be content with the poor dynamics of their membership base development and the stagnating number of volunteers. For most organizations, this results in falling membership numbers. Study of civil society in the Czech Republic points to important exceptions among medium and large scale civil society organizations, which have managed to end this process and in some cases even reverse the trend, even expanding their membership and volunteer bases (i.e. Voluntary Fire-fighters) (Rakusanova 2007).

Membership base communication, as well as communication with the broader public is the third lowest ranking indicator of the USAID index. In 2005, Hungary had the worst rating for this aspect while Poland had the best. The evaluation in Hungary's case was negatively influenced by media attention focussing on the often non-transparent links between civil society organizations and politics.

(3) In respect to public image, a further weakness of civil society is its failure to establish links with the media, particularly at a national level. Civil organizations fail to acquire space for the positive public presentation of their activities. Throughout Central Europe, the media tend mostly refer to civil society organizations in connection with scandals or corruption (as was the case in Poland, for example). However, the failure to establish a productive relationship with the media cannot be fully ascribed to civil society organizations themselves, but points to a large degree of selectiveness on of the part of the media. In the Czech Republic, for example, the media justifies the lack of coverage vis-à-vis civil society as their attempt to avoid hidden advertisement of donors.

Although they do not feature in the national press, civil society organizations and their activities constitute an integral part of regional and local press coverage. Campaigns targeting children and development aid constitute an important exception to the lack of media attention. These projects tend to emphasize their public visibility and succeed in attracting a rather high level of publicity, in many cases thanks to the link between charity projects and celebrities. Advertisement and public fundraising activities are crucial in

establishing short term as well as long term donations. In Slovakia and Hungary advertisement is a necessary to persuade citizens to allocate their tax allowances to individual organizations.

A further aspect contributing to the improvement of civil society's public image is the establishment of so-called company foundations (e.g. Siemens, Vodafone, O2, Microsoft, and HP). Company foundations are an integral part of firms' communications with the public. In addition to their own activities, this new type of civil society organization contributes to raising public awareness of civil society in the given countries.

Essentially, civil society's public image is the result of the successful promotion of its organizations' activities. Throughout the region under analysis here, this aspect of the sustainability index remains relatively stable over time. Nevertheless, in the long term, Hungary's rating in this respect has been lower despite organized civil society being very active and successful in terms of lobbying and defending its interests and in its efforts to influence decision-making processes (e.g. pushing through changes in the law on free access to information or the new law on volunteer work, to which we will return in the next section). Hungary got the lowest rating among the countries under study primarily because its successful activities were not adequately represented in the media. In respect to public image, the problem in Slovakia is a lack of communication and cooperation across the entire sector. This results in a reduced capacity to promote the civil society agenda particularly at the highest political level, i.e. in the national parliament.

With regard to political lobbying by civil society, successful campaign against domestic violence can be cited in the case of the Czech Republic. This campaign resulted in the successful passing of Act No. 135/2006 of the Collection of Laws, which was actually formulated by the Alliance against Domestic Violence. Significantly, it was a campaign in which civil society succeeded in establishing vital alliances both between different civil society organizations, and between civil society and individual members of the parliament.

In Poland, the success of civil society engagement can be attributed to the law on publicly beneficial activities and volunteer work. This law enables civil society organizations to comment on draft legislation and to be part of government committees. While succeeding at national level, the implementation of this law tends to be inadequate at other levels. Polish civil society organizations report problems in attempting to engage in constructive dialogue with regional political representatives.

As regards regional political representation, EU funds represent an important opportunity for fostering cooperation between civil society and the political sphere. More and more, local political representatives realise that the expertise of civil society organizations in certain areas is indispensable. However, political representation in the CEE region does not generally perceive civil society organizations to be equal partner at any level of political representation. The word “lobbying” has always had negative connotations and is often not associated with the legitimate promotion of interests but rather with corruption.

(4) Infrastructure is among the better rated aspects of the sustainability index in countries under study. In the long term, Poland has the best rating for infrastructure. Conversely, the infrastructure of organized civil society in the Czech Republic is consistently weak in comparison with the countries monitored. The positive evaluation in Poland can be attributed to the umbrella organization which administers the information database of non-profit organisations. Furthermore, Polish civil society organizations successfully form sectoral coalitions and umbrella organisations at regional, national and even European level. (Of the countries monitored Polish civil society was the only one with its own representation in Brussels before EU accession.) Once every three years a Forum of Non-Profit Organisations is also organised. This facilitates better awareness, the exchange of experiences and the establishment of cooperation within Polish civil society.

Conversely, the relatively poor rating for infrastructure in the Czech Republic is primarily caused by the lack of such nationwide networks, an important exception being the *Information Centre for Non-Profit Organisations*, which for a long time has been improving awareness and cooperation both within organized civil society and in terms of civil society’s communication with the public.

Overall, the infrastructure of organized civil society in Central and Eastern Europe is improving. There is room for further improvement on the part of civil society itself and individual civil society organizations, but also on the part of the state. This claim is supported by an evaluation of the development of the legal environment outlined below.

(5) The legal environment is the second-based rated indicator in all countries under study, with a significant level of variation among countries. While in the Czech Republic the scholars continue to judge legal environment very critically – there is no clear legal definition of a civil society organisation; the registration process is relatively long, etc. Hungary has the best rating in this aspect. In 2006 Hungary amended the law on free access to information, as well as passing a completely new law on volunteer work. The law on

volunteer work allows non-profit organisations to pay the costs of volunteers without being taxed for it and this is seen as supporting the development of volunteer activity (Ehmann 2006).

(6) On average, the aspect of sustainability for non-profit organisations with the best rating across all countries is the provision of services. In the 2005 evaluation, the Czech Republic ranked the best, while Hungary was the worst. Again significant variation occurs among the countries under study. Civil society organizations in the CEE region generally provides a wide range of services in areas such as healthcare, social welfare, education, environmental protection, youth work, drug prevention, etc. Civil society organizations are often the only provider of services in any of these areas. For example, in the case of the Czech Republic hospices are run solely by civil society organisations and the civil society also dominates in the provision of drug rehabilitation and HIV/AIDS prevention, etc. (Rakusanova 2007).

A crucial problem in this area is the financing of service provision, because in this respect civil society organizations are fully dependent on state funding. It is the state which defines the agenda, and critical disagreements can occur between state agencies and civil society organisations on the importance of some activities (e.g. in the case of caring for people with long-term illnesses, the state prefers institutional care while civil society advocates home care and home help, allowing senior citizens to remain as long as possible in their home environment).

Even if there is an agreement between state and civil society on the importance of services, grant-based funding is a critical issue and negatively affects the ability of civil society organisations to provide high-quality services on a continuous long-term basis. Civil society organisations have to confront this problem in all the countries under study. This issue is critical also in respect to EU funding, as it weakens the ability of civil society organisations to obtain adequate funds for their activities from European Union sources. The main reason is that in the existing environment, civil society organizations are not capable of generating the financial reserves necessary for coping with the funding model used by EU programmes (most costs are reimbursed ex-post rather than prior to funded activity).

## **Summary of comparative findings and interpretation**

This comparative analysis of organized civil society in the four Visegrad countries based on USAID's NGO sustainability index allows us to evaluate the strengths and weaknesses of organized civil society in the CEE countries. Organized civil society in the Czech Republic is less developed than its Western counterparts; nevertheless, it is one of the most developed in Central Europe. Based on the comparative analysis of organized civil society in the

four CEE countries, we encounter crucial similarities on a number of issues facing civil society. As outlined in the analysis above, despite some initial differences, a convergence is occurring in organised civil society in Central and Eastern Europe. However, one important caveat here is the sustainability index's lack of sensitivity in terms of evaluating the relatively stabilised and consolidated civil society in Central Europe, meaning it is more accurate in measuring the initial "large scale" changes, rather than subtle changes on the way to consolidation of civil society.

In respect to Howard's hypotheses, one optimistic and one pessimistic, the relationship between the state and civil society remains a crucial factor in the relative weakness of civil society in Central and Eastern Europe. In almost all analyzed aspects the state fails to create the necessary environment and to cooperate with civil society on important matters. EU and EU funds offer important opportunities for fostering cooperation between civil society and the state. Thus EU accession can be viewed as an important milestone in the development and consolidation of Central and Eastern European civil society as well as its governance.

Based on this more differentiated empirical assessment and contextualization of organized civil society within Central Europe, we can conclude that, over time, civil society has successfully built an intermediary space between private interests and the state in Central and Eastern Europe (see Rakusanova 2007). Furthermore, the growth of civic participation in CEE countries in recent years – for instance in the case of the Czech Republic, where we find increases in participation both on the macro- (growing number of civil society organizations), and on the micro-level (growing number of members among some organizations) – indicates a trend which calls into question Howard's pessimistic hypothesis (Howard 2003). CEE organized civil society also appears to have a satisfactory and sustainable ability in regard to the promotion of participation by civil society, and it is starting to bring it into life.

In fact, at the individual level the post-communist citizen tends to be rather passive in his approach to civil society due to a history of forced membership and participation. However, the growth of political and civic participation in recent years hints at a change in this trend (Rakusanova 2005; Rakusanova and Rehakova 2006). On the other hand, a significant portion of society still regards informal social networks – which form an alternative to civil society – as equally or more important than civil society.

In comparison with Western Europe, two problems which CEE civil society is facing need to be highlighted: (1) the lack of civil society involvement in the functioning of the welfare state; and (2) the lack of acceptance of

organized civil society as an important partner of the state in delivering social services, as well as in public policy formulation. Among the specific features of organized Central European civil society is a relatively high degree of centralization and bureaucratization, the traditional delimitation vis-à-vis the state, that often results in clashes between civil society organizations and political parties. This is further strengthened by experiences from the opposition and dissident movements, which regarded the state and the (Communist) Party as illegitimate. Another common denominator among post-communist countries is the link between civil society and the political sphere (Austria, the Czech Republic) and strong link between civil society and the private sphere (Poland, Slovakia).

In regard to the effects of EU accession on civil society, we have demonstrated that the prospect of membership presents both opportunities and threats to civil society in the CEE region. The post-accession move of various donors from CEE further east and its repercussions points to the financial dependency of CEE organized civil society on foreign donors. Accession has also further deepened the gap between organizations which have the administrative capacity to apply for grants and those who do not. However, for organizationally capable civil society organizations the EU policy of public-private partnership in structural projects offers an opportunity to become a more important partner for regional and national government.

## Conclusions

To summarize the central argument of this chapter, empirical evidence strongly suggests that Howard's so-called pessimistic hypothesis – interpreting the lower level of development of CEE civil society and civic participation as contributing to the shallow, procedural and formal character of democracy in Central Europe – does not hold. As I have shown, both in comparative assessment and in-depth country studies, the normatively loaded reductionist approach tends to over-emphasize weaknesses and fails to recognize important trends towards the consolidation of Central and Eastern European civil society which qualifies increasingly as a partner for national and European governance.

The above analysis supports, but does not confirm Howard's second, optimistic vision. The absence of (Westernized) developed participatory civil society in Central and Eastern Europe does not constitute a barrier to the development of democracy in the region. In comparison with current trends in Western Europe, it has been claimed that the post-communist countries have skipped the participatory phase of modern democracy. However, the relatively low level of citizens' participation (through membership in civil society organizations) does not necessarily indicate democratic instability,

rather hints at a problematic relationship between citizens and the state in this region (Howard 2003).

To conclude, I claim that the main benefits from incorporating the study of CEE civil society into the study of emerging European civil society can be found in (1) the insights this approach affords into the interplay between organized civil society and the public sphere; (2) in the critical focus on the role of state and (3) the concentration on the relationship between the state and civil society, as well as (4) state and citizens. Furthermore, the conflict between active citizenship and a liberal or libertarian approach to democratic citizenship – as demonstrated in Central and Eastern Europe – can play out at the European level in struggles to achieve true civic dialogue with equal recognition of different social groups (comparable to social dialogue). Finally, it also furthers the critical assessment of the (currently) insufficient level of participation on the part of civil society in the European constitutional process and the lack of attention paid to civil society's demands (Andreev 2006; Obradovic 2005; Obradovic and Vizcaino 2006). Overall, the more top-down the process of Europeanization and European integration as an elite controlled project evolves, the less civil society actors seem to gain access to the public sphere (Della Porta and Caiani 2006).

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# Chapter 3

## European civil society Between participation, representation and discourse

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### Introduction<sup>1</sup>

The structure of democratic representation in the multi-level system of the EU has been primarily analysed in relation to the role of Parliaments and political parties in mediating between a common European and particular national interests (Rittberger 2005; Hix et al. 2003; Maurer 2007; Katz and Wessels 1999). With the reconfirmation of “representative democracy” as the basis of legitimacy of the EU in article 8 of the the Lisbon Treaty, the EU moves towards the establishment of a multi-level parliamentary field, which is relying on two entwined channels of political representation: direct representation of the citizens at the Union level in the European Parliament and indirect representation in the Council through their governments (Crum and Fossum 2008). In addition, the new Treaty has put emphasis on the enforcement of subsidiarity compliance mechanisms, and, above all, the enrolment of national parliaments as the “watchdogs of subsidiarity” in the legislative process of the EU (Cooper 2006).

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<sup>1</sup> Core ideas of this article were first elaborated as a comment to Beate Kohler-Koch’s intervention on “Political Representation and Civil Society in the EU” at the Connex Thematic Conference on Political Representation. European University Institute Florence, May 25-26, 2007. The author would like to thank Beate Kohler-Koch for the very fruitful discussion on this topic.

What has been less noted in this debate is that the road to Lisbon was also marked by a trade-off between representative and participatory democracy. Whereas the Convention in 2003 agreed on an equal footing between participation and representation as the founding principles of European democracy, the Lisbon Treaty abandoned the explicit reference to participatory democracy and formulated a more embedded right of participation of the citizens or the *representative* (sic!) associations in the democratic life of the European Union. With this it was made clear that participatory elements of democracy should be considered mainly as an auxiliary to EU-governance but not as an autonomous principle on which the democratic legitimacy of the EU could be founded.

Such path dependent legal and institutional designs explain that there is – as Beate Kohler-Koch (2007) has put it – a “conspicuous absence” of political representation in the discourse of civil society and EU-governance. The role of civil society in relation to the building of a European representative order has remained ambiguous. As I will argue in the following, this ambiguity is mainly due to the application of a false antinomy between *representative politics* located in parliaments and *direct-participatory politics* located in civil society (Saward 2007: 5). In line with this traditional way of thinking, civil society has been primarily perceived as the realm of participation and in this quality has been opposed to representation. The consolidation of what already a couple of years ago has been identified as the “compound representative structure” of the EU (Benz 1998) is however only insufficiently described by focusing exclusively at the role of elected representatives in the European and in the national Parliaments. The compound representative system of the EU is rather characterized by the increasing prominence of non-elective forms of political representation breaking down the boundaries between representative and participatory forms of democracy.

Instead of playing off civil society against representative democracy, a more progressive interpretation is put forward in this article, which seeks to overcome the dichotomy between representation and participation and analyses the *embedding* of participatory democracy as part of the consolidation of a plural representative order of the EU. For that purpose, the interpretation of the EU as a multi-level Parliamentary field (Crum and Fossum 2008) can be usefully supplemented by the idea of a multi-level representative field that expands into society. According to Arthur Benz (1998), compound representation in the EU includes not only parliaments but also governmental and interest representation (political and functional) at different levels of political aggregation. In relation to this compound representative arrangement, the roles of civil society and of participatory governance need to be redefined. Civil society is then no longer to be perceived as a self-sufficient and independent arena of interest aggregation (the liberal interpretation) or as an

autonomous sphere for the unfolding of free and open debate (the deliberative interpretation), but, first and foremost, as a constitutive element of the compound representative structure of the EU.

Against the Lisbon Treaty's insistence on Parliamentary democracy as the basis of legitimacy of the EU, it is thus important to keep in mind that the EU is made up of multi-level representative relationships which are detached or only loosely coupled to parliaments and parliamentary elections. The article will first deconstruct the false dichotomy between participation and representation that is underlying institutional designs of governance and demonstrate to what extent organised civil society in the EU is relying on political representation. In a second step, the contours of the multi-level representative field of the EU are specified by distinguishing a) three conceptual frames of conceiving the representativeness of organised civil society in relation to EU-governance, and b) two distinct mechanisms of political representation in aggregating individual preferences or in integrating the political community of the EU. Last but not least, the article needs to address the intrinsic normative question of the democratic quality of the representativeness of civil society. If it can be verified that non electoral forms of political representation are becoming central in the constitution of the multi-level representative field of the EU, the question is whether and how such non elected civil society activists can be classed as democratic representatives? (Saward 2007: 3). The article suggests that contingent answers to this normative problem are provided by ongoing representative practice. It is proposed to analyse representation as a discursive practice of advocacy, judgement and critique, which is activated through representative claims-making, finds wider resonance within the public sphere and thus puts the polity and its social constituency in a double constitutive relationship.

## **The promise of participatory governance**

Civil society has been traditionally conceptualised as the realm of voluntary action and participation activating the citizens and channelling their voice into the system of political representation. This is in line with mainstream political thinking which has discussed representative-parliamentary and direct-participatory government as alternatives referring to mutually exclusive modes of democratic legitimacy (Held 1987: 4; Plotke 1997) and insisting on a democratic division of labour between institutional and non-institutional politics (Habermas 1996: 329ff.). Also in empirical terms, civil society is frequently perceived to act as the opponent of the elected representatives by mobilising the direct voice of the citizens from outside or from below (Tilly 2004).

Following this main line of political thinking, European civil society has also been mainly analysed as a substitute for representative democracy (Finke, 2007). It has been argued that representation in a polycentric non-state polity would be problematic in principle and counter-effective since there is no common ground shaped by cleavages, coalitions and identities that could be used for building representative relationships (Abromeit 1998). The allegedly unstable majorities of the European Parliament would be only very indirectly representative of a European electorate and there would be no stable public opinion on which representative government could rest. Such structural limitations in models of representative democracy have thus enhanced the search for participatory models of legitimate governance, where civil society is the most significant player (Friedrich 2007; Greenwood 2007; Hüller 2007; Kohler-Koch and Finke 2007; Nanz and Steffek 2007).

Such a trust in participatory governance is also shared by European Union institutions. In its more recent strategic papers, the Commission has made its preference for more flexible and dynamic arrangements of participatory democracy explicit, relying on the direct inputs of citizens expressed through stakeholder networks and forums. Such proposals are carried by the conviction that the channels of parliamentary representation can, in principle, be sidestepped by consulting as wide a range of stakeholders as possible before proposing new legislation or new policy initiatives.<sup>2</sup> The principle of good governance is thus expressed in the guarantee of participation of all affected parties in consultation, which is put into practice by the Commission as the only instance with the mandate to pursue the European “common interest” (Kohler-Koch 2007: 18). In this way, a supranational decision-making body would be enabled to build direct interactions with society. It would be the instant receiver of societal inputs and demands, and would no longer depend on the allegedly “erratic” outputs of the deficient direct and indirect representative channels – European Parliament and national governments – that mediate between the EU and the member states.

Empirical accounts of the practices of consultation indicate that the Commission has indeed expanded its participatory regime (Bignami 2003; Kohler-Koch and Finke 2007; Smismans 2007a) inviting differently affected groups for participation, thus channelling citizens’ voices. Civil society advocates profit from the Commission’s new responsiveness in a number of ways. Through its funding practice, the EU keeps the infrastructure of European networking alive and most transnational campaigns and initiatives would not run without financial, technical and often even ideational support

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<sup>2</sup> The Commission’s guide to Eurojargon defines a stakeholder as: “Any person or organisation with an interest in or affected by EU legislation and policymaking” <[http://europa.eu/abc/eurojargon/index\\_en.htm](http://europa.eu/abc/eurojargon/index_en.htm)>, (accessed 10 December 2008).

from Brussels. Civil society advocates increasingly find themselves in a partnership with supranational governance and, eventually, re-directing their critical voices from the EU to the governments of the Member States (Ruzza 2004; Trenz 2007).

## The conspicuous absence of political representation in civil society discourse

While acknowledging its innovative and progressive character, participatory governance in the EU has been also confronted with a rather harsh normative critique. Chris Lord (2007) has noted that the current practice of “participation by invitation” is only a disguise for the problem of representation. Although some principles of “good governance” are formulated to guarantee the representative quality of stakeholder networks involved in European governance, the question remains unsettled as to who guards the guardians of representativeness in the EU (Lord 2007: 149). Michael Th. Greven (2007: 244–5) has formulated a categorical critique of participatory governance, which, in his view, is a manifestation of a technocratic practice of authoritative problem solving. Participatory governance would stand for the “structural inequality of memberships” in organised civil society against the principled equality among citizens: “Citizenship in a democratic system is not voluntary or optional in the same manner as in civil society” (ibid.). Participatory governance is therefore nothing more than a “private contract” between government, voluntary associations and its respective members: “But in the very moment when nonmembers are affected by these private contracts a different form of legitimacy is required, which [...] can only be located in representative offices” (ibid.).

Participatory governance has been further criticised for its technocratic character. By assuming a *substitute* role with regard to the representative channels provided by national governments and parliaments, organised civil society would risk becoming merely an *auxiliary* of depoliticised EU governance. In the new institutional and constitutional setting of the EU, this auxiliary function of participatory forms of government is enshrined in rules for civil society consultations and expertise through stakeholders, specialists and professional activists. Nevertheless, the Commission perceives the inclusion of civil society as an instrument to strengthen the representative elements of the EU. The auxiliary function of civil society as a tool to enhance the representativeness of EU governance is laid down in the Lisbon Treaty, stipulating the participation of “representative associations” in the democratic life of the EU. With regard to the enforcement of this principle, the European Commission’s role as a gatekeeper of civil society participation

and dialogue is reconfirmed (Art. 11.3). This would enshrine a technocratic understanding of civil society as a tool of “good governance”, which would empower the Commission to identify (and subsequently represent) common European interests. The function of representation would thus ultimately rest with the Commission as the guarantor of procedural fairness and inclusion of relevant interests and perspectives (Kohler-Koch 2008: 17).

This self-description of the role of the Commission as the guardian of representation by European civil society has remained surprisingly unchallenged within the academic community and even within civil society at large. Beate Kohler-Koch (2007) makes this point when speaking of a conspicuous absence of representation discourse in the official talk on EU governance. In other words, representation in relation to civil society is a non-issue. At the same time, a hidden agenda of representation may nevertheless exist if we assume that the Commission seeks to foster – or reaffirm – its claim of formulating the common European interests by effectively making use of participatory governance arrangements. This hidden agenda of representation may further inform the very architecture of European civil society, which is built on a multi-level system of interest representation in which associational actors are seen as intermediaries called upon to aggregate individuals’ preferences into collective demands and thus bridge the gap between the EU and its citizens. In this double role as participants in EU governance and as representatives of their own – frequently undefined – constituents, civil society actors are torn between contradictory role expectations and constant needs to search for *trade-offs* between participation and representation.

On the critical side, one might expect that there are systematic reasons for this failure to reflect more thoroughly the questions of political representation in European civil society discourse. Kohler-Koch (2007) attributes a political rationality to the fact that representation is not mentioned in relevant documents and strategy papers issued by the Commission. When the Commission launched the White Paper on European governance, it had no interest in overburdening the agenda of institutional reform or challenging the intra-institutional equilibrium (especially its relationships with the governments of the Member States and the European Parliament). A commitment to participation was the most plausible and also the least controversial approach to improving European governance. More critically, the insistence on the representation-participation dichotomy can be also read as a form of social control. By separating civil society participation and issues of representation, European institutions can either locate social interest actors outside the realm of representative government or legitimately claim to subordinate and control them as an auxiliary of governance.

This political rationale would explain path-dependent or strategic institutional choices. It does not explain, however, why representation is also a missing category in theoretical and normative accounts of EU governance and civil society. At this point, there is a need to open up the conceptual discussion, which has perceived civil society participation thus far as a substitute for representative democracy. My argument, to be developed in the following, is that beyond the political rationale, there is also a theoretical rationale for blending out issues of representation in EU governance research. By focusing on flexible participatory arrangements, the theoretical and normative debate could more easily detach civil society from its supposedly organic link to the nation state and focus on conceptions of the emerging global or cosmopolitan civil society. The new agenda of participation was thus part of the programme to overcome social sciences' "methodological nationalism", which consists precisely in avoiding the kind of substantialist references to territory, state or collectivity, which are conventionally used for constructing political representation (Beck 2003).

The problem then lies in the ways to link – conceptually and pragmatically – the unbound civil society back to the newly emerging institutional and procedural settings of transnational governance. The theoretical argument to be developed in the following is that civil society activism can only be linked to formal political structures and institutions if it is incorporated into the framework of representative politics. Political representation is therefore not secondary or inadequate but it is constitutive of civil society. This thesis of the intrinsic relationship between civil society and political representation can be corroborated to the extent to which European integration is developed as a political project. Representation needs to be reconstructed from a hidden agenda to an explicit one, by deconstructing the justificatory discourse of participatory governance. Only by disentangling the participatory conundrum that has developed in relation to EU governance over the last two decades can we arrive at a normatively adequate and practically satisfactory clarification of the role of political representation in relation to organised civil society and EU governance. Representation is then no longer seen as a form that lies outside participatory governance and to which civil society should relate in one way or another, but, as a key mechanism that shapes civil society from inside, accounts for its dynamic unfolding.

## **Organised civil society and representative governance: from partner to constituent**

Civil society involvement in the official discourse on EU governance is meant to *complement* the elements of representative democracy on which the EU is founded (Kohler-Koch 2008: 12). The particular answer provided by the Commission for strengthening its own outputs in terms of efficient and

democratic decision-making lies in promoting the concept and the agenda of *good governance*. It is the way of gradually incorporating European civil society as an auxiliary of governance, which adds to the efficiency, functionality and overall legitimacy of EU policy-making (Heinelt 2005). In this view, the conditions for “good governance” depend on what Beate Kohler-Koch (2007) aptly calls “participatory engineering”. This practice results in a fusion of governance tasks in policy-making and implementation, where institutional actors and social actors are increasingly relying on each other.

In a slight adaptation of a proposal by Kohler-Koch (2007) three conceptual frames of reconstructing the representative link between organised civil society and EU-governance can be distinguished. These three representative modes are inspired by the expansive logics of the EU-participatory regime, from expertise and close lobbyism to open consultation and citizens’ dialogue (Bignami 2003). According to the first model, the EU is conceived as a regulatory political system which relies on expertise and information inputs at various levels, representation is only relevant at the highest level of political aggregation. It falls back upon the Commission to articulate the common European interest out of the plural inputs and contributions, and to translate it into “adequate” policy choices. If the EU is conceived as a system of participatory governance, which instrumentalises so-called stakeholders as co-producers of efficient and effective policy regulations, representation also becomes important at the individual level. The representativeness of the invited partners determines the quality of the aggregated interest. If the EU is ultimately conceived as an emergent polity embracing a political community formed through active citizenship, representation is needed to demarcate the political community. We would thus observe a social constituency in the making, which is comprised by a process of collective will formation.

These three models of EU-society relations are distinguished along polity-lines. What varies is the scope and inclusiveness of the polity, whereas “civil society” appears as a relatively stable variable located at the input side of governance. In the regulatory model, civil society is clearly subordinated to governance tasks and produces inputs “on demand” in the form of knowledge and information that is needed by EU institutions to improve governance performance. In the partnership model, civil society becomes the co-author of governance. It is ultimately defined as an intermediary arena of participation, which is incorporated by governance but still maintains sufficient independence to follow its own agenda. The polity-constituency model invokes a dichotomous state-society relationship. It allocates the representative role to the whole of the political community, which is engaged in a process of collective will formation. Civil society is still perceived as the sphere of interest intermediation but, as such, it is grounded in a general public sphere, which

has the potential to mobilise a collective will in support or in opposition to power holders. In order to fulfil this function, civil society needs to be discursively re-embedded; it needs to generate public debates and discourses that include the whole of the political community. Model three thus expresses an ambivalence between civil society as an intermediary sphere of interest mediation and civil society as an identification of the totality of the political community. As I will argue in the next section, this ambivalence points to two different mechanisms of political representation that either flows from the represented to the representative (the aggregative-electoral mechanism) or from the representative to the represented (the integrative-identitarian mechanism).

Table 3.1: Conceptual frames linking EU and civil society

Conception	EU a regulatory political system with civil society involvement	EU a system of participatory governance	EU an emergent polity with a social constituency in the making
Image of the EU	A multi-level regulatory system with responsible institutions in search of good governance	A multi-level representative system operating on public-private partnership	An emergent polity in its own rights embracing a political community
Image of Europe's civil society	Experts and professional activists providing information and knowledge	Stakeholders and organised interests; broad definition of CSOs embracing all types of voluntary non-profit organisations	Citizens' general interest associations acting in and forming a political public sphere through public deliberation
Function	Problem-solving	Interest aggregation	Collective will formation
Locus of representation	Commission as the guarantor of "good governance"	"Representative" associations	Political community

Adapted from Kohler-Koch (2007)

## Representation as an aggregative and as an integrative mechanism

Following the expansive logic of modelling EU-society relations, representation is brought back in two different but still largely unspecified ways. The first of the two modes brings in representation as an *aggregative mechanism* of preference formation. The latter mode brings in representation as an *integrative mechanism* of the EU polity in relation to its social constituency. In the first case, representation depends on the capacity of organised civil society to aggregate citizens' preferences. Representation is thus grounded in a linear power relationship between the principal (the

constituent) and the agent (the delegate), which runs *forward* through an explicit mandate of the constituency, ideally through electing the delegates. In the second case, representation depends on the systemic performance of government and organised interests to ensure the integrity of (civil) society. Representation thus moves *backward* from the representative who is trying to anticipate the beliefs of its potential constituents.

Table 3.2 proposes two mechanisms that account for the active making of representation. In both variants, representation applies the generalised norm of representativeness in EU–society relations. Representation is understood as a creative process that constructs the representative (the traditional aggregative mode) but that also has repercussions on the self of political representation and in this sense can be said to depict the represented or the underlying social constituent (the integrative-identitarian mode). To argue in this way is to stress the performative function of political representation as a twofold constitutive relationship. The aggregative and the integrative mode of representation are relying on a two-directional process of building the representativeness of civil society in relation to government and its social constituents.

**Table 3.2: Mechanisms of political representation in EU-society relations**

Representativeness	Type of mechanism	
	Representation as an aggregative mechanism	Representation as an integrative mechanism
Criteria for measurement	Equal consideration	Political justification
Relationship	Linear (principal-agent)	Systemic
Focus	Capacity of civil society to aggregate citizens' preferences and to hold government accountable	Capacity of government and organised interests to guarantee the integrity of (civil) society
Means	Participatory claim Societal self-organisation	Representative claim Social engineering
Direction	Represented constitute the representative	Representative constitute the represented

According to the aggregative mechanism, the patterns of representativeness of civil society in relation to EU governance are identified in a forward-looking move from the principal (the represented) to the agent (the representative). The principle of “equal consideration” applies in so far as equal weight should be given to the interests of each. This corresponds to the imaginary of society made up by individuals (i.e., the single members of the constituency) that constitute the whole (i.e., the polity). The represented constitute the

representative. According to the integrative mechanism, the patterns of representativeness of civil society in relation to EU governance are identified in a backward-looking move from the representative to the represented. The principle of political justification applies, arguing that collective choices need to be defended beyond the question of what is the common concern and what serves the public good. This corresponds to the imaginary of the polity as a hegemonic entity which constitutes the single parts (a constituency made up of citizens imbued with rights and duties). The representative constitutes the represented.

The first mode of conceptualising representation as an aggregative mechanism delivers a rationale for the self-organisation of civil society. The classical assumption is that civil society needs to sustain its autonomy against the state and against the market. As such it can only be self-organised, emerging from the spontaneous action of free and equal citizens (Calhoun 2001). The representativeness of European civil society is based on its self-image and identity as a collective actor that is different from the state and the market.

The second mode of approaching the question of representation as an integrative mechanism delivers the rationale for civil society engineering from above. The classical assumption is that civil society as the world of independent associations is embedded in a moral and normative (legal) order, which is protected by the state. As such, the organised forms taken by civil society have to take account of the integrity of the political community or the polity to which it is bound by the imaginary of self-rule and popular sovereignty (Taylor 2002). The representativeness of civil society is based on the image of the polity as a whole. It rests with the citizens' state and the various forms of virtual representation invented by it. Or, in the case of the EU, according to the tentative conclusion of Kohler-Koch (2007), it ultimately rests with the European Commission, which defines itself through participatory governance.

## **Beyond delegation and interest aggregation**

The traditional perspective of conceiving "representation" as an aggregative mechanism has clearly proven insufficient for determining the representativeness of organised civil society. Civil society representatives are normally not directly and equally elected by their constituencies. The problem of delegation through the aggregation of individual preferences is aggravated due to the multinational set-up of the EU. Studies of the EU-organisational world have repeatedly shown that EU social actors tend to be free riders rather than delegates. Associations or NGOs which are active at the transnational level need to refer to their constituents in an acclamative way. They are also only rarely relying on formal membership as a criteria that

could be used to determine their representativeness. Their special knowledge and expertise turns them into general interest entrepreneurs who are generally trusted but not made publicly accountable (Imig and Tarrow 2000; Ruzza 2004; Trenz 2007). The good governance agenda is one answer to this problem in the sense of allocating the task of selecting and aggregating societal interests within the Commission as a guarantor of equal consideration of societal interests and exempting social stakeholders from representative tasks (Smismans 2007b).

Such limitations for applying the aggregative-electoral mechanism of representation to the case of EU partnership governance speak for the urgency of conceiving alternative, non-electoral modes of political representation and assessing their legitimacy potential. The literature on civil society has emphasised the impact of other mechanisms like trust in expertise, reflexive capacities, moral integrity or simply advocacy and advertisement by mostly self-appointed civil society representatives. Rethinking representation in the framework of deliberative democratic theory and for the context of parliamentary representation, Jane Mansbridge has conceived of the represented-representative relationship as one that is not necessarily based on a linear power relation but on “reciprocal power and continuing mutual influence” (Liebert 2007; Mansbridge 2003: 518). Replacing the dyadic principal-agent model, representation becomes a systemic phenomenon (Saward 2007: 6). As such, it is grounded in a discursive relationship between government and individuals, mediated by organised actors who *perform* in front of a larger audience.

Representation of civil society is thus specified as a form of cultural creativity that unfolds as a particular semantic within the public sphere (see Eder, in this volume). It then needs to be understood how public discourse, instead of reading off civil society’s objective interests or expressing its inherent identity, *constitutes* civil society by *representing* it as a particular form of culture and solidarity (Calhoun 2002: 159). I will use this insight in the creative and constitutive force of public discourse to propose a different notion of civil society as a discursive formation within the public sphere (see Trenz 2005) for details on this proposal). This allows me to conceive the emergence of a European civil society not as a matter of new structures of collective action and organisation but as a new way of imagining identity, interests and solidarity (Calhoun 2002: 171).

In the following, this integrative mechanism of political representation will be further specified by adapting Mansbridge’s (2003) helpful distinction of four modes of representation to the case of civil society. Mansbridge shares our concern in the insufficiencies of the traditional mode of perceiving representation as an aggregative mechanism (of what she calls promissory

representation) and classifies three additional modes of representation, each of which, as I will try to demonstrate, has the potential of fulfilling an integrative (systemic) function with regard to the dynamic and reciprocal polity-constituency relationship, in which civil society is embedded:

*Anticipatory representation* transcends the principal-agent model by focusing on the continuous communicative exchanges between the represented and the representatives that are facilitated through the mass media. In modern media democracies, political rulers not only address the voters at the occasion of an election but they are put under constant constraints to justify their political choices in front of the wider audience. The existence of such permanent communicative exchanges also gives them the chance to observe reflexively and to anticipate the preferences of their constituents. By establishing a reciprocal relationship of power and of continuing mutual influence, rulers as well as voters become educable and malleable (Mansbridge 2003: 519). The legitimacy of the representative-constituent relationship can then be measured in the deliberative quality of communication, which is driven by the merit of argument and justification.

*Gyroscopic representation* relies on forms of generalised trust towards the representatives whose alleged attitudes and characteristics make their future behaviour for the voters predictable. The constituents share a particular preference or identity with the representative but do not try to induce the representative's behaviour (Mansbridge 2003: 521). Opinion polls show, for instance, that civil society actors whose commitment to the public good is beyond question are generally much more trusted than elected representatives. Also the permissive consensus towards the EU can be interpreted as a case of gyroscopic representation. It allows the EU system of governance to be operated with considerable discretion. Its legitimacy is measured by generally accepted outputs without necessarily having to rely on regular inputs or on traditional forms of responsiveness and accountability (Majone 1998).

Finally, the case of civil society points to the relevance of *surrogate representation*, in which the represented are chosen by their representatives. The surrogate representative typically chooses an issue (e.g., minority rights), which she persistently defends within the political arena even though members of the particular community (e.g., minorities) have no direct relationship with the person in office. Civil society activists frequently act as surrogate representatives of such groups without a direct voice in the political process; environmental groups claiming to represent future generations, human rights groups claiming to represent political refugees or a local pressure group claiming to represent a particular neighbourhood. Also in this case, the representative is not accountable or even responsive to the

represented. Crucial to this process is rather the idea of a representative's claims, which call into existence the represented as an addressable entity (Saward 2006; 2007). The legitimacy of surrogate representation therefore lies in the performative act of representation itself, through which a particular person claims to speak for somebody else and in the general resonance which this performative act creates within a wider audience (which is not identical with the constituent).

Anticipatory, gyroscopic and surrogate modes of representation differ in how they conceive of the integrative (systemic) function of political representation beyond the traditional principal-agent model of a linear aggregation of individual preferences from the constituents to the representatives. The three modes are relying on discursive acts linking different actors' positions through justificatory logics and intermediary performances to create resonance within a wider public. The presence of a third (the audience or the general public) is seen as an integral element of political representation. Last but not least, it is the character of this dynamic discursive relationship that constitutes the representative and the represented. Table 3.3 summarises some of the characteristics of these different modes of building a systemic representative relationship. Differences lie in the ways the discursive-representative act is enacted, what kind of normative criteria are evoked by it, what kind of systemic operation is performed and who is potentially included/addressed by it.

**Table 3.3: Representation as an integrative mechanism**

	<b>Anticipatory representation</b>	<b>Gyroscopic representation</b>	<b>Surrogate representation</b>
<b>Integrative mode</b>	Communicative exchange	Trust	Advocacy
<b>Normative criteria</b>	Quality of deliberation between represented-representative	Authenticity	Credibility
<b>Performance</b>	Education	Identification	Acclamation
<b>Target</b>	Reciprocity between represented and representatives	Relative autonomy of the representative	General public

The conceptual link between civil society and political representation postulates a two-directional process, in which principals and agents stand in a non-linear dialogical relationship. Accordingly, the representativeness of an actor is not determined as a zero-sum relationship through elections, which establish who is elected (and therefore representative) and who is not (Saward

2006: 299), but as a positive sum relationship, which involves represented and representatives in a continuous process of collective will formation.

Representation by organised civil society in the EU can thus be said to work along two different directions. The first direction still follows the path of traditional aggregative “promissory representation”. EU associations enter as brokers of aggregated citizens’ preferences into the political arena. In this function, they receive signals from the citizens, select and transform them into positions which are directed at the European Commission and other institutional bodies of the EU. Interest politics in the EU have unfolded for several decades now, but a convergent system of European interest representation is still out of sight. The EU has opened a plurality of channels for lobbying and consultations, but national interest profiles and national channels of interest intermediation prevail. European umbrella organisations have notorious difficulty in finding the lowest common denominator of their members’ interests and are therefore frequently handicapped in expressing their positions in EU negotiations (Heinelt et al. 2002).

The second direction opens civil society participation up to deliberative “anticipatory representation”. Beyond the function of interest mediation, EU associations also perform as partners of EU governance. In this role, they improve the governmental outputs by giving expertise and applying the norms of deliberation and, at the same time, by enhancing the quality of information between the EU and its citizens. To the extent that the deliberative mode of collective decision-making has gained prominence in the EU setting, forms of anticipatory representation can develop through which civil society delegates progressively defend the interests of their constituents. While the responsiveness of political institutions in a deliberative setting can be measured by their degrees of participation, inclusiveness and plurality of procedural designs, representation as such is not quantifiable. It is a quality that is acquired through discussion (Eriksen and Fossum 2007: 8, based on Manin 1997) and it is linked to the search of common understanding, which unfolds through free, equal and open debates in an all-inclusive public forum.

Political representation also comes in, however, when it needs to be decided who is entitled to sit in the forum and to actively participate in the debate and who may attend the debate as a passive observer. This problem has often been sidelined by reference to the abstract principle of publicness, which – as empirical research has repeatedly shown – is only an insufficient guarantee of publicity and attention as long as an encompassing resonance body in the form of a European public and media sphere is not available. Others recur again to statistical representativeness to resolve the problem of selecting voice

in participation. Deliberative polls, for example, rely on random samples of citizens' representatives, but are so far rather understood as experimental designs without enforcing capacities (Fishkin and Lushkin 2000). One possible solution is to bring in additional forms of gyroscopic and surrogate representation to explain the integrative mechanism of political representation in relation to the general legitimacy of EU civil society in relation to EU governance.

## **Assessing European civil society as a gyroscopic and as a surrogate representative**

The impact of gyroscopic representation can be measured through generalised trust in the political system in general and NGOs and civil society actors in particular. The proliferation of civil society is often seen as a symptom of the crisis of trust in the institutions of representative democracy. Opinion polls like Eurobarometer show that trust in representative institutions among the populations of the old and – even more so – the new Member States tends to be low (with the noticeable exception of Scandinavian countries). NGOs and international organisations like the UN, but also the European Union to some extent, are more trusted than national governments, political parties and even parliament. Such patterns of generalised trust indicate the relevance of gyroscopic representation in which the represented identify with particular principles or share a moral conscience that is defended by particular organisations (a church, or Greenpeace) or by charismatic personalities. The representatives in turn (the particular organisations or prominent persons) are largely autonomous and unconstrained by public opinion changes. They are trusted not because they follow the majority vote but because they are independent from it and rotate like gyroscopes on their own axes (Mansbridge 2003: 520).

Gyroscopic representation has the potential to release patterns of trust and political loyalty from the bonds of the nation states. Non-elected, gyroscopic trustees are often transnationally active (the pope, the Dalai Lama or even pop stars). They stand for the moral conscience of the world and not of a particular community. As such, they become integrating figures of global civil society but are only loosely related to the technocratic setting of EU governance, which is rather characterised by the lack of charismatic figures and prominence. Eurobarometer, which measures trust in political institutions, delivers only rough data on civil society. The expression of a high level of trust in single international NGOs and general interest representatives, such as Greenpeace or Amnesty International, cannot be turned into conclusions about the representativeness of European civil society as a whole.

The analysis of the impact of surrogate representation requires a more qualitative research strategy and the application of ethnographic and discourse analytical methods. Instead of quantifying representation or applying standardised procedures and norms, attention is turned towards the practice of representative claims-making. Rather than asking who constitutes civil society, one can instead ask how civil society goes about the task of being representative. What can then be answered through interview techniques, questionnaires or text analysis is what kind of representative claims are seen as “socially approved” and “appropriate” in a transnational representative field as constituted by the EU. The research focus is thus on “the active making (creating, offering) of symbols or images of what is to be represented” (Saward 2006: 301). The representatives are observed in their role of “choosing their constituents” and “portraying them or framing them in particular, contestable ways” (ibid: 301-2).

When asked about their own perceived constituencies, civil society activists have rather diffuse groups in mind and refer to general and undetermined categories like citizens, the global community and sectoral or territorial groups of various size and scope. As advocates of global concerns, internationally active NGOs tend to be free-floating and detached from territorial constituencies or the interests of particular memberships (Keck and Sikkink 1998). Their strength lies precisely in de-coupling and re-embedding local concerns in global discourse and world polity (Meyer et al. 1997). They thus reject the idea of membership accountability and question the legitimacy of any particularistic expression of popular sovereignty. Cosmopolitan civil society makes a case for surrogate representation precisely to denounce the artificiality and arbitrariness of traditional representative settings. Surrogate representation thus sets the grounds for cosmopolitan claims-making.

Representative claims remain highly contested from within civil society and from the outside. By focusing on the performative side of representative claims-making, this justificatory practice of public discourse is put centre-stage. In this sense, representation is replaced by public discourse. The reasons for this replacement are twofold: Firstly, because political representation remains parasitic on deliberation, “as no person can consider herself to be legitimately represented unless the mandate and accountability terms are spelled out, and the represented are offered acceptable justifications for decisions taken on their behalf” (Eriksen and Fossum 2007: 9). Secondly, the good reasons and justifications through which the representative quality can be acquired in public debates are themselves in need of representation to be conveyed from deliberating bodies to larger audiences. In this sense, research needs to focus on the performative and aesthetic component of representative claims-making in shaping its own discursive referents. Surrogate

representation is therefore not distinctive from other more “authentic” modes of political representation. More accurately, it is all what political representation is about as the process of defining and redefining the relationship between the political rulers and the citizens.

The notion of surrogate representation as manifested in representative claims-making thus has an important impact on a theory of political representation and a theory of civil society. Ultimately, it is the ongoing discourse within the public sphere that *re-presents* political actors, opinions and reasons and makes them significant. Civil society is then no longer perceived as a field of participation but as a projection of representative discourse. We thus arrive at a different notion of civil society, as a discursive formation and not as a collective actor or a social structural entity, and we arrive at a different notion of political representation not as a formal, one-to-one relationship between well-defined social units but as a signifying practice of a shifting and mutually constitutive relationship.

## Conclusion

European civil society seems possible but it appears to depend indeed on quite a strange way that it might happen (Caporoso and Tarrow: 2008). European civil society is less to be described in socio-structural terms, it is also only insufficiently grasped as an organisational feature of collective action. European civil society seems mainly possible as a collective act of representation. Following this main line of argumentation, the article has emphasised that political representation is a significantly broader topic than suggested by traditional political theory. In reconstructing the different modes in which the representativeness of European civil society can be conceived and assessed, it has been argued that representation is only insufficiently described as the aggregation of individual preferences and the empowerment of political delegates by the vote of the citizens. Beyond the principal-agent model, there is a second, systemic function of political representation, which is grounded in a dynamic and reciprocal polity-constituency relationship, based on deliberation (or political discourse).

In approaching this systemic function of political representation as the safeguard of the integrity of the political community, this article relies on a classification proposed by Mansbridge (2003) to identify three additional modes of reconstructing the representativeness of civil society. Anticipatory, gyroscopic and surrogate representation are grounded in a triadic discursive relationship between the political rulers, organised civil society and the general audience. Political representation is thus embedded within a plural and dynamic social field, in which delegates not only need to relate formally to their constituents but also constantly justify their choices in front of the

larger audience (the anticipatory mode), engender trust and loyalty (the gyroscopic mode), or respond to the generalised expectation of being representative (the surrogate mode). In analytical terms, this implies the need to measure the creative force of political representation in promoting justificatory logics, engendering collective identities and, last but not least, also in constituting particular actors' positions as signifying and as addressable units.

In order to spell out how political representation unfolds as a creative practice, the notion of representative claims-making has become central. Representative claims-making does not simply refer to the technical aspect of political representation in drawing the distinction between the representee and the representative. Representative claims-making is rather embedded in a double constitutive relationship of what Saward (2006) has called the "active constitution of constituencies" and, as we can add now, the simultaneous and interlinked constitution of the polity. As such, it refers to a double claim about the "aptitude or capacity of a would be representative and about relevant characteristics of a would be audience" (Saward 2006: 303). There is a performative and an aesthetic moment in political representation as a process of *constituting* the representee as well as the representative.

In this sense, political representation can be said to introduce a distinct and novel notion of European civil society as a collective act of imagination that is needed for it to enter into democratic practice and to apply the discourse of democracy to the European political setting. Representation is at the heart of civil society activism. It is not second best because deviating from the participatory ideal, but it is what democratic politics are all about (Plotke 1997; Saward 2007: 5). Civil society as a unitary construct of representation is what is comprised in anthropological studies of ritual and magic as a *fetish*: a non-casual by-product of a collective act of imagination. The research attention then shifts from "civil society" as collective agency to "civil society" as discourse, which generates particular ideas and images about the constitution of collective agency.

In this last sense, the notion of representative claims-making is meant to pave the way for an integrated analysis of the multi-level field of representation that new and old modes of EU governance have opened up. As stressed by Crum and Fossum (2008: 14ff.), such a field is integrated by a set of basic values and procedural norms that constitute institutionalised patterns of interactions and that tell us how democratic representation ought to look like in the EU. As has become clear by now, the contours of this field stretch beyond the channels of parliamentary representation to include a wider range of actors committed to the practices of "claiming" for rights and democracy

in the EU. The practice of representative claims-making can then be analysed, first of all, as a way of distributing social capital among the actors and institutions that populate the European field. As such, it points to a *contentious logic* operating within the field in which social positions are unequally distributed and creating thus legitimacy constraints for some to impose their hegemonic position against their alleged constituents and for others to challenge the hegemony of the self-acclaimed representatives (Eder and Trenz 2003). Secondly, the practices of representative claims-making can be analysed as a way of building new forms of cultural and symbolic capital that is needed for taking advantage of the new transnational positions that are made available by European governance. As such, it points at the *cultural logic* of a field where collective actors always *perform* in front of larger audiences. It is through this creative performance of political representation within the public sphere that the symbols and norms of European integration are enacted and transmitted. Political representation is then indeed what democracy is all about: giving meaning to the EU polity and its social constituencies and connecting them through the narratives of a double constitutive relationship.

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# Chapter 4

## The role of civil society in engendering European democracy

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### Introduction

The political sociology of the European Union is still in its infancy, especially when it comes to explaining the role of civil society in the reconstitution of the “would-be” European democratic polity. European democracy entails the “riddle of a second-order democratization of already democratized societies”, involving the risk of “democratization against the collective will of the Europeans” (Eder and Trenz 2007: 179; Kohler-Koch and Finke 2007; Kohler-Koch and Rittberger 2007). Some of the EU’s recent institutional reform projects are cases in point, where ideas for democratic innovation, even those empowering civil society, have failed to achieve popular support, or have even been out rightly rejected.<sup>1</sup> How to account for this paradox?

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<sup>1</sup> Successful institutional innovations in the EU include, among others, the adoption of the “Copenhagen criteria for enlargement”, set out in December 1993 by the European Council in Copenhagen (DOC/93/3; 22. 6. 1993); the European Commission’s “European Governance White Paper” (COM(2001) 428) had a more mixed fortune; while the Laeken process - despite major drawbacks - is still underway: Starting with the Laeken Declaration by the European Council Meeting in December 2001, setting a comprehensive agenda for treaty reform, and the creation of the “European Convention” (February 2002 – June 2003) as a novel, more inclusive and deliberative process for preparing treaty revisions by “Intergovernmental Conference”; over the “Treaty establishing a Constitution for Europe” (TCE, October 2004) providing new rules on participatory democracy (the right of citizens’ initiative), on the role of the social partners, churches and non-confessional organizations, and introducing changes regarding transparency of the proceedings of the institutions, to the revised Lisbon Treaty (December 2007). While the TCE has been ratified by 20, but rejected by two Member States (including successful referendums in Spain and Luxemburg, and failed

On the one hand, political science accounts of European integration – whether institutionalist, rational choice or constructivist ones – share largely elitist perspectives on the issue of democratic legitimacy.<sup>2</sup> Likewise, in the Europeanization literature the impacts of Europe on the politics of the member states have been least explored: “We hardly know anything about how the emergence of a European structure of political and societal interest representation impacts on processes of political contestation and interest aggregation in the member states” (Börzel and Risse 2006: 487–8). Thus, the more the integration process becomes politicized, the less will we be able to understand it in terms of an exclusively elite driven project where the two-way linkages with the people don’t matter (Haller 2008; Balme and Chabanet 2008).

On the other hand, while promising the “much needed ‘bottom up’ view of the origins and sources of European integration”, contributions by sociologists “have been scattered and marginal” (Favell 2007: 122). As much as social theorists have to say on transnational or global processes in theoretical terms, empirically we remain wedded to “methodological nationalism”.<sup>3</sup> That is, although idealizing civil society as a universalistic and abstract space (Forst 2007; Alexander 2006: 196; Habermas 1998) or “rethinking European society (in) the global civil society context” (Delanty og Rumford 2006), we typically understand “real civil society” in the sense of “historically formed, culturally distinct nation-states”, with the EU certainly not being such a “nation-state-society” (Favell 2007: 122). When dropping this premise, timely questions regarding the contemporary European constellation arise (cf. Cohen & Arato 1992: 18–20): First, how do modern civil societies link across national boundaries, articulating a “third realm” differentiated from the economy and the nation states? Furthermore, to what extent do the differentiated institutional and organizational structures of European civil societies – family, associational life, and the public sphere – rest on civic privatism and political apathy, or, alternatively, on citizens’

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ones in France and the Netherlands in May 29<sup>th</sup>, and June 3<sup>rd</sup>, 2005); the Lisbon Treaty has passed all national ratification procedures but two (the Irish failed one in June 2008, and the Czech one that is on hold). See Eriksen et.al 2004; Eriksen 2005; Puntcher-Riekman and Wessels 2006; Liebert 2007.

<sup>2</sup> For varying accounts of European integration from elitist perspectives in rational choice, institutionalist and, respectively, social constructivist terms, see, for instance, Moravcsik 2006; Scharpf 1999; Wiener 2007.

<sup>3</sup> For a critique of the critique of “methodological nationalism”, understood by contemporary social theory – especially by Ulrich Beck – as “the equation between the concept of society and the nation-state in modernity”, and the substantive problems this poses to social theory, see Chernilo 2006.

active participation? When adopting a dynamic conception, are a “vital, modern, civil society and an important form of citizen participation in public life” evolving and kept alive by social movements that aim at the expansion of rights, the defence of the autonomy of civil society, and its further democratization? Finally, does the democratization of European civil societies possibly help open up the European political societies (parties and representative institutions), on the one hand, and the European economic society, on the other hand (ibid. 19–20)?

My purpose is to critically review for the non-state EU polity at the turn of the 21<sup>st</sup> century the classical arguments deployed by Tocqueville for 19<sup>th</sup> century USA, reconfirmed by Almond and Verba for post World War II democratic systems, and theorized by Jean Cohen and Andrew Arato as a way of synthesizing the experiences of the civic rights movements of the sixties in the West and the peaceful democratic revolutions of the eighties in the East. These different authors have established our belief that civil society is a vital force for a democratic regime, at least within national boundaries. This civil society argument about democratization continues to resonate with recent post- and supranational models of civil society participation in European and global governance as “a cure of the democratic deficit” (Held 1996; Steffek et al. 2007). Moreover, it also informs gender approaches to democracy, European integration and enlargement that have developed over the past decade (Prügl 2007; Einhorn and Sever 2003; Hoskyns 1996, 1999, 2004).

Taking critical issue with this civil society thesis of democracy, I submit that in the post-national constellation, and with an effective and legitimate institutional framework for EU-civil society relations not yet in place,<sup>4</sup> we should be aware of a “Janus faced” civil society that entertains an ambiguous relationship to European democracy. My argument is premised on a notion of civil society whereby civil society is not defined as a collection of voluntary civic and social organizations and institutions, but is understood as a civic sphere formed by the relations between social constituencies (groups or sectors) and the European multilevel polity (Alexander 2006; Eisenstadt 1995: 240). In Europe’s emerging postnational civic sphere – broadly understood as

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<sup>4</sup> After several years of operating CONNECS online registration for civil society organizations, in 2008 the European Commission has replaced this by a new “Register of Interest Representatives”, see <<http://webgate.ec.europa.eu/transparency/regrin/welcome.do>> (accessed 10 December 2008). For a comprehensive comparative analysis of the diverse range of legal frameworks for civil society, NGO's and, more precisely, “foundations” and “associations”, at the level of EU member states, see Joanna Serdnynska's contribution to this report (Chapter 5).

a configuration of linkages between society and the EU multilevel polity – social groups and sectors may act as movements striving for political inclusion, participation and equality. But they may equally mobilise as counter movements against European democratisation or oppose further integration. While some advocate the unfettered forces of market integration, others may opt for nationalist strategies as a last resort for the protection of their stakes. Only if the frameworks for assessing the democratic quality of the European polity and its member states (Lord 2007) will include “civil society”, will a proper bottom up perspective allow us to better understand of its impacts on the evolving EU polity. Moreover, if these frameworks were also premised on principles of “gender justice”, extending “gender democracy” into parliamentary arenas and into the civic sphere, we might gain even deeper insights into the vital mechanisms that are operating in the civic sphere (Galligan and Clavero 2008; Holst 2008).

The aim of this chapter is to develop the theoretical framework for this argument that the role that the role of civil society in the reconstitution of European democracy can be that of a contentious agent rather than a partner, dialogical voice or constituency support and provide an empirical illustration for why this may be the case. This undertaking warrants a three-step approach: First, I will scrutinize major contributions to the political theoretical debate on democracy and democratization beyond the state (or, in other words, in the “post-national constellation”) as to what they suggest regarding the role of civil society. In the second step, I will review the recent debate on civil society in Europe and what it tells us about the preconditions and impediments for European democracy (or for the democratization of the EU polity). Then, for illustrating my argument, I will draw on the paradoxes that the women’s organisations offer during the episode of European constitutional ratification. In the final part, I will summarise some of the conditions for how civil society can hope to contribute to engendering democracy in the European Union.

## **Transnational democratic theory and civil society**

What do we mean by “engendering EU democracy”? Whether we understand the question in neutral terms (“promoting EU democracy”) or take its gender connotation to heart (“rendering EU democracy more gender equal/just”), on what theoretical grounds should we expect the reconstitution of European democracy to depend on the role of civil society? This question lies at the intersection of different research literatures, namely EU democracy and democratisation; organised interests and civil society; and gender analyses of EU policy and politics. The limitations of space do not allow me a more

thorough review here, so I will restrict myself to summarizing briefly the three major elements in a conception of transnational democracy that builds on (and is constituted by) civil society: (1) a process approach to democracy and democratization as a specific class of citizen-polity relations; (2) the transnational scope of citizens' relations to the European multilevel polity; (3) a gender approach to European citizenry (or the social constituency of the European polity), structured neither exclusively nor primarily by national diversity or socio-economic classes, but also shaped by gender, race, ethnicity, religion and other group-based differences.

### *A process-based approach to democracy*

Let us start by clarifying our key question – what is democracy? Students of democracy and democratization generally choose one of four types of definition, based on constitutional, substantive, procedural, and process-oriented approaches to democracy (Tilly 2007: 7-9):

- For the present analysis of the civil society link with democracy, a constitutional approach to democracy will highlight the legal preconditions on which civil society is premised, on the one hand. On the other hand, it will place the role of civil society in the construction of a constitutional and legal order of a democratic regime centre stage (Tilly 2007: 7-9; Bohmann 2007; Eriksen and Fossum 2007; Dryzek 2002; Held 1996).
- By comparison, substantive approaches to democracy will highlight “the conditions of life and politics” that a given regime promotes (ibid.). Thus, from a civil society perspective, we will focus on those “values” and “public goods” that civil society organizations care most about, for instance “social justice”, or “gender justice”. These values might provide substantive yardsticks for assessing the quality of democratic regimes.
- Procedural definitions of democracy normally focus on elections, with relatively little room for civil society. Yet, they also capture varied mechanisms for consultation and participation that are in principle open to civil society. Generally, in the words of James Bohman, the core of democracy can be depicted in terms of reflexive procedures which make its norms and practices subject to citizens: “Democracy is that set of institutions by which individuals are empowered as free and equal citizens to form and change the terms of their common life together, including democracy itself.” (Bohman 2007:1-2). This procedural formula for turning individuals into free and equal citizens who form and change

together the norms and practices of their democratic life, should neither be restricted to the confines of the nation state nor to the borders of the European polity, but may well expand into the cosmopolitan realm.

- In order to develop a “grounded theory” of democracy starting from civil society, a process-oriented approach seems most fruitful. Here, “some minimum set of processes” for relating the European polity to the citizens must be continuously in motion. Although developed for the state level, I will extend this approach to the democratic processes operating in the multilevel European Union. Thus, I define the “European polity” as a multilevel, polycentric, non-state organization “that controls the major concentration of coercive means within a substantial territory, exercises priority in some regards over all other organizations operating within the same territory, and receives acknowledgement of that priority from other organizations, including states” (Tilly 2007: 11). In turn, “citizens” are a “catchall category” which lumps together everyone living under the European Union’s jurisdiction, independently from his/her nationality. Relating both elements – European citizens and the EU polity – we arrive at specifying democracy as “a certain class of relations between states and citizens”, and “democratization” and “de-democratization” as “changes in those sorts of relations” (Tilly 2007: 12). Again, I see no reason why this process approach should not work in national and transnational settings alike, provided that institutional arrangements can be found that are capable of making the citizens-polity relationships endure in practice. Civil society appears as a suitable candidate for testing such claims.

The claim that “civil society” provides a vital institutional infrastructure for engendering democratic relationships between citizens and political organisation can be defended for the state and beyond it, on both political and social grounds. For political reasons, a civic sphere is vital to democracy if it helps citizens develop political relations in support of, in dialogue with or in opposition to the state, thus improving citizens’ political awareness and facilitating a more informed citizenry. Consequently, provided there are appropriate patterns of civil society, we would expect citizens to make better voting choices, participate more in politics, and hold government accountable. Especially if public interest groups handle their internal affairs by democratic modes, civil society will accustom members and participating citizens to democratic decision making. In turn, drawing on sociological mechanisms, Robert D. Putnam has pointed out that even non-political civil society organisations may be beneficial to democracy, depending on their “social capital” – for instance, mutual trust and shared values. This may help

to hold society together and facilitate understanding and interconnectedness among otherwise fragmented and different social groups. Thus, apolitical social capital may turn into a political resource.

Yet, the claim that civil society is a motor of democracy may also be exaggerated or even misleading. As a matter of fact, organized civil society groups may foreclose or outright undermine democratic processes. For instance, some scholars have observed that civil society actors have obtained much political influence without being elected, appointed or accountable to anyone (Kohler-Koch forthcoming). Others have contended that, since the concept of civil society has developed in close relationship with the nation state, organisations might also promote nationalist, racist or xenophobic, sexist ideas and even hatred, rather than pursuing the values of European integration, peace and democratisation, non-discrimination and gender equality, civicness, and tolerance (Kohler-Koch forthcoming; Balme and Chabanet 2008; Erne 2008).

### *The transnational scope of citizens' relations to the European multilevel polity*

Regarding the territorial scope of European citizens' relations to the European multilevel polity, these can be described by the specific sets of principles and institutional procedures that characterize the major three alternative normative models for a European democracy: an intergovernmental order of "delegative" national state democracy; a multinational federal state; or a cosmopolitan (that is post-national or transnational) union (Eriksen and Fossum 2007). Depending on what kind of European democratic model we are looking at, the opportunities and constraints regarding the role of civil society appear quite different.

First, assuming that democracy can or must be reconstituted primarily at national level, civil society will not mobilize citizens to reach out to the EU, a body that they conceive as a primarily technocratic, at best functional regulatory regime. But, in fact, it might trigger mobilization against the EU, and to rolling back European integration. As a consequence, democratic legitimacy remains inextricably linked to the nation state. For instance, as Andrew Moravcsik claims, "needless European constitutional debate" has politicized the public through constitutional rhetoric, while the EU has no chance of effectively generating participation that could translate into political legitimacy (Moravcsik 2006).

By contrast, if one supposes a democracy that can be reconstituted by establishing the EU as a multi-national federal state we might expect civil

society to bring about a plurality of group-based, transnational identity(ies), political networks and social solidaristic allegiances strong enough to support collective action across national boundaries.

Finally, if we believe that democracy can be reconstituted through the development of a regional cosmopolitan post-national entity, we would envisage new governance structures entangled with deliberating transnational civil society, thus providing an alternative to a government above the nation state, and giving EU governance democratic legitimacy through deliberation and participation.

*A gender reflective approach to the transnational democracy.*

Independently from the scope that our democratic model entails, the term “engendering” also has connotations of bringing “gender” into the democratic process in a more specific sense. In the following, I wish to use “engender” to mean both democracy promotion in general and gender reflective democratisation in particular. Gender reflective democratization promotes the articulation and the redress of gender-based injustices in their different forms, whether they are rooted in economic maldistribution, in cultural misrecognition, or in political under representation (Fraser 2007). Adopting such a critical perspective, the “gendering of democracy” entails a three dimensional process, where issues of “redistribution”, “recognition” and “representation” by groups with conflicting identities and interests are at stake. Accordingly, in the postnational constellation, processes of democratization depend on “participatory parity” (Fraser 2007) regarding access to employment and redistribution, to transnational public spheres, and new forms of political representation (Mansbridge 2003; Lovenduski 2006). This critical framework builds on social constructivist feminist perspectives. In the reflexive processes transforming a polity such as the European Union from a “gender blind” or “gender neutral” entity into a more gender-sensitive one, social constructivism has been pivotal.<sup>5</sup> For instance, following the EU’s 1992 Maastricht treaty ratification debates, analyses of the legitimacy deficits of EU politics, policy and polity-making have greatly benefited from gendered constructivism lenses. Moreover, they have helped disseminate awareness towards multiple, cross-secting differences other than gender. Without doubt, a politics of recognition has been a necessary device on which anti-discriminations policies depend. Yet, for taking effect, these policies will not least depend on political representation and on market-

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<sup>5</sup> For overview of the expanding research field of gender approaches to European integration, EU politics and policy making, including “gender mainstreaming”, see Hoskyns 1996, 2004; Abels 2005; Prügl 2007.

correcting and regulating powers. Thus, a critical account of the democratization of European integration and the Europeanisation of democracy, seeks to compensate for the shortcomings of universalistic democratic theories. A transnational democratic theory needs to assess social practices in light of political power asymmetries to identify the exclusionary mechanisms that stand in the way of citizens and groups who are willing and ready to engage with what is supposed to become but not yet a sufficiently democratic European polity. It is at this point that we need to focus more explicitly on the promises and constraints of European civil society.

## **Civil society conceptions and democracy beyond the state**

There are three controversial questions that have sparked theoretical debates on how European civil society is linked to the issue of democracy:

- Is a European civil society possible and what are its prerequisites?
- How can civil society promote democracy in Europe?
- What normative requirements does European civil society need to meet in order to fulfil this function?

The role of civil society for democracy is controversial also since we have not yet defined more precisely what civil society is, how to conceptualise it in relation to the family, the state and the market, and how to deal with the gap between civil society organizations and unorganized society. Therefore, before turning to the roles of civil society in the promotion of democracy, let us clarify, first, the concept of civil society, second, distinguish some of its major types, and third, look at what is required for civil society to enhance democracy and democratization.

### *Civil society as relation between state and society*

As indicated above, I conceive of civil society here as a “specific mode of relations between the state and social groups such as families, business firms, associations, and movements that exist independent of the state” (Eisenstadt 1995: 240). These structures of civil society vary hugely across different countries, and at the level of supranational or transnational polities such as the UN or the EU. However, these variations are patterned and can be summarized under five headings, each describing a different type of relationship that civil society entertains vis-à-vis the state (or, alternatively, the European multilevel polity).

### *Types of civil society relations to the state/transnational polity*

Civil society features five different types of relationship vis-à-vis the state or, in the present context, the European multilevel polity (Chambers and Kopstein 2006: 364ff):

- Civil society may be a pluralistic sphere apart from the state, with voluntary membership and no strong legal or institutional boundaries;
- Civil society may be an agent that interacts with and opposes the state, such as in the revolutions of 1989 in East Central Europe (ibid. 367). Back then, it has served as a habitat for societal opposition against the authoritarian state and has become an engine for democratization;
- Civil society in dialogue with the state or transnational polity, where the public sphere is an “extension of civil society.....where the ideas, interests, values and ideologies formed within civil society are voiced and made politically effective” (Habermas 1996: 367, quoted in Chambers and Kopstein 2006: 369);
- “Civil society in support of the state”, where it serves as the necessary condition of stability of liberal democracy, by creating a common civic culture that transcends pluralism, creates bonds of community, and nourishes toleration, cooperation, respect, and reciprocity (Chambers and Kopstein 2006: 371-2);
- Civil society in partnership with the state, where it challenges the sovereignty of the nation state, by “supplanting the functions and functionalities of the state with the citizen of civil society” (ibid. 374). From a normative perspective, the idea of a European governance premised on civil society participation and consultation promises better governance, improved legitimacy and citizen’s involvement in the European polity.

### *Civil society requirements for the reproduction of democracy*

In the traditional terms of Western democracy, civil society has been seen as the social infrastructure of the democratic state. For civil society to fulfill its role for the reproduction of democracy, it must meet a number of necessary and sufficient requirements (Eisenstadt 1995: 240):

- Multiplicity, that is the existence of many private arenas of social life;
- Autonomy, understood as independence of public arenas within which various associations regulate their own activities;
- Linkages, defined as the existence of institutional and ideological links between social sectors and state agencies, which provide access for different sectors of society (including political representation; judicial

- institutions, channels of public discourse);
- Accountability, where civil society–state linkages help foster the accountability of rulers;
  - Commitments, through which social sectors remain basically committed to the state rules and the political community.

In the new Europe, civil society reflects the evolving European social space and how this is structured by linkages relating the citizens to the European Union, EU, by weaving networks of civic mobilisation and participation that are not really regulated by norms and principles. Sometimes European civil society is vitalized by popular sentiments that are concerned with European integration and governance – such as in the context of the European Union Constitutional Treaty or Lisbon Treaty ratification.

### *Civil society as an agent promoting democratic change in Europe*

Theoretically, qualitative changes towards democracy in the EU may come in three modes, each of which is accompanied by different patterns of interactions between citizens and the EU and the corresponding channels provided by civil society:

First, democratisation in Europe may occur through top down processes of Europeanisation, for instance through a series of political reforms (Schmitter 2000). Alternatively, as in the case of the post-Laeken constitutional process, it may result from novel procedures of treaty reform. This constitutional experiment has been described as an instance of the (belated) politicisation of the EU, where citizens no longer judge policies by standards of effectiveness alone. Rather, their normative legitimacy and especially the democratic norms by which they are justified are at stake (Fossum and Trenz 2006; Zürn 2006). In this case, civil society might be strengthened or change as a consequence of democratic reforms, following the democratisation of the EU rather than the other way round.

Second, democratisation may also evolve through bottom up processes of contentious action (Imig and Tarrow 2001). It may happen as a consequence of interest politics (Greenwood 2002), or discursive democratisation through contestation (Dryzek 2002). In all three situations, we can expect civil society to play the role of a key agent promoting the democratisation of the EU.

Third, in a horizontal perspective, we can envisage a “third way” transnational democratisation of the EU (Bohman 2007), and imagine European civil society as emerging from horizontal networks linking national civil societies.

### *Contentious civil society as an impediment to transnational democratization in Europe*

Recent re-readings of Karl Polanyi depict him as a theorist who has not only pioneered the first great transformation at the level of the nation state (Polanyi et al. 2001; Block 2003). He also offers the key to better understanding the current second transformation at global and international level. Along this line, Caporaso and Tarrow (2008) have claimed to correct current analyses of the EU polity that they see misguided in three respects: because they were excessively concerned with internal EU crises such as the failed constitutional process, over-emphasized European identity and privileged social constructivist perspectives, instead of structural analysis. All these approaches, according to the two critics, ignore the structural dimensions of economic and social conflict on a larger scale that transcends the European polity.

Let me therefore formulate three hypotheses that will structure the case study in the final section, providing alternative explanations for why some civil society organisations have disengaged with or even rejected the EU's post-Laeken "Treaty establishing a Constitution for Europe" (TCE):

- Following Caporaso's and Tarrow's thrust of structural conflict analysis, the EU is negotiating the second "great transformation" of the capitalist order, where the TCE should be a case in point that epitomises the conflictive search for a new "institutional balance", and thus, it should reveal tensions and conflicts between the economic and the social.
- Alternatively, in a political institutional perspective, it is the crisis of political representation of the democratic party state – indicated by decline of party membership, citizens' dissatisfaction with national democracy and lack of trust in political leaders – that explains the deeper lines of conflict about the TCE, since this offers new opportunities for organised interest groups and protest movements to voice their claims.
- Third, adopting a culturalist perspective we would expect that – unlike in struggles for redistribution or for political representation and participation – the identity politics of recognition should play a pivotal role if we want to account for the deep conflict surrounding the EU's new constitution.

## Contentious civil society in EU polity building The case of EU constitutional treaty ratification<sup>6</sup>

To what extent does empirical evidence confirm these three theoretical expectations? Let us take a closer look at the role of European civil society in general in the EU's post Laeken treaty reform, and the role of women's organizations in particular. Drawing on findings from a recent research project, I will show that in the case of the 2004 TCE the link between civil society and the "(en)gendering" of the Constitutional process has been more contentious than might have been expected. Bearing in mind the notable inroads organized civil society has made in European governance,<sup>7</sup> on the one hand, and previous findings on the impact of women's agency in EU governance and Amsterdam treaty reforms (Liebert 1999; Helfferich and Kolb 2001), this is one of the typical paradoxes that women's movements offer and that warrant explanation (Scott 1996).

In contrast to previous findings on women's organisations in EU policy making that have triggered processes of Europeanisation, especially in the area of gender equality and equal treatment norms, a number of authors have criticised the insufficient and ineffective participation of organised civil society in the Constitutional process, despite public hearings and online forums held by the Convention (Andreev 2006: 7; Puntscher-Riekmann and Wessels 2006; Millns and Diaz 2005).

The question of whether and how civil society at the national level is affected and reacts to the building of a European polity, has not found conclusive answers in empirical studies yet. Although the EU's constitutional project has triggered growing mobilization – starting with the European Convention, and culminating in the ratification referendums (Vetters et al. 2006) – it is still true what Imig and Tarrow (2001: 7) have critically commented: "We know

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<sup>6</sup> The empirical analyses on which this section is based draw on comparative empirical data compiled by the ConstEPS research project group, in the framework of the project "Citizenship and Constitutionalisation: Transforming the public sphere in East-West European integration" (ConstEPS), located at the Jean Monnet Centre at the University of Bremen, and funded by VolkswagenFoundation (2005-8); see <<http://www.monnet-centre.uni-bremen.de/projects/consteps/index.html>> (accessed 10 December 2008). I want to acknowledge the contributions to national print media analysis and to interviewing national civil society organizations by Petra R. Guasti (Czech Republic), Tatjana Evas (Estonia and Latvia), Samba Diop (France), Kathrin Packham (Germany and the UK), and Aleksandra Wyrozumska (Poland). My particular thanks goes to Ewelina Pawlak for quantitative data analysis assistance.

<sup>7</sup> For an overview of the state of the art on European civil society research, see chapter 1 in this report.

much more about participation in consultative committees in the five square kilometres of Euroland in Brussels than we do about contention over the effects of their decisions among the 375 million people who have to live with their consequences.”

In the following, a case study on the positions taken and reasons given by contentious segments of civil society shall help us shed some light into this gap. In particular, I will look at how national women’s organizations have positioned themselves in the EU’s constitutional treaty ratification. The following five women’s organizations have been included in a 2007 survey of 150 European civil society organizations that had been active in the EU’s constitutional treaty process:

- British Women’s National Commission (WnC)
- Czech Women’s Lobby (CWL)
- French “Coordination Française pour le Lobby Européen des Femmes” (CLEF)
- German Women’s Council (DF: Deutscher Frauenrat)
- Polish Women’s Rights Centre (CPK: Centrum Praw Kobiet)

Let us illuminate the patterns and dynamics of contentious civil society in the reconstitution of democracy in Europe by looking first at the discursive contexts in the member states, regarding the saliency of equality issues in mass media coverage of the constitutional treaty ratification debates (1). Then (2) we will scrutinize the presence of women among all representatives of civil society organizations who – acting as spokespersons for European affairs – were interviewed. Third (3), the substantive positioning of the five women’s organisations on the issues of EU and TCE legitimacy will be compared. Fourth (4), we will map the networks developed by the European Women’s Lobby and national civil society as well as women’s organization during the constitutional process; and, finally, (5) we will systematically explore the underlying normative ideas, beliefs and preferences that the national women’s representatives articulated in relation to the TCE, thus justifying – or at least indicating reasons for – the critical stances they had taken.

(1) To what extent do equality norms play a role in public constitutional debates in the Member States? We can expect that in the national print media coverage of the constitutional ratification processes, the TCE was framed in terms of the equality norm – and its synonyms in diverse national contexts, as established by individual country experts – with varying extensiveness. In the French public debate, “égalité” was most frequently invoked for justifying

support of as well as opposition to the ratification of the TCE. In terms of equality discourses, the mass media in the UK, Germany, the Czech Republic and Estonia make up an intermediary group. By contrast, in Poland, Sweden and Latvia, the equality norm did hardly play any role in public constitutional discourses (see Table 4.1).

Table 4.1: References to “equality” in national print media coverage of EU constitutional treaty ratification debates, for justifying support or opposition (by month, Oct. 2004-Oct. 2005)

Member state	CzR	EST	FR	Ger	Lat	PL	Sw	UK
Equality (and synonyms in diff. languages)	Rovnost	Vürdõigus, võrds	Égalité	Gleichberechtigung	Vienlīdzība	Równość	Jämlikhet*	Equality
Oct 2004	0	6	5	1	0	0	0	2
Nov 2004	1	2	17	5	0	0	0	6
Dec 2004	6	0	19	1	0	0	0	1
Jan 2005	7	5	18	0	1	0	0	9
Feb 2005	0	5	14	1	0	0	0	1
Mar 2005	4	2	50	1	0	0	0	3
Apr 2005	1	7	81	6	0	0	0	2
May 2005	13	3	102	17	3	0	0	9
Jun 2005	6	5	23	4	0	0	0	6
Jul 2005	1	1	8	0	0	0	0	7
Aug 2005	1	0	3	2	0	0	0	2
Sep 2005	1	1	11	2	0	0	0	2
Oct 2005	0	0	10	4	1	0	0	7
Total	47	37	361	44	5	0	0	57

Source: ConstEPS EU constitutional treaty ratification, print media data set, eight member states (Oct. 2004-Oct. 2005).

(2) Furthermore, among the 150 intermediary organisations that we interviewed about their positions and activities regarding the European constitutional process, 23 per cent were represented by female officials or experts on EU affairs. Among these, out of the 44 civil society organisations (three of them women’s associations) 15 were represented by female respondents; with this share of 30 per cent female respondents civil society organisations proved to be more hospitable to women’s participation and representation than political parties (6 out of 40 political parties being represented by women; hence a share of only 15 per cent) on the one hand, and also compared to economic interest organisations on the other hand: Here, 9 out of a total of 44 organisations were represented by female officials (= 20 per cent). In the UK, political parties were exclusively represented by

male respondents, while in Germany the same was true for business and employer organisations. From the perspective of gender proportion, the old and new member states performed similarly with regard to respondents, except Poland where only one organisation was represented by a female respondent: the national women's organisation (see Table 4.2).

**Table 4.2: Female respondents, by organisation category and country**

Country	Civil society organis.	Female respondents, by civil society organisation category (% of total no.)					
		Total	Total female	Public interests *	Political parties	Trade unions	Employers
Czech Rep.	24	7	3	2	1	1	0
Estonia	16	6	2	1	1	2	1
EU	14	4	1	1	-	1	1
France	24	1	1	-	-	-	0
Germany	25	6	3	2	1	-	0
Poland	24	1	1	-	-	-	3
UK	23	6	4	-	-	2	1
<b>Total</b>	150	35 (23%)	15	6	3	6	5

Source: ConstEPS EU constitutional process – civil society data set, six member states (2007)\*

Including five national women's organisations (Czech Republic, France, Germany, Poland, UK).

(3) Comparing the five national women's organisations (the British, Czech, French, German and Polish) with among each other and with the European level "European Women's Lobby" (EWL), notable disparities were found with regard to their positions towards the EU in general, and the TCE in particular: On the one hand, the positions on the EU varied, from neutral (UK) to moderately favorable (D) and strongly favorable (PL). On the other hand, none of the women's organisations articulated a favorable position concerning the TCE. Moreover, comparing the women's organisations to the other civil society organisations, the former were considerably more sceptical or even outright critical of the TCE than the latter. While ten organizations, including the women's groups, evaluated the TCE as detrimental, 25 were favorable (see Table 4.3).

Table 4.3: Public interest organisations' positions on EU and constitutional treaty

Position on EU	Position on Constitutional Treaty					Total
	Very detrimental	Detrimental	Neither favourable nor detrimental	Favourable	Very favourable	
Strongly Eurosceptic	1	1	0	0	0	2
Eurosceptic	1	1	0	0	0	2
Mostly Eurosceptic	0	0	0	1	0	1
Neutral	0	0	2	0	0	2
Mostly pro-European but not on all issues	0	3	3	0	2	8
Pro-European	0	2	1	6	2	11
Strongly pro-European	0	1	0	9	5	15
<b>Total</b>	<b>2</b>	<b>8</b>	<b>6</b>	<b>16</b>	<b>9</b>	<b>41</b>

Source: ConstEPS EU constitutional process – civil society data set, six member states (2007)

Including five national women's organisations (Czech Republic, France, Germany, Poland, UK).

(4) Our fourth element for unravelling the puzzle of the contentious role of women's organizations in the construction of the EU polity concerns the strategic interactions that the European Women's Lobby (EWL) and national civil society organizations developed during the constitutional process and the ratification campaigns. From all 150 organisations that were interviewed, 10 indicated that the EWL had been part of their network of "important interlocutors" during the constitutional process. Among others, these partners of EWL included the Czech Employers' Organization, the Polish Consumers Organisation, the British Federal Trust for Education and Research and the British European Movement. Moreover, as we would have anticipated, four of the five national women's organizations had been frequently connected to the European Women's Lobby over the course of the constitutional process. At most, one might wonder why despite the close contacts and communication that the national women's organizations maintained with the EWL during the constitutional process, they had chosen quite different positions, taking attitudes on the TCE that were notably more skeptical or out right critical than those of the European Women's Lobby (see Table 4.4).

Table 4.4: Women's multilevel game in the European constitutional process

Level/Country		Org Category	EWL
EU	DIE LINKE/PDS: Confederal Group of the European United Left	Political party	
Czech Rep.	Confederation of Industry of the Czech Republic (SPCR)	Employers' org	
Germany	PDS (Left-D)	Political party	
	Deutscher Frauenrat (DF)	Civil society	
Estonia	Legal Information Centre for Human Rights (LiCHR)	Civil society	
Poland	Women's Rights Centre (CPK)	Civil society	
	Polish Consumers' Association (SKP)	Employers org	
UK	The Federal Trust for Education & Research (FTER)	Civil society	
	European Movement (EuM)	Civil society	
	Women's national (WnC) Commission	Civil society	

Notes: EWL = European Women's Lobby; | = organisation indicates that EWL was important interlocutor in constitutional process.

(5) Which are the major reasons given by the women's representatives that would explain the skeptical positions chosen by their organisations' with respect to the TCE? Now, we will seek to systematically unravel the underlying normative ideas, beliefs and preferences that the national women's representatives have articulated in their responses given to a list of statements concerning the TCE. From these individual sets of 47 responses it is possible to infer justifications – or reasons – for the critical stances the civil society organizations had taken. Summarizing these findings, I wish to offer the following interpretations (see Table 4.5):<sup>8</sup>

a) With respect to satisfaction with the national democratic institutions, only the British women's organization slightly agrees with being "satisfied with how democratic institutions work in our country", while the Polish strongly disagrees and the German and French "slightly disagree" (item 9). However, this does not imply trust in national leaders: the British as well as the German respondent agree that "people oppose the TCE because of their mistrust of

<sup>8</sup> Table 4.5 displays 16 out of the 48 statements that were included in the questionnaire, most of them extracted from print media coverage of TCE debates in the member states. Respondents were required to indicate their level of agreement vs. disagreement on a five point scale.

national leaders” (item 8); by comparison, the French strongly disagrees with that statement.

b) Regarding the capabilities and opportunities for active European citizenship, all four women’s groups agree that it is no mistake “to think that citizens will participate in the constitutional process (item 15). Moreover, they also converge towards the claim that all citizens should vote on the TCE in a European referendum (item 11), and all reject the proposition “European leaders should adopt treaty changes without referendum” (12). However, the four organizations are divided on the issue whether “European leaders, in drafting the TCE, did not care about citizens”: while the Polish and the German slightly agreed, the British and French strongly disagreed (item 7). Neither is there a unanimous stance on the question whether the TCE would “bring EU political decision-making closer to citizens” (item 5; disagreement: D, UK; agreement: France, PL).

c) As to the construction of a supranational European democracy, the national women’s organizations widely agree on that “the TCE enhances democracy in the EU” (item 2; only the UK neither agrees nor disagrees). However, the French respondent strongly believes that the TCE will undermine the democratic nation state, while the Polish strongly disagrees, and the German and British one do not have a position on that (item 4). Equally divided is the position of the four on the question whether “the TCE strengthens national parliaments and the European Parliament (item 6; PL and D agree, while UK and France do not have a position).

d) Finally, the question remains whether organized civil society or political parties should play a more important role in EU constitutional politics. Women’s organizations tend to see both as complementary rather than competitors: While all are unanimous that “organized civil society should have more of a voice in EU constitutional politics” (item 16), they also agree that “political parties should actively involve citizens in EU constitution-making” (item 13; only the French is undecided).

Table 4.5: Women's organisations' positions on democracy in Europe

	DF (D)	CLEF (Fr)	CPK (PL)	WnC (UK)
1 The TCE's Charter of Fundamental Rights promotes EU citizenship	4 slightly agree	1 strongly disagree	4 slightly agree	4 slightly agree
2 The TCE enhances democracy in the EU	4 slightly agree	5 strongly agree	4 slightly agree	3 neither agree nor disagree
4 The TCE undermines democratic nation states	3 neither agree nor disagree	5 strongly agree	1 strongly disagree	3 neither agree nor disagree
5 The TCE brings EU political decision-making closer to citizens	3 neither agree nor disagree	5 strongly agree	4 slightly agree	2 slightly disagree
6 The TCE strengthens national parliaments as well as the EP	5 strongly agree	3 neither agree nor disagree	4 slightly agree	3 neither agree nor disagree
7 European leaders, in drafting the TCE, did not care about citizens.	4 slightly agree	1 strongly disagree	4 slightly agree	1 strongly disagree
8 People oppose the TCE because of their mistrust of national leaders	4 slightly agree	1 strongly disagree	3 neither agree nor disagree	4 slightly agree
9 My org. is satisfied with how democracy works in our country.	2 slightly disagree	2 slightly disagree	1 strongly disagree	4 slightly agree
10 My organisation does not see a democratic deficit in the EU	2 slightly disagree	1 strongly disagree	2 slightly disagree	-
11 All citizens should vote on the TCE in a European referendum	5 strongly agree	3 neither agree nor disagree	4 slightly agree	4 slightly agree
12 EU leaders should adopt treaty changes without referendum.	1 strongly disagree	3 neither agree nor disagree	2 slightly disagree	2 slightly disagree
13 Political parties should actively involve citizens in EU constitution-making	5 strongly agree	3 neither agree nor disagree	5 strongly agree	4 slightly agree
14 EU constitutional reform should result from political debate between opponents & proponents	5 strongly agree	3 neither agree nor disagree	5 strongly agree	4 slightly agree
15 It is a mistake to think that citizens participate in the constitutional process	1 strongly disagree	2 slightly disagree	3 neither agree nor disagree	2 slightly disagree
16 Organised Civil society should have more of a voice in EU constitutional politics	5 strongly agree	5 strongly agree	4 slightly agree	5 strongly agree

Note: The questionnaire comprises in total 48 items extracted from media coverage of TCE debate; respondents were required to rank answers between 1 (strongly disagree), 2 (disagree), 3 (neither agree nor disagree), 4 (agree) and 5 (strongly agree); for abbreviations of organisations see table 4.4.

Source: own data set (see table 4.2 above).

Thus, at least in the women's organizations view, Moravcsik's claim about a "five-year constitutional detour" is a misleading idea, namely that given "the sort of issues the EU handles" it did not warrant democratic participation, deliberation, or democratic legitimacy (2006: 221-2). Quite on the contrary, all four organizations agree with that the capability and will for active citizenship in EU constitutional treaty reform politics exists, and that what is lacking are, first, party political strategies offering active citizens access and participation. And, second, organized civil society is complaining about not having enough of a say in EU constitutional politics. Finally, all share the belief that "EU constitutional reform should be a result of political debate between opponents and proponents where the better argument will win" (item 14), hence that it should not result from elitist or bureaucratic bargains behind closed doors. Thus, in the view of national women's organizations, EU polity building should be transformed into a process of deliberation: bring in contentious views and articulate political controversy, in a transparent process of political struggles, of public opinion and political will formation.

Summarising our findings from this case study on the British, French and German national women's organizations on the one hand, and the Czech and Polish nationally organized women on the other hand, the pattern of normative beliefs regarding the democratic nature of the EU's polity building process reveal contentious issues, but also a significant area of overlapping consensus. Thus, we can say that within the European civic sphere there has been an extensive pocket of a female counter public advocacy against the EU's Constitutional Treaty. As a matter of fact, having effectively rejected – or having advocated abstention from – the ratification of the TCE, the women's organizations in the five member states have helped roll back the European constitutional process towards being an intergovernmental order. Thus, while we would have expected women's organisations – in view of the EU's past records of enhancing equal treatment norms – to expand the scope of their activism and help engender EU democracy by supporting the TCE, this was not the case. Yet, we have been able to confirm that women's organizations' scepticism towards the TCE was not motivated by nation statism or democratic nationalism but rather by their support for a more ambitious constitutional project and process, conducive towards an inclusive multinational "Union of citizens and states", based on active citizenship and a democratic civil society.

Thus, albeit limited in scope, this case study is a crucial one since it focuses on a particularly sceptical segment of civil society – women's organisations – does neither provide evidence for the neo-Polanyian structural hypotheses nor the cultural identity argument. Instead, the accounts given by the

spokeswomen of these organisations point to critical shortcomings inherent in the domestic politics of EU constitutional treaty reform: lack of channels for civil society to bring in its voice, lack of opportunities for citizens to participate; lack of public controversial debate, weakness of channels for citizens involvement through political parties in EU polity building.

## Conclusion

### The EU would-be democratic polity at the crossroads

What will happen with this “expectations-capabilities” gap from which the EU’s protracted and inconclusive treaty reform processes suffers? If it is likely to prevail or even to widen, should we then predict that women’s organizations in particular, and organised civil society in general will become more contentious and cease providing constituency support, decline acting as bridges to grass-root citizens, stop performing as agents for further European integration, but rather contest or out rightly seek to sabotage the constitution of a European order? Alternatively, to the extent to which the public supports the EU for the sake of the benefits it produces for them the democratic quality of the treaty reform processes may loose saliency.

I will highlight here three constraints that appear relevant when trying to assess this cross-road that political elites in post-constitution Europe apparently face: (1) the Janus-faced nature of the EU’s treaty projects; (2) the technocratic nature of how EU governance is portrayed in the public spheres; and (3) the polarised pluralism of European civil society.

(1) The TCE is Janus faced in so far as it provides for a reorganization of political authority under the constraints of a socio-economic order that will shape differential gender relations in European society, without subjecting these issues to public debate (cf. Prügl 2007): “On the one hand, among international institutions, the EU stands out in its foregrounding of the goal of gender equality, listing “equality between women and men” among its “values” and “objectives” in the new constitution (Articles I-2 and I-3) and having committed to mainstreaming gender considerations into all aspects of its operations. On the other hand, caught between the agendas of market liberalization and the preservation of European welfare states, it is a site of political struggle about European gender orders.”

Many authors argue that the TCE contributes to new forms of political authority that find their expression in symbolic commitments to gender equality while producing inequality and difference in new ways. Primary law – including treaty reform and ECJ jurisdiction – has ceased to be the primary

mechanism for engendering European citizenship rights and democratic norms (Mancini 2000). It has been argued that the ECJ and the two Conventions, by the values and objectives laid down in the TCE and by the Charter of Fundamental Rights, have helped thicken social protection at the European level, thus strengthening the social prerequisites for equal European citizenship (Jenson 2007). However, since the main thrust of the EU has been undoubtedly first of all regulatory, aimed at market making and “guided by the visible hand of efficiency standards” (Majone 2005, quoted by Caporaso and Tarrow 2008), constitutionalism has enhanced “regulatory competition” among the member states. Thus, it has threatened a downward spiral of social protection (Scharpf 1999) and the undermining of parliamentary democracy at the national level (Offe and Preuss 2006). These trends notwithstanding, Caporaso and Tarrow (2008) have claimed “that in the case of the free movement of labor, the ECJ’s market interventions work to facilitate labour exchanges but go well beyond the correction of market failures to embed the market in society. In other words, the principles that guide the embedding process go well beyond efficiency and include social purposes such as family considerations and fair treatment” (ibid.).

(2) Moreover, the publicly perceived technocratic nature of the EU acts as a further impediment to civil society’s showing a sympathetic face to the reconstitution and engendering of EU democracy (Erne 2008). Comparing NGO access to the UN and the EU, Joachim and Locher (2008) argue that “the thematic breadth of the UN offers NGOs potentially more “hooks” for their ideas and opportunities for issue linkages, while the EU in comparison may pose greater difficulties to civil society actors who are interested in social issues and wish to make their voices heard. Accordingly, the “technocratic mindset of EU policy-makers” and “their reluctance to get involved in ideological or public debates” act as a selective filter encouraging the presence of civil society groups who possess technical knowledge or specialized information and engage in lobbying rather than in public politics (Joachim and Locher 2008). It is no surprise, then, that women and gender equality norms have already been conspicuously underrepresented in the crucial drafting stage of the Constitution in the European Convention (Millns and Diaz 2005), and that at the final ratification stage they have been more than reluctant to support it.

(3) Finally, we have to take into consideration that in European governance, and, more specifically, in relation to EU treaty reform, organised civil society is by no means the same as civil society or as society. In the context of the new Europe, European level organised civil society does not only lack social roots but is also more static than unorganised civil society. Its contribution to

the engendering of European democracy will therefore depend on the extent to which organised European civil society can democratize: In other words, it is a question of how to resolve the “European citizenship paradox”, by reconciling citizens equality and diversity (Liebert 2008). Thus, the impact of organised European civil society on democratising the European polity will depend on how political conflict about European integration is played out (Marks og Steenbergen 2004). For adequately articulating conflicting preferences, organised – and therefore static – European civil society will be necessary but not sufficient. European democracy will also need to be supported by the more dynamic elements of civil society, as agents of the Europeanisation of civil society (Warleigh 2001) as well as for building “movement advocacy coalitions” (Ruzza 2004). Especially under the constraints of European economic society, social mobilization around public issues, frames based on universal democratic norms, and the promotion of active citizenship will be further preconditions for democratisation.

In light of the role of EU jurisdiction for constructing a European society and deconstructing national societies, the EU has been described as a device for modernization (Münch 2008). This process is based on the diffusion of new norms and innovative instruments (for instance “gender mainstreaming”) aimed at reregulating European markets and restructuring European societies. Starting with women’s equal opportunity and treatment policies in labour markets, the EC moved on to the reconciliation of work and family life, to gender mainstreaming and has intervened in practices of sexual harassment and trafficking in women, too (Stratigaki 2000; Caporaso and Jupille 2001; Liebert og Sifft 2003; Zippel 2006; Locher 2007). Research on EU gender policy and politics has thus contributed to shedding light on agency, cognitive and institutional mechanisms of European market correction, hence “positive integration” through equal opportunity, non-discrimination and equal treatment norms – arguably a prototype for the “social Europe” to come. Yet, the diffusion of gender equality norms through EC policies are but one dimension of the processes of societal transformation that are underway in the European society. Following the Amsterdam Treaty of 1997, the EU has broadened “the Scope and the Norms of EU Gender Equality Law”, towards “a multidimensional conception of equality law”, including apart from gender also sexual orientation, race and ethnic origin, religion, age, and disability (Schiek 2005).

Compared to these processes of top down Europeanisation aimed at policy diffusion across member states, the (en)gendering of EU-democracy by civil society follows quite a different pattern. While in the former case EU agency is central, even when consulting social movements and activists of organised

civil society, in the latter case the supranational elites find themselves at the receiving end: “Civil society is on the move. It lies at the heart of the current changes[...] We are out in midstream, headed towards what some describe as the post-industrial society, others the digital society. We are also heading towards globalisation[...] So we are in midstream, and we must try to understand what is happening, first of all, in society” (Delors 1999:75).

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# Chapter 5

## Civil society law in Europe A comparative legal perspective<sup>1</sup>

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### Introduction

An important reason for considering different European legal framework of civil (non-profit) law is that the non-profit sector has evolved. The past twenty years, in particular, have brought substantial changes. The great Turn-around in Middle and Eastern Europe, the extremely development and completion of the Common Markets and at the same time globalisation effects led to the law changes (i.e. Belgium 2002, all Middle and East European Countries at the beginning of the 1990's) or at least reform discussion (Germany, France).

Civil society is always connected with citizens and their activity. The paradox is that citizen activity is informal and flexible and law, which regulates, is formal and prescriptive. Therefore it is important to understand legal and regulatory framework governing civil society. This includes the legislation relating to issues such as the right to associate, establish a foundation, form a trade union and many others. Legal and regulatory frameworks can encourage or deter the development of civil society. Complicated registration procedures or financial requirements, for instance, can make the setting up process long and tedious. On the other hand, legal framework can prevent arbitrary state or authority intervention and guarantee citizens and their organisations the right to hold government officials to account. The

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importance of civil society law in Europe in the last decade is closely connected to the role that it should play:

Civil society plays an important role in giving voice to the concerns of the citizens and delivering services that meet people's needs. [...] Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. [...] It is a real chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest.

(European Commission 2001: 14)

Civil society entities share important common features that justify the perception of them as a distinctive set of institutions and as an identifiable social “sector” They are, for instance, private in character and not part of the governmental apparatus.

However, unlike other private institutions these entities are expected to serve some public or community purpose and not simply generate profits for those involved in them. They therefore embody two seemingly contradictory impulses. First of all, a commitment to freedom and personal initiative; to the idea that people have the right to act on their own authority to improve the quality of their own lives or the lives of persons they care about. Second of all, an emphasis on solidarity; on the idea that people have responsibilities not only to themselves but also to the communities they are a part of. Uniquely among social institutions, the institutions of the non-profit or civil society sector merge these two impulses; producing a set of private institutions serving essentially public purposes (Salamon et al. 2003: 1).

### Terminological remarks

The idea of civil society has a long history dating back to classical Greece: Cicero and Aristotle<sup>2</sup>. It is fascinating to follow the various conceptualisations of civil society through the centuries. The detailed evaluation of the civil society concept is given in many publications and therefore it will not feature in this paper.<sup>3</sup> However, it is important to note that the renaissance of the term and current popularity is closely connected to the transformation process in Central and Eastern Europe. This also refers to when the term was used by dissidents in order to express their opposition against the ruling authoritarian regime (Klein 2001: 35).

Although civil society constitutes a well-established term in political theory there is no clear cut definition of the phenomenon. A very general definition is given by Cohen and Arato:

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<sup>2</sup> For a detailed account of the ancient idea of civil society see Castiglione (2002).

<sup>3</sup> See Cohen and Arato 1997; Kneer 1997; Reinhardt 2004.

A sphere of social interaction between the economy and the state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements and forms of public communication.

(Cohen and Arato 1997: ix)

At the core of much of the current enthusiasm about civil society is a fascination with nongovernmental organizations; especially advocacy groups devoted to public interest causes such as the environment, human rights, women's issues, election monitoring, anticorruption amongst others. Such groups have been multiplying exponentially in recent years, particularly in countries undertaking democratic transitions. Nevertheless, it is a mistake to equate civil society with NGOs. Civil society is a broader concept that encompasses all the organizations and associations that exist outside of the state and the market. It includes the gamut of organizations that political scientists traditionally label interest groups—not just advocacy NGOs but also labour unions, professional associations, chambers of commerce, ethnic associations and others. It also incorporates the many other associations that exist for purposes other than advancing specific social or political agendas such as religious organizations, student groups, cultural organizations, sports clubs and informal community groups (Carothers 2000: 2).

Despite the increasing involvement of civil society, and especially NGOs in the process of European politics, the features and functions of the civil society “players” have not yet been clearly identified. Moreover, the existing definitions and interpretations can be misleading or even contradictory. There is no legal act on the European level, which gives a definition and regulates material and procedural issues regarding any form of civil society organisation. This “non-status” at the European level may be considered to be an opportunity for maintaining a variety of voices of civil society but can also create some problems. Most importantly, the lack of regulations raises questions about legitimacy and accountability in the light of the increasing participation in the European political process (Martens 2003: 1).

This chapter refers to some European achievements in non-profit law. Therefore the definition of civil society used in official documents by the European Commission, should be given as:

A range of organisations which include: the labour-market players (i.e. trade unions and employers federations – the “social partners”); organisations representing social and economic players, which are not social partners in the strict sense of the term (for instance, consumer organisations); NGOs (non-governmental organisations), which bring people together in a common cause, such as environmental

organisations, human rights organisations, charitable organisations, educational and training organisations, etc.; CBOs (community-based organisations), i.e. organisations set up within society at grassroots level which pursue member-oriented objectives, e.g. youth organisations, family associations and all organisations through which citizens participate in local and municipal life; and religious communities.<sup>4</sup>

The Commission seems to refer to a broad definition – what consequences it brings, will be explained in the latter part (on European civil society). In most European countries domestic legislation serves as a basis for identification and recognition for a number of different “forms” of civil society organisations.

There are two basic legal forms of civil society organisations: associations and foundations, which will both be presented in this chapter. In the following, I will first present some general principles that focus on the law of the bigger group among all different civil society organisations; the non-governmental organisations. In the next step, I will take a closer look at a legal form of foundation. The presentation of different national rules will take place with the example of the countries that are in the scope of the RECON Project (Bulgaria, Belgium, Czech Republic, Denmark, Estonia, France, Germany, Hungary, Italy, Latvia, Norway, Poland, Spain, Sweden, The Netherlands, Turkey and UK). I will then present the European legislation achievements in this field, i.e. projects of European law of foundation.

The same way will be applicable to the law of association. First I will present an overview of the national law of associations and then European “activities”. Finally, as a recap, I will briefly present the perspective of European civil society law.

## General principles of civil society law

There is no single “right” way to design civil society laws and regulations. Legal traditions, as well as traditions of civil society activity, differ widely among countries. Significant variations can thus be expected in how legal systems handle the crucial issues that civil society operations entail.

Despite such variations, however, it is possible to identify some general principles or rules of good practice that can usefully guide the development of civil society law. The Council of Europe adopted a recommendation on the legal status of non-governmental organisations in Europe in 2007,<sup>5</sup> which

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<sup>4</sup> ‘The role and contribution of civil society organisations in the building of Europe’, Opinion of the European Economic and Social Committee, OJ C 329, 17 November 1999.

<sup>5</sup> Council of Europe, Recommendation CM/Rec (2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe.

defines the minimum standards to be respected concerning the creation, management and the general activities of NGOs and can serve as a reference point for national legal arrangements. Although these standards are observed in many countries the recommendation gives a basis for monitoring adverse measures taken in the future.

The document recognizes that the contributions of NGOs are made through an extremely diverse body of activities, which can range from acting as a vehicle for communication between different segments of society and public authorities, through the advocacy of changes in law and public policy, the provision of assistance to those in need, the elaboration of technical and professional standards, the monitoring of compliance with existing obligations under national and international law and on to the provision of a means of personal fulfilment and of pursuing, promoting and defending interests shared with others (*ibid.*: 1).

For the purpose of recommendation, NGOs are defined as voluntary self-governing bodies or organisations established to pursue the essentially non-profit-making objectives of their founders or members. This definition refers generally to two main forms of civil society organisations that are in the focus of this paper: foundations and associations.

Regarding basic principles two important statements, included in the recommendation, should be underlined. First, NGOs should enjoy the freedom of expression, and all other universally and regionally guaranteed rights and freedoms applicable to them, and be either informal bodies or organisations or ones which have a legal personality. Whereby those with legal personality should have the same capacities as are generally enjoyed by other legal persons and should be subject to the administrative, civil and criminal law obligations and sanctions generally applicable to those legal persons. Second, international character in terms of their composition and sphere of operation, where applicable, is postulated. Moreover, legal and fiscal framework should encourage their establishment and continued operation.

Due to objectives, NGOs should be free to pursue their objectives, provided that both the objectives and the means employed are consistent with the requirements of a democratic society. It is important to guarantee the NGOs the freedom to undertake research, education and especially advocacy on issues of public debate, regardless of whether the position taken is in accord with government policy or requires a change in the law. Any lawful economic, business or commercial activities help to pursue the objectives in order to support their non-profit activities without any special authorisation.

For the establishment and membership it is crucial that any person, be it legal or natural, national or non-national, or group of such persons, should be free to establish an NGO and, in the case of non-membership-based NGOs, should be able to do so by way of gift or bequest. Two or more persons should be able to establish a membership-based NGO but a higher number can be required where legal personality is to be acquired; so long as this number is not set at a level that discourages establishment. The ability of any person to join membership-based NGOs should not be unduly restricted by law or subject to the prohibition on unjustified discrimination. On the other hand, no person should be compelled, by law or otherwise, to join an NGO.

Furthermore, the rules for acquiring legal personality should be widely published and the process involved should be easy to understand and satisfy by the acquisition of legal personality. Fees can be charged for an application for legal personality but they should not be set at a level that discourages applications.

A transparent way of operation helps all organisations to maintain the confidence in their activity and pursued objectives and foremost donors have interest in inline operating. Therefore NGOs can be required to submit reports on their accounts and an overview of their activities to a designated supervising body each year.

## Law on foundation

### Definition, types and characteristics of foundation

Although all European countries have the legal form as the foundation or a functional equivalent, national foundation law has developed quite differently, sometimes even within the same country (Germany). The different definitions of a foundation will be presented in the table below. For the purpose of this chapter it is useful to adopt a very general definition of an entity that we call foundation, proposed by Salamon and Anheier (1997: 3). Accordingly, foundation can be defined as an asset, financial or otherwise, with the following characteristics:

- Non membership-based organisation: the foundation must rest on an original deed, typically signified in a charter of incorporation or establishment that gives the entity both intent of purpose and relative permanence. Some organisational structure is required: relative persistence of goals, structure and activities and meaningful organisational boundaries.
- Private entity: foundations are institutionally separate from the government and structurally separate from public agencies. They can be created and set up by the government and receive significant support but

cannot be an instrument of the government whether on an international, national or local basis.

- Self-governing entity: foundations are equipped to control their own activities. They must have their own internal governance procedure, enjoy a meaningful degree of autonomy and have a separate set of accounts.
- Non-profit-distributing entity: foundations are not to return profits generated by either use of assets or the conduct of commercial activities to their owners, trustees or directors.
- Serving a public purpose: foundations are private assets that serve a public purpose, which may be charitable or tax-exempt in the relevant laws of the country (Salamon and Anheier 1997: 3).

The overview will be presented in the table form and consists of six features, in order to demonstrate some important differences between European jurisdiction. The six characteristics are: *definition* as a basis of the examined entity; *purpose* which has crucial importance to insure tax benefices; the *setting up process* to show some procedural differences and requirements (see Table 5.1). In Table 5.2 follow: *reporting/accountability obligations*; as a feature that can strengthen public confidence, *supervision*; which reflects links to state/authority and *taxes* beneficiaries as probably the most important consequence of having a non-profit public benefit (!) status. Nevertheless, the volume of this chapter does not allow for the presentation of each issue in detail and therefore does not claim completion but only a general overview.

It is worth mentioning that the rank of the law regarding foundation differs among European countries: from the constitutional rank; Art. 34 of the Spanish constitution enshrine the “right to foundation”, through the civil code (Turkey) to the most common forms of regulation: acts on foundation (i.e. Sweden, The Netherlands), non-profit legal entities (Bulgaria) or even in the tax law (in Germany – “Abgabenordnung”). It seems strange but it has an important underlying reason: non-profit organisations, especially foundations and associations that pursue public benefit purpose, enjoy special fiscal status; they are exempt from taxes (for more information on tax treatment please see table 5.2).

The very special case is France, where foundations continue to be governed by soft law and subsidiary law. The foundation as such is unknown to the Code Civil. Foundations are now present in the French legal landscape via the law on the development of patronage (mecenat) and the law on enterprise foundations (Hondius 2001: 575).

It is worth noticing that in Belgium the term foundation was not defined, recognised or protected under Belgian law until recently. In the 1921 law

there were only two entities: the non-profit association and the public utility establishment. This law has been amended by the law of 2 May 2002, which introduces significant changes; namely by replacing public utility establishment with the term public utility foundation and by creating a new type of foundation: the private foundation.

Not necessarily every legal system gives a legal definition of a foundation (i.e. Poland, Hungary, and Germany); jurisprudence often delivers it on a basis of requirements stated by law. All definitions, legal or not, focus on the same point: assets/property/capital that are dedicated to given purposes. There is no membership in the foundation in order to keep the beneficiary group indeterminate and as wide as possible.

**Table 5.1: Foundations: definition – purpose – setting up**

	<b>Definition (legal definition, types, founder)</b>	<b>Purpose</b>	<b>Setting up</b>
<b>Bulgaria</b>	No legal definition.	Public and private purposes.	Deed, Court registration. No minimum capital.
<b>Belgium</b>	No legal definition. <ul style="list-style-type: none"> <li>• public utility foundation (PUF)</li> <li>• private foundation (PF)</li> </ul> The foundation is the result of a legal act from one or several <i>individuals</i> or <i>legal entities</i> that dedicate capital to a specific non-for-profit aim.	Public utility: religious, scientific, artistic, educational, philosophical, cultural or private purposes	Notary deed or by will. <i>PUF</i> : approval from the Ministry of Justice, legal personality by royal decree, status has to be published. Minimum capital: €25,000. <i>PF</i> : status of incorporation must be communicated to the court, no state approval, no minimal capital.
<b>Czech Republic</b>	<i>Foundation (F)</i> and <i>endowments fund (EF)</i> are purposeful organisations of assets established for the achievement of public benefit goals.	Only (!) public benefit purposes: development of spiritual values, human rights, protection of the environment, cultural monuments and tradition, science, education, physical education, sports.	F: agreement in writing concluded between the founders, notary record: founding charter or testament. Established on the date of its entry into the Register Court, no state approval. Minimum capital: CZK 500,000 (€18,000). EF: no minimum capital
<b>Denmark</b>	No legal definition. Independent and separately constituted legal bodies with their own governing structure and dedicated assets. <ul style="list-style-type: none"> <li>• public benefit foundation (PB)</li> <li>• commercial foundation (CF)</li> </ul>	Public benefit or commercial purposes.	PB: deed or will, registry by local foundation authority and local tax authority. Minimum capital: 250,000 DKK (€34,000). CF: must register with the Danish commerce authority. Minimum capital: 300,000 DKK (€40,000)

<b>Estonia</b>	<p><i>Foundation</i> is an independent legal person acting under civil law, irrespective of its founder, except for those foundations set up by the Parliament through separate law. Founder: legal or natural person.</p>	Public or private purposes.	Founding act, registration by Registry of Non-Profit Organisations and Foundations, no state approval. No minimum capital.
<b>France</b>	<p><i>Foundation</i>: the legal act through which one or more individuals or legal entities decide irrevocably to allocate property, rights or resources for a non-profit making activity of public interest.</p> <ul style="list-style-type: none"> <li>• public utility foundation (PUF)</li> <li>• corporate foundation (CF)</li> <li>• non-autonomous foundation (NAF)</li> <li>• foundation for scientific cooperation (FSC)</li> </ul>	Only (!) public benefit purposes.	<p>PUF: deed or will, founder must seek authorisation via a decree issued by the French Ministry of the Interior, legal personality after decree publication, capital €1,000,000.</p> <p>CF: legal personality through an authorisation by the Préfet, for 5 years, €150,000 endowment, legal capacity limited to own buildings.</p> <p>NAF: created by private contract between the host public utility foundation and founder.</p>
<b>Germany</b>	<p>No legal definition. Legal entities with assets that shall be used to pursue a specific legal purpose laid down by the founder. Variety of types: autonomous, non-autonomous, without legal personality, civil law, public law, church law, corporate foundation. Individuals or legal entities can establish a foundation.</p>	Public or private benefit purposes.	Recognized by authority of the Bundesland, in which wants to be headquartered, capital of €50,000.
<b>Hungary</b>	<p>No legal definition. <i>Foundation</i>: established by privates, legal person and unincorporated business associations.</p>	Only long term public interest.	Letter of Establishment, founder sets up a board of trustees, provide capital and apply for registration by a local court. No state approval. No minimum capital.
<b>Italy</b>	<p>No legal definition.</p> <ul style="list-style-type: none"> <li>• public benefit foundation</li> <li>• foundations of banking origin</li> <li>• corporate foundation</li> </ul> <p>Established by an individual or legal person.</p>	<p>Private or public benefit purposes: health, aid, charity, education, sport, art, culture, environment, scientific research.</p> <p>Banking foundations have to pursue social purposes and promote economic development.</p>	Deed or will, an endowment is required, registration in legal entity register oversight by Prefettura. No state approval. No minimum capital.

<b>Spain</b>	<p><i>Foundation:</i> non-profit organisation, whose assets are, according to the wishes of the founder, allocated permanently to the fulfilment of general interest purposes.</p> <p>Art. 34 of the Constitution: right to establish a foundation for general interest purpose</p> <p>Founder: individuals and legal entities.</p>	<p>Only general purposes: social matters, education, culture, sports, health care, cooperation for development, environment, scientific research, volunteer work, any public benefit.</p>	<p>Notarised deed or will approved by registration office, Register of foundation. Minimum capital: €30,000. State approval by the Protectorate.</p>
<b>Latvia</b>	<p><i>Foundation:</i> an aggregate of property set aside for a purpose defined by the founder.</p> <p>Established by an individual or legal body.</p>	<p>Public or private purposes.</p>	<p>Registration by Register of Associations and Foundations, no state approval. No minimum capital.</p>
<b>Norway</b>	<p>No legal definition.</p>	<p>Public and private purposes.</p>	<p>Formed by will, gift or other legal act.</p>
<b>Poland</b>	<p>No legal definition.</p> <ul style="list-style-type: none"> <li>• private law foundation</li> <li>• public law foundation</li> </ul> <p>Established by an individual or legal body.</p>	<p>Only public benefit: protection of health, economic and scientific development, education, art and culture, public welfare, protection of the environment and historical monuments.</p>	<p>Notarised deed or will, registration by court, no state approval, only if a foundation plans to engage in economic activities a minimum capital is PLN 1,000 (€165).</p>
<b>Sweden</b>	<p><i>Foundation:</i> assets that are managed independently to pursue a specific purpose according to the deed of the founder.</p> <ul style="list-style-type: none"> <li>• grantmaking foundation</li> <li>• operating foundation</li> </ul> <p>Founder: individuals and legal entities.</p>	<p>Any legal purpose.</p>	<p>Deed in writing and transfer of property. No minimum capital. No state approval. Registry only for f. with business activities, parent f., participation of the state and if the founder wishes so.</p>
<b>The Netherlands</b>	<p><i>Foundation</i> is a legal person created by a legal act that has no members and whose purpose is to realise an objective stated in its statutes using capital allocated to such purposes.</p>	<p>Public or private purposes.</p>	<p>Notarised deed or will. Registry in Register of Commerce. No minimum capital. No state approval.</p>
<b>Turkey</b>	<p><i>Foundations</i> are the charity groups in the status of a legal entity formed by real persons or legal entities dedicating their private property and rights for public use.</p>	<p>Public purposes.</p>	<p>Registration by the court. The amount of the registration endowment will be determined by the Foundations Council on a yearly basis.</p>

<b>United Kingdom (England and Wales)</b>	<p><i>Charity</i> is a body or trust designated for a charitable purpose that provides benefits for the public.</p> <p>Variety of types: trust, companies limited by guarantee, charitable incorporated organisations or unincorporated associations.</p> <p>Trust: an entity created to hold and manage assets for the benefit of others. The trust must pursue a charitable purpose and is governed by trustees.</p>	<p>Charitable purposes: prevention or relief of poverty; advancement of education, religion, health, citizenship or community development, arts, culture, heritage, science, amateur sport, human rights, conflict resolution, promotion of religious or racial harmony, equality and diversity; the advancement of environmental protection, animal welfare; the relief of those in need by reason of youth, age, ill-health, disability, financial hardship or other disadvantage; the promotion of the efficiency of the armed forces of the Crown, of the police, fire, rescue services or ambulance services.</p>	<p>Charity Commission lead register, trust deed, memorandum or status, Commission's approval is required. No minimum capital.</p>
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In some country legislations different types of foundations are given by law. The classification is made in most of the examined countries due to the pursued purpose – private or public. Swedish foundations are classified by type of activity – grantmaking and operating foundations. There are a few examples of foundation types existing in only one country and regulated by special law: Italian banking foundations, French foundation for scientific cooperation or Danish commercial foundation.

Foundation, according to Bulgarian, German, Sweden, Latvian, Estonian, Dutch and Norwegian law, is a legal form that is neutral to any purpose whose use in name or title is legally permissible without limitation in contexts other than those that are classically considered to be connected with the term foundation. Czech Republic, France, Poland, Spain, Hungary, Turkey and the United Kingdom permit foundation only with a public benefit purposes like: science, education or protection of health. Obtaining legal personality as foundation in these countries is automatically an instruction to pursue public benefit purposes.

Some countries, such as Belgium, France, Germany, Czech Republic and Denmark, require a minimum capital or registration endowment (Turkey, Hungary) and are not allowed to decrease below this value through the

period of a foundation's existence, in order to ensure the continuation of a foundation.

In the setting up procedure a standard is a registration that requires the submission of documents and the day of registration is the day of obtaining legal capacity. Two countries, France and Belgium, have a restrictive law regarding setting up. In France, as mentioned already above, the founder must seek authorisation via a decree issued by the French Ministry of the Interior. The documents are then filed with the Bureau of Associations and Foundations, which will consult the various Ministries relevant to the contemplated foundation's objectives, as well as the Highest Court. Foundation only gets legal personality once the decree is signed and published in the Official Journal. The law governing French public utility foundations consists of a discretionary administrative practice, under the tutelage of government and the Conseil d'Etat, with absurdly high entrance requirements and no general status to give guidance to potential founders.

Under Belgian law state approval by Ministry of Justice is also required. Public utility foundation receives legal personality by royal decree and the status must be published in *Moniteur Belge*.

*Note on United Kingdom charity law:* It should be noted that the United Kingdom is a federation of different jurisdiction with different tradition. Charity law in Scotland and Northern Ireland is separate from that in England and Wales. England has a long tradition (Charitable Uses Acts 1601), which is now often called "non-for-profit" organisations – though the expression "voluntary organisations" has more resonance in England than "non-for-profit". The essential feature of charity in law is public benefit; but it is only one of several necessary conditions that must be satisfied in order to obtain charitable status. Regardless whether the organisation has the legal form of association, trust or company, the key distinction is between bodies that are charities because their purpose is for the public benefit, and those whose purpose is essentially private (Fries 2004:135). Charitable status is determined by organisation's purposes rather than their constitutional form. Under English law charities cannot have political purposes. With the new Charities Act in 2006 a new structure for incorporated charitable organisations has been established. It has the benefits of incorporation, which are the creation of a legal personality for the charity and limited liability for trustees. Charitable incorporated organisations need neither separate registration with the Companies House nor regulation under company law.<sup>6</sup>

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<sup>6</sup> The Charities Act 2006 and more information are available at <<http://www.charity-commission.gov.uk/spr/charbill.asp#1>>, accessed 10 December 2008.

For all countries, regarding reporting/accountability of the foundation, it is common that annual financial report, and sometimes also annual activity report, must be delivered to the supervision body; normally the authority that is involved in the registration and/or financial authorities, under reservation of losing tax privileges.

**Table 5.2: Foundations: reporting, accountability – supervision – taxes**

	Reporting/Accountability	Supervision	Taxes
<b>Bulgaria</b>	Annual activity report and accounts. Independent audit for public benefit.	Central registry at Ministry of Justice.	Income tax on economic activities, no gift and inheritance tax. Tax deduction for donors.
<b>Belgium</b>	Public utility foundations and small private foundations have to file their accounts and annual budgets with the clerk's office of the commercial court Large private foundations do this with the National Bank of Belgium	PUF: Ministry of Justice and court PF: commercial court	Exemption from corporate tax only applicable if the entity has a non-profit status. Reduced tax on legal entity. Reduced inheritance tax. Donors: tax deduction. No income tax for beneficiary.
<b>Czech Republic</b>	Annual report must be published. Annual financial statement has to be verified by an auditor.	Supervisory Board, Auditor, Registration Court	Income from donations or grants is not subject to income taxes. Donations and legacies to foundations registered in the Czech Republic are exempted from inheritance taxes. Tax deduction for donors (only for foundations registered in the Czech Republic).
<b>Denmark</b>	Yearly accounts to local tax authority, own auditor. Commercial: prepare annual accounts.	PB: Ministry of Justice. CF: Ministry of Commerce.	Tax on the income derived from economic activities, system of deduction for charitable expenditure. Public benefit f. exempted from inheritance tax. VAT for commercial f. Donation only to Danish PB are tax-deductible. Income tax for beneficiary.
<b>Estonia</b>	Report of financial activities. Auditor's statement.	The Registry of Non-Profit Organisations and Foundations.	No income taxes. Donors: the total of donations deducted from the taxable income cannot exceed 5% of total income

<b>France</b>	Annual Report. Financial Statement to Prefét and Interior Ministry, auditor must be appointed.	Interior Ministry.	Exemption from corporate tax. Also foreign foundation ac- tive in France; if non-profit- character can be proved, it is exempt from tax. Exemption from inheritance and gift tax. Tax credit for donors (tax reduction equal to 66 % of the value of the gift). No taxes of the beneficiary.
<b>Germany</b>	Annual Reports to the state authorities and to the financial authorities, if they wish to receive tax privileges. Foundations are not legally requested to make the information publicly available.	State authorities (Bundesländer)	Only foundations with headquarter in Germany can be exempted from corporate income tax, if they pursue philanthropic purposes (public benefit, benevolent purposes or church support). Exemption from inheritance tax. Tax deduction for donors. No taxes of the beneficiary.
<b>Hungary</b>	Annual report.	Public prosecutor's office.	Only entrepreneurial activities are taxable, no gift and inheritance tax, donations are tax- deductible.
<b>Italy</b>	Annual report.	Regional administration, Ministry of Interior or Ministry of Economy in some cases.	PB are exempted from income tax and banking foundations not, grants and donations are completely tax-exempted, both are exempted from gift and inheritance tax, tax deduction and credit for donors and also beneficiary.
<b>Latvia</b>	Annual Report to the tax administration office and to the State Register. Public benefit foundations have to submit an annual report to the Ministry of Finance.	Administration office which supervises the use of assets and payment of taxes. Ministry of Finances supervises public benefit foundations.	No taxes for public benefit foundations. Income tax deduction for donors. No tax for beneficiary.
<b>Norway</b>	Annual account and auditor's report.	County governor.	Capital gain exempted from tax.

<b>Poland</b>	Annual activity and financial report, available to the public, audit is required for big foundations.	Appropriate minister.	Public benefit foundations have income, capital, withholding, inheritance tax exemption. No VAT and property tax exemption (!) Tax deduction for donors but not for beneficiary.
<b>Spain</b>	Annual report/account to the Protectorate	The Protectorate	Exemption from income tax from activities to support the purpose of the foundation Tax deduction for donors but not for beneficiary (only for grants from the state)
<b>Sweden</b>	Public annual report, own auditor.	County government of the management's domicile.	Tax benefits for public benefit foundations. Income derived from business is taxable. No inheritance tax. No tax deduction for individual or corporate donors.
<b>The Netherlands</b>	Financial report.	Public Prosecutor's Office and District Court.	Income tax on business activities except charitable. VAT for supplying goods or services. Tax deduction for donors and beneficiary. Public benefit foundations are wholly exempt from the gift and inheritance tax.
<b>Turkey</b>	Annual report.	Courts, Ministry of Finance.	Exemption from inheritance and estate taxes.
<b>UK</b>	Annual return to the Commission.	Charity Commission, High Court.	Registration lead to acceptance as a charity for tax purposes by the tax authority, Her Majesty's Revenue and Customs. Exemption from tax on capital gains and income, inheritance and capital taxes. Tax deduction for donors. No tax for beneficiary.

Regarding the tax system I must begin with a truism: tax provisions in every country constitute a very complicated system, therefore only some general outlines can be presented. Generally foundations are exempt from income

tax; especially income from donations and grants are not subject to income tax, in England and Poland only if they are spent for charitable purposes. There are also privileges regarding corporate tax. In some countries (Poland and France) economic activities can be undertaken, if allowed in the status, but the income deriving from economic activities is taxable. In Belgium foreign entities that have a permanent presence in Belgium also benefit from exemption. For foundations in most countries an activity abroad is not an obstacle in being exempt from corporate tax. All legal systems provide exemptions from gift- and inheritance tax.

It is also common that national legal systems guarantee tax credit or deduction for individual and corporate donors (except Sweden). All states provide tax privileges for beneficiaries; receiving grants or other benefits from foundation (except Poland). Tax benefices are the most encouraging impulses for operating as a foundation.

## European law of foundation

It should be clarified whether there is a need of “producing” law for foundations on the European level before presenting some achievements in this field. The first argument is that economic globalisation also influences foundations. More and more founders have assets in several countries, which may become a foundations’ endowment. Furthermore, some foundations solicit donations or undertake economic activities in many countries. Many of them want to pursue transnational issues (Hopt et al. 2006: 49).

As provided in the above tables, national law limits activities with foreign participation. There is often an “efficiency gap” in the work and functioning of foundations, i.e. recognition procedures for foreign foundations, prohibition of transferring its head office abroad and maybe most importantly: tax deductibility is usually only allowed for donations to national organisations. European Foundation could provide for a far more efficient approach to facilitating private investment in the public good of Europe.

Foundation law in every member country is a complex field, which consists of civil (material and procedure) law and tax law. Harmonisation of law in this field arouses difficulties. First of all, harmonisation of tax law is not within the competence of the European Union. None of the legislations for European legal forms (i.e. *Societas Europea*) contain tax provisions.

Secondly, there is the question of a legal basis within the EC Treaty for a Statute or Regulation for a European Foundation. In a draft on Statute of European Foundation, presented by the Bertelsmann Foundation, two possible Articles are considered: 95 and 308 of EC Treaty. This is imprecise, because those two articles are not complementary but contradictory.

There is also another crucial question regarding implementation; namely it could be argued that EEIG or SE are “economic” European legal forms, which can lay claim to the freedom of establishment (Art. 48 EC Treaty), whereas a foundation is typically “non-for-profit” entity. The wording of Art.48 paragraph 2 explicitly excludes non-profit-making organisations. Foundations function above all as a grant-making entity, so it should be considered if this activity is protected by the freedom of capital movement (Hippel 2007: 354). For this solution there are some strong arguments. All EU directives on capital movement contain an annex with descriptive examples of transactions regarded as capital movements and one of them explicitly names gifts and legacies.

Finally, there is also a strong argument that makes all the problems mentioned in the above discussion groundless. Foundation law is settled in the national, social and culture policy. The valid primary right of the European Community prohibits a global reform of foundation law in the member states as long as this organizational form is used for cultural purposes (art.151 para. 5 EC Treaty). In this area, if necessary, only selective supplements are possible; with which the European Community may enrich and support national foundation law (Hommelhoff 2001: 227).

The idea of European Foundation was rarely on the European Commission’s agenda. The discussion arose from some legal scholars’ discussion<sup>7</sup> and the publication of a book on foundation law (comparative studies) (Schlüter et al. 2001). At the same time the idea of a European foundation was a part of the considerations of the High Level Group of company law experts set up by the European Commission to make recommendations on a modern regulatory framework in the EU for company law.

The High Level Group came to the point that a European Foundation is worth considering but should not take priority in the short or medium term, as it would not be imperative for the conduct of cross-border activities. Additionally, national differences in foundation law had to be kept in mind. Moreover,

Member States seem to be even more profound, making the drafting of a EU Regulation on a European Foundation without any form of harmonisation of national laws on foundations all the more difficult. (...) Instead of trying to produce Regulations for these alternative

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<sup>7</sup> Conference held in May 2000 in Hamburg on Foundation Law in Europe, organized by the Max Planck Institute of Foreign and International and Private Law and The Institute of Economic and Tax Law of the University of Kiel.

European legal forms, the proponents of these European legal forms themselves could consider developing model laws for them.<sup>8</sup>

Such models, proposed by Bertelsmann Foundation (Hopt et al. 2006) and by The European Foundation Centre (EFC 2005), are the focus of the next paragraph.

### The draft for a European foundation

#### Bertelsmann Foundation and European Foundation Centre proposal

The Draft for a European Foundation presented by Bertelsmann Foundation contains a minimal regulatory framework for the European Foundation. Main ideas are: a clear functional purpose, which means that a foundation must pursue a public benefit purpose and economic activities are foreseen in a limited way. Regarding the activities, registration authority and supervisory authority no European dimension is necessary. The authors of this project are convinced that existing restrictions of the other European legal forms are politically motivated and the rationale of a European Foundation does not justify such a restriction. In addition a European registration and supervisory authority is rejected because that would mean higher costs and more bureaucracy and does not seem to be a politically realistic approach (Hopt et al. 2006:53). Moreover, the authors aim only for a rudimentary framework containing the common minimum elements of a European Foundation in order to ensure the ratification.

The European Foundation Centre has developed a more detailed proposal. This proposal requires a European Foundation to pursue a mission with an explicit European dimension and to have activities in at least two Member States. It calls for registration and supervision to be performed by a new European agency to be established for this purpose. The EFC proposal relies on the role of the European agency more than on the corporate governance principles and the internal supervisory mechanisms which are central issue of Bertelsmann Foundation. The EFC proposal allows the foundation to carry out ancillary trading directly and prescribes a minimum value of initial assets of €50.000.

## Law on association

### Freedom of association: basic parameters

Freedom of association is the general right of citizens to join together, without interference from the state, in associations to attain a particular aim. Legal guarantees of associations carry a strong presumption against interference but they are not absolute. The fundamental duty of a state is to

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<sup>8</sup> Report of the High Level Group of Company Law Experts on a Regulatory Modern Framework for Company Law in Europe, Brussels 2002, p. 122.

refrain from interfering with individuals who seek to exercise their freedom of association and with the activities of any established association.

Freedom of association is protected by the Convention for the Protection of Human Rights and Freedoms.<sup>9</sup> Art. 11 read as follows:

1. Everyone has the right of freedom of peaceful assembly and the freedom of associations with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others.(...).

Manfred Nowak describes a dual nature of the right of association; as a civil right it grants protection against arbitrary interference by the state or private parties when an individual wishes to associate with others or has already done so. As a political right it is indispensable for the existence and functioning of democracy because political interests can be effectively achieved only in community with others (Nowak 2005: 385).

The notion of association within the meaning of the Convention has an autonomous meaning that is independent of the existing classification in the respondent states' legal orders. It could be defined as any form of voluntary grouping for a common goal. Article 11 of the Convention also protects informal associations, provided that they fulfil the minimum degree of duration and organization (Mataga 2006: 5). Since 47 European countries adopted the Convention, the wide definition of freedom of association can be a very helpful instrument in protecting this right in those countries where national legal provisions are not sufficient or unclear.

Freedom of association is guaranteed by a constitution in European countries. Moreover, in most of them there is also a clear norm for any interference with the freedom of association by public authorities. The interference must be prescribed by law and pursue one of the legitimate aims listed in this provision. Norway is the only one state without constitutional provisions regarding freedom of association.

There is a close link between freedom of association and freedom of expression. The protection of opinions, and the freedom to express them, is one of the objectives of the freedoms of assembly and association.

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<sup>9</sup> The Convention for the Protection of Human Rights and Freedoms, adopted in Rome on 4 November 1950.

Freedom of association does not cover a right to associate in order to attain objectives that, in the light of national laws, are illegal. However, it should be interpreted so to include the right to campaign for changes in current laws, although in practice it may sometimes be difficult to draw a line between these activities (Hansmann 2001: 250).

**Table 5.3: Freedom of association in constitutional law**

<b>Bulgaria</b>	<p>Art. 12:</p> <p>(1) Association of citizens shall serve to meet and safeguard their interests.</p> <p>(2) Associations, including trade unions, shall not pursue any political objectives, nor shall they engage in any political activity that is in the domain of the political parties.</p>
<b>Belgium</b>	<p>Art. 27: Belgians have the right to enter into association or partnership; this right cannot be liable to any preventive measures.</p>
<b>Czech Republic</b>	<p>Art. 20 Chart of Fundamental Rights and Freedoms:</p> <p>(1) The right to associate freely is guaranteed. Everybody has the right to associate with others in clubs, societies and other associations (...)</p> <p>(3) The exercise of this right may be limited only in cases specified by law, if measures are involved, that are essential in a democratic society for the security of the state, protection of public security and public order, prevention of crime or for protection of the rights and freedoms of others.</p>
<b>Denmark</b>	<p>§ 78(1) Citizens shall, without previous permission, be free to form associations for any lawful purpose.</p> <p>(2) Associations employing violence, or aiming at the attainment of their object by violence by instigation to violence, or by similar punishable influence on persons holding other views, shall be dissolved by court judgement.</p> <p>(3) No association shall be dissolved by any government measure; but an association may be temporarily prohibited, provided that immediate proceedings be taken for its dissolution.</p>
<b>Estonia</b>	<p>Art. 48: Everyone has a right to form non-profit association. Only Estonian citizens may belong to political parties.</p> <p>The establishment of organisations and unions that possess weapons are military organised or perform military exercises and require prior permission; for which the conditions and procedure of insurance shall be provided by law.</p> <p>Organisations, unions and political parties whose aims or activities are directed at changing the constitutional order of Estonia by force, or are otherwise in conflict with the law providing for criminal liability, are prohibited.</p> <p>Only a court may terminate or suspend the activities of, or fine, an organisation, union or political party for a violation of the law.</p>
<b>France</b>	<p>The first paragraph of the preamble to the Constitution of 4 October 1958 explicitly refers to that of the Constitution of 27 October 1946: 'The French people solemnly proclaim their attachment to Human rights and to the principles of national sovereignty as they have been defined by the Declaration of 1789, confirmed and completed by the preamble to the Constitution of 1946.'</p>
<b>Germany</b>	<p>Art. 9: All Germans shall have the right to form corporations and other associations. Associations whose aims or activities contravene the criminal laws, or that are directed against the constitutional order or the concept of international understanding, shall be prohibited.</p>

<b>Italy</b>	Art. 18: (1) Citizens freely have the right to form associations without authorization for those aims that are not forbidden by criminal law. (2) Secret associations and associations pursuing political aims by military organization, even if only indirectly, are forbidden.
<b>Latvia</b>	Art. 102: Everyone has the right to form and join associations, political parties and other public organisations.
<b>Norway</b>	No constitutional provisions
<b>Poland</b>	Art. 58: The freedom of associations shall be guaranteed to everyone. Associations whose purpose or activities are contrary to the Constitution or statutes shall be prohibited. The courts shall adjudicate whether to permit an association to register or to prohibit an association from such activities. Statutes shall specify types of associations requiring court registration, a procedure for such registration and the form of supervision of such associations.
<b>Spain</b>	Art. 22: (1) The right to associate is recognized. (2) Associations that pursue purposes or use methods that are classified as crimes are illegal. (3) Associations constituted under the provisions of this article must register for purposes of public information only. (4) Associations may only be dissolved, or their activities suspended, by virtue of a motivated judicial order (5) Secret and paramilitary associations are prohibited.
<b>Sweden</b>	Chapter 2 Fundamental Rights and Freedoms: (1) All citizens shall be guaranteed the following in their relations with the public administration: (...) 5) Freedom of association: the freedom to unite with others for public or private purposes.
<b>The Netherlands</b>	Art. 8: The right of association shall be recognized. This right may be restricted by an Act of Parliament in the interest of public order.
<b>UK</b>	Art. 11 The Human Rights Act: Everyone has the right of freedom of peaceful assembly and a freedom of association with others; including the right to form and join trade unions for the protection of his interests.

## National law on association

Law on association belongs to the non-profit field as a law on foundation. Nevertheless, these two entities are not similar. The simple difference between foundation and association is that, opposed to association, foundation has no members and focuses on value (capital). The cores of an association are members who freely pursue the common goal. Both the use of the foundation's capital and the activity of an association's member have non-profit character.

**Table 5.4: Associations: Definition – Activity – Membership**

Definition/Types	Object/Activity	Membership
<p><b>Bulgaria</b></p> <p>Associations are organizations that are established by three or more persons united to perform activities that pursue non-profit objectives.</p>	<p>Non-profit legal entities freely determine the means for attaining their objectives. They may pursue additional business activities provided they are related to the subject of the basic scope of activities specified in their registration, and provided the revenues are used for the purpose of attaining the objectives set forth in the statute or the articles of association. The subject of business activities shall be set forth in the statute or the articles of association. The non-profit legal entities may pursue business activities in compliance with the terms and procedures stipulated by the laws governing the respective types of business activities. They shall not distribute profit.</p>	<p>Membership is voluntary. All members are entitled to participate in the management of the association, to be informed of its activities, to use its property and the results of its activities, pursuant to the procedure set forth in the statute.</p> <p>The rights and obligations of members, except for property rights and obligations, are not transferable and may not pass to other persons in the event of death or dissolution, respectively. The implementation of membership obligations and the exercise of membership rights may be assigned to other persons provided the statute contains stipulations to that effect.</p>
<p><b>Belgium</b></p> <p><i>De facto</i> associations, which are not incorporated and therefore have no legal personality. Associations with a non-profit purpose. International associations under Belgian law. <i>International associations</i> under foreign law, which are recognised by Belgian law.</p>	<p>Engagement in commercial activities if they are of secondary importance to its main non-profit activities, and if the benefits are allocated entirely to the association's non-profit purpose.</p>	<p>Anyone has the right to free association.</p>
<p><b>Czech Republic</b></p> <p>Art. 1 (2) Any legal entity established for the purpose of exercising the right to associate is deemed to be considered an association.</p>	<p>Associations may engage in both mutual benefit and public benefit activities.</p> <p>Associations may not operate as political parties or political movements (Art. 3), but nothing prohibits them from engaging in legislative or politically motivated activities.</p> <p>An association may not be established for the primary purpose of carrying out economic activities.</p>	<p>Art. 1 (1) Anyone has the right to free association with others.</p> <p>Art. 2 (1) No one may be forced to associate, to accept the membership of an association or to participate in an association's activity. Anybody is free to withdraw from the association</p> <p>Art. 2 (3) Legal entities may also become members of an association.</p>

Definition/Types	Object/Activity	Membership
<p><b>Czech Republic Contd.</b></p>		<p>‘Citizens’: law on Associations does not explicitly permit foreigners to establish associations, the Czech Constitution provides foreign persons (natural and legal) with the same rights as Czech persons under Czech law, unless otherwise stipulated in a particular law.</p>
<p><b>Denmark</b></p>	<p>Economic activity allowed.</p>	
<p><b>Estonia</b></p>	<p>Economic activity not allowed.</p>	<p>Any natural or legal person who complies with the requirements of the articles of association of a non-profit association may be a member of the non-profit association. A non-profit association shall comprise of at least two members unless the law or the articles of association prescribe a greater number of members (§12).</p>
<p><b>France</b></p>	<p>Any legal activity besides the ‘sharing of profits’ (Art. 1). The Tax Code explicitly forbids all insiders, including board members, managers, employees and other third parties from having a financial interest in any not-for-profit organization. Associations may engage in any activities, except those contrary to law, morals, or the integrity of the territory or the republic. Associations may directly or indirectly engage in any commercial activity, and there is generally no distinction between related and unrelated economic activities. Declared associations and general interest associations may engage in political activities to any extent. A special category of associations</p>	<p>Anyone (also foreigners) can form or manage an association.</p>

Definition/Types	Object/Activity	Membership
<i>France contd.</i>		
<p><b>Germany</b></p> <p>An <i>association</i> is a membership organization whose members have come together to permanently pursue a common purpose. Associations can exist without legal personality. <i>Non-economic associations (nichtwirtschaftliche Vereine/Idealvereine)</i>, whose main aim and activity must not involve the conduct of business; receive legal personality upon registration at the local court. When such an association is registered, it places the designation ‘e.V.’ (<i>eingetragener Verein</i>) at the end of its name.</p>	<p>Public benefit and mutual benefit associations are permitted.</p> <p>Public benefit associations must not spend any of their assets for the direct or indirect benefit of political parties. They may engage in economic activities as long as commercial activities are not their primary purpose.</p> <p>Associations whose aim or activities contravene criminal law, or are directed against the constitutional order or the notion of international understanding, shall be banned.</p>	<p>Anyone has the right to free association.</p>
<p><b>Hungary</b></p> <p>An association is a self-governed, voluntarily established organization that is formed for a purpose defined by its character and that organizes its members’ activities in order to achieve its aim.</p>	<p>An association can carry out any activity consistent with the Constitution and not prohibited by law. No civil society organization shall be established for the primary purpose of economic-entrepreneurial activities. No armed organization shall be created under the right of association.</p>	<p>Anyone has the right to form organizations or communities with others or to participate in the activities of private persons, legal persons and their organizations not possessing legal personality may, for purposes of their activities form and operate civil society organizations.</p>
<p><b>Latvia</b></p> <p>An association is a voluntary organisation of people, which is founded to achieve the objective set out in its articles of association, which is not of a profit gaining nature. Founders are at least two natural, or legal, persons or partnerships with a legal status. An association of associations is allowed.</p>	<p>Business activity is allowed in the form of supplement activities, which relate to maintaining or utilising its assets and achieving an objective.</p> <p>Public activities: all allowed that are not contrary to law.</p> <p>Not as political party.</p>	<p>Natural or legal persons.</p>

Definition/Types	Object/Activity	Membership
<p><b>Norway</b></p> <p>Association is created when a number of individuals or legal entities under organised form, and for a certain period of time, join together for a common purpose</p>	<p>Any legal activity is permitted.</p>	<p>Natural or legal persons.</p>
<p><b>Poland</b></p> <p>A self-governing, lasting (membership) organization, formed of free will and with a non-profit motive.</p> <p>Associations may be formed by Polish citizens or by foreigners who are domiciled in Poland.</p> <p>Law permits a 'union of associations' to be established by a minimum of three associations. In addition to the three or more associations any other legal persons can also act as founders.</p> <p>Unions of associations are subject to the same rules as other associations.</p>	<p>Mutual benefit or public benefit purposes.</p> <p>An association is free to define its purposes, operational program and organizational structure and to pass internal resolutions about its operations. It is limited in its purposes and activities only by other laws that are intended to ensure national security, public order, protection of public health and morals, and the protection of rights and freedom of others.</p> <p>In July 2005, a new law regulating lobbying activities was enacted. This law distinguishes between professional/commercial lobbying and the activities of NGOs. NGOs are not obliged to obey the law's strict lobbying restrictions.</p> <p>No limitations on the political activities of associations. The Preamble of the Law on Associations (LOA) lists the opportunity to participate actively in public life as one of the inherent purposes of associations. The law explicitly grants associations 'the right to voice their opinion on public issues' regardless of their stated goals or activities (LOA Art. 1(3)).</p> <p>An association may conduct economic activities as long as it heeds the rules imposed by other regulations (LOA Art. 34). An association must e.g. register with the Court register of business entities before undertaking economic activities.</p>	<p>Natural or legal persons.</p>

Definition/Types	Object/Activity	Membership
<p><b>Spain</b></p> <p>All citizens should enjoy the right to associate themselves freely in pursuit of whatever lawful objectives they may have. (Associations / Public benefit associations)</p>	<p>Activities performed by an association must be consistent with its public-interest objectives. No profit from the activities may be received by associates, their spouses, or other individuals or legal persons who reside with them or are otherwise natural recipients of their affection.</p>	<p>Associations may be established by legal persons as well as individuals. Individuals must be of legal working age, and not subject to any legal incapacity preventing or restricting them from acting on their own behalf.</p> <p>Any lawfully formed association has the capacity to form federations, confederations or unions in accordance with the same requirements applicable to the formation of an association.</p>
<p><b>Sweden</b></p> <p><i>Not-for-profit organizations:</i> a charitable purpose and not aiming to promote their members' economic interests.</p> <p><i>Economic associations:</i> the purpose of an economic association is to promote its members' economic interests through economic activity in which the members participate.</p>	<p>Any legal purpose.</p>	<p>Foreigners are equated with Swedish citizens in respect of the freedom of association unless otherwise provided by special rules of law.</p>
<p><b>The Netherlands</b></p> <p>Association is a legal person with members directed towards an object other than meeting the material needs of its members by contracts concluded in the business set up by the association (limited or full legal competence).</p>	<p>May pursue all kinds of objects, also commercial, but may not distribute profits to its member.</p>	<p>Natural or legal persons.</p>
<p><b>Turkey</b></p> <p>An <i>association</i> is defined as a society formed by a unity of at least seven real persons or legal entities for realisation of a common objective other than shared profit by collecting information and performing studies for such purpose.</p>	<p>No association may be formed for an objective contrary to the laws and ethics.</p>	<p>Anyone has the right to form an association without obtaining prior consent.</p>

Definition/Types	Object/Activity	Membership
<p><b>UK</b></p> <p>Company limited by guarantee.  Unincorporated associations.  An unincorporated association is not a legal person.</p>	<p>Under the Charities Act of 1993 a charity must pursue purposes that are exclusively charitable as defined by the common law; 'Charitable purposes are characterized by a desire to benefit others for the public good; this is known as public benefit'. A charity can be established only for a charitable purpose and its activities must further that purpose (Charities Act 52 (6)). It cannot engage in certain commercial or political activities. As discussed below, these sorts of restrictions are generally limited to charities and do not apply to other NGO forms.</p> <p>Charity law allows charities to exercise a trade in the course of actually carrying out a primary purpose of the charity.</p> <p>A charity can never be formed for the primary purpose of engaging in political activities. A charity may, however, engage in some political activities as a means of achieving its charitable purposes.</p>	<p>Anyone has the right to free association.</p>

All law systems recognize association as a legal entity and also as the de facto or unincorporated associations, which derive from freedom of assembly and are guaranteed by national constitutional law. The overview above allows the enumeration of some common characteristics of association: self-governing, voluntary, common achieving goals or activities and the only non-profit motive. Associations may engage in all countries in both mutual benefit and public benefit activities. All legal systems prohibit operating as political parties or political movements, since these activities are regulated by a separate law.

Belgian law (amended in 2002) names a special type of association: the international association that is officially called the International Non-For-Profit Association (INPA). The significant increase of this legal instrument was caused by the move of European Union institutions to Brussels in particular. Many associations with an international membership have adopted the INPA form. In most cases they are interest groups or lobby associations that are active in the context of European institutions. Traditionally they are federations of national associations, whereby they function as a platform for consulting and exchange information.

There are several reasons for choosing the INPA status. Firstly it is the name – International Association, which gives an international flavour. Secondly it has legal personality and can exercise rights and obligations or has assets and liabilities. INPA can only have goals that are in line with non-for-profit status. The International Association is not allowed to run a commercial business and has to be open to Belgian and non-Belgian nationals. Its seat has to be in Brussels, because it is a Belgian legal entity, but the secretariat or administrative seat may be based abroad. At least two natural or legal persons can establish INPA. Regarding accounts and audit there is a difference between small and large International Association. Smaller INPA can adopt a simplified accounting system. Larger INPAs (referring to two of following thresholds: annual average of 5 employees, total revenues of € 250.000, balance sheet total of € 1.000.000) are required to follow the accounting system of corporations.

## European law on association

Third sector organisations have entered the European Union scene relatively late. In the mid 1980's a resolution, commonly known as the Fontaine Report,<sup>10</sup> became influential in putting the possibility of EU policy-making on the third sector on the agenda. The Report enthusiastically endorsed an important role for the non-profit sector in helping to create the new Europe. The Report calls on the Commission to see the non-profit sector as an

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<sup>10</sup> Nicole Fontaine, Reporter, European Parliament Committee on Legal Affairs and Citizens' Rights, Resolution on Non-Profit-Making Associations in the European Communities, Working Documents, Series A, 8 January 1987 (Document A 2-196/86).

important ally in building the new Europe. During the debate on the Report on 12 March 1987 the reporter made the following additional statement:

Yet associations are a vital and extremely varied balance of democracy in each of our countries. They are a constant source of a wide variety of ideas, proposals and initiatives. They are active across the whole spectrum of public life: social, charity and voluntary work; cultural, educational, family, sports and recreational activities; environmental and consumer protection... It is significant that, whenever an initiative to promote European integration emerges, it takes the form of an association. Why are we now considering the possibility of action in this domain by the Community and Parliament? The time has come to take stock of the situation. A growing number of associations are aiming to extend their activities beyond national frontiers. This involves them in intractable legal and administrative problems as a result of the legislation applying to associations in the various Member States.<sup>11</sup>

One of the most tangible and specific proposals contained in the Fontaine Report was the suggestion that a legal instrument should be created to enable third sector bodies to operate with greater ease transnationally.

The European Commission submitted a proposal on March 1992 for a statute for a European Association (EAS) (European Commission 1991: 1). One year later a revised proposal was submitted (European Commission 1993: 1). In the next years just a little progress was made. Particularly in the UK there was a strong fear of this new proposal.

As it became clear that the main issue was the particular proposal for a transnational legal structure, British opinion began to coalesce in two ways. First they sympathised with the German view that European action was unnecessary, since transnational third sector organisations could operate reasonably well simultaneously under national law in each Member State. Second, an adopted version of an alternative structure, the European Economic Interest Grouping, would form a better starting point for a tailored legal instrument (Kendall and Anheier 1999: 290).

Three active positions existed at the level of the association themselves. The French associations favoured the EAS because it offered them a chance to overcome restrictions on property ownership and the centralized system of public governance of the third sector associations. The German free welfare associations appear to have been against the measure, on the grounds that it might in some way challenge their privileged position regarding the

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<sup>11</sup> See <<http://www.uia.org/legal/app412.php#>>, accessed 10 December 2008.

collection of church tax. The Italian third sector had been actively supportive enough to secure, under the Italian presidency, the conception of an expert working group at the Council. This examined the draft regulation and as the result the regulation featured on the agenda of a Council of Minister meeting for the first time (Kendall and Anheier 1999: 291). However, there was no agreement found because of crucial different national positions.

In 1997 the European Commission took the next step and published communication “promoting the role of voluntary organisations and foundations in Europe” (European Commission 1997) where the important role of non-profit organisations is acknowledged:

Their contribution to the development of social and political ideas, and to the intellectual climate in which we now live, has been similarly immense. Voluntary organisations and foundations have played a vital role in the dissemination of scientific ideas and of technological developments and have provided forums for the exchange of thinking across the whole range of human concerns.(...) They have played a major role in the mobilisation of public opinion in favour of development, promoted democracy, and have established privileged links with the representatives of civil society in the developing countries, as well as providing much needed emergency help and food aid in times of crisis, often showing heroism working in troubled regions (European commission 1997: 5).

Nevertheless, no progress was achieved in the legislative process until 2005.<sup>12</sup>

### Proposal for a Council regulation on the statute for a European association

These are the main points of the proposal:

- A European Association (EA) is to be a body whose members pool their knowledge, or their activities, either for a purpose in the general interest or in order to directly or indirectly promote the interests of particular professions or groups.
- An EA is to have a legal personality from the day of its *registration in the Member State* in which it has its registered office.
- An EA may be set up directly either by any two or more legal entities *formed under the law of a Member State*, provided at least two of them have their registered offices and central administrations in different Member States, or by at least 21 natural persons, that are nationals of and resident in at least two Member States.

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<sup>12</sup> All events regarding this proposal can be found at <<http://ec.europa.eu/prelex/apcnet.cfm>>, accessed 10 December.

- An association which has been formed in accordance with the law of a Member State may set up an EA by converting into EA form if it has an establishment in a Member State other than that of its registered office. It must be able to show that it is carrying on a genuine cross-border activity.
- The EA's registered office, which is to be specified in its rules, must be within the Community and in the same place as its central administration.
- The rules of the EA must provide a general meeting and an executive committee.
- A general meeting is to be held at least once a year, not more than six months after the end of the financial year. Meetings may be convened at any time either by the executive committee, on their own initiative, or at the request of at least 25 per cent of the members; the rules may set a lower proportion.
- Every member is entitled to one vote. Decisions are to be taken by a majority of the votes of the members present or represented. The general meeting has sole power to amend the rules of the EA; any such resolution is to be passed by a majority of two-thirds of the votes of the members present or represented.
- The members of the executive committee have the power to represent the EA in dealings with third parties and in legal proceedings. They are to be appointed and removed by the general meeting.
- Members of the executive committee are to be appointed for a period that must not exceed six years. They may be reappointed at the end of the six-year period.
- The EA is to draw up a budget for the forthcoming financial year.
- Regarding liquidation, insolvency and suspension of payments the EA is to be subject to the *laws of the State* in which it has its registered office.

The purpose of the proposal on the statute for a European Association is to create a statute that allows associations to be active in the whole EU territory; foremost to participate in economic advantages of the Common Market.<sup>13</sup>

This proposal is not a very autonomous regulation. It is strongly connected to national jurisdictions as it refers to national law in many provisions, i.e. formation and registration under Member State law, liquidation, insolvency and suspension of payments. The EA is to be subject to the laws of the State in which it has its registered office.

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<sup>13</sup> Reasons given by the Commission in the document on p. 2.

Once it has been determined that a situation calls for binding law, it must then be decided whether the more appropriate tool is a directive or a regulation. Replacing directives with regulations can indeed simplify the regulatory structure; given that regulations are directly applicable and directives require local implementing norms. Regulations also present the advantage that all persons subject to a given rule have the same text before them at the same time; subject of course to the margin of error of translation. The Commission intends to exploit the use of regulations more fully in the future in order to gain these advantages. So if it comes to the adoption of a statute, rather than just a recommendation, it could well take the form of a regulation so as to create a true organizational form that can be used in all member states; rather than, realistically, multiplying a basic model into 27 different practical manifestations as a consequence of diverse implementing measures (Baums 2003: 16).

After fifteen years waiting period this proposal has become largely obsolete and therefore needs to be re-assessed taking into account the new political and economic priorities.

## Next steps perspectives

As a first step, the new European Commission that took office in November of 2004 immediately began to examine, during the first half of 2005, the legislative proposals that had not yet been adopted and decided to withdraw some of them. In the area of company law (widely understood) this included the proposed regulation for a European association and a European mutual society; including the corresponding directives on labour rights for this organisational form. However, it should be noted that these initiatives did not originate with the 2003 Action Plan but had been proposed in the early 1990's as part of a programme for a "social economy".

As announced in "Better Regulation for Growth and Jobs in the European Union" (European Commission 2005: 2), of 16 March 2005, the Commission has decided to introduce a step change in which it seeks to ensure that the quality of legislation in Europe promotes the objectives of the Partnership for Growth and Jobs. To enhance European competitiveness the regulatory environment in the European Union has to be of the highest standard possible. To attain this goal, the "acquis communautaire", the existing stock of legislation, needs to be simplified, where necessary, and updated. An array of measures is foreseen for this including, notably, the launch of a new phase of the simplification programme in October 2005. The proposal for a European Association is also on the agenda. The problem with this initiative of the Commission is that there is no deadline for preparing and presenting the new proposal.

## Conclusion

One of the most striking findings of this chapter is that within any particular member state the non-profit sector is incredibly diverse, heterogeneous and populated by organisations with hugely varied goals, structures and motivations. How can an over-arching policy on the European level be possible towards such a “loose and baggy monster”? (Kendall and Knapp 1995). As mentioned above already, there is a lack of shared understanding across member states as to what the concept actually means and what it might embrace.

Do these multiple complications mean that it is impossible, or fruitless, to talk about European civil society law? First of all, we have to keep in mind that it will be hard work to find a consensus for a civil society legal framework. The fifteen years work on legal basis for *Societas Europea* and other autonomous entities under European law (*Societas Cooperativa Europea*) can only confirm these assumptions.

Secondly, there are still some difficulties in finding a right treaty basis for these new entities – European Foundation and European Association. Since civil society organisations (especially foundations) are active in the culture field, adjustment of the law on the ground of Art. 95 EC Treaty is prohibited and the catch-all article (308 EC Treaty) is not necessarily the most “elegant” solution.

Enabling legal framework for European civil society is perhaps not impossible but surely very tedious.

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# Chapter 6

## The institutionalization of civil society in Hungary

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### Introduction

The concept of civil society is one that is used by many, in many different ways. It is utilized in the context of politics and public life, as well as in the professional discourse of various social science disciplines. The concept can appear as a restrictive descriptive term or as a defined and measurable mark of social phenomena, very often with a normative content. In such cases there is an emphasis on what ought to be, with a tendency toward a vague utopist envisioned future.<sup>1</sup>

The concept of civil society has a special importance in East-Central European societies. In these countries the concept of civil society is in part a central element in the intellectual framework for interpreting the history of the last few decades.<sup>2</sup> Movements opposed to state socialist regimes presented their critiques – or their envisioned social alternatives – in terms of civil society. In scenarios where soft dictatorships effect all aspects of life, only second society (Hankiss 1986) or the semi-legal sphere of civil society can offer space where individual initiative can come to fruition and where citizens can practice their democratic rights. The changes brought about by

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<sup>1</sup> There are some who – given its multiple meanings – consider the concept useless, and would strike it off social science terminology (for example cf. Kumar 2001).

<sup>2</sup> Miklósi (2000) considers civil society – along with the category of nation – to be the key concept of the regime change.

the negotiated revolutions of 1989–90 (Bruszt 1990) were significant in that they transformed the norms developed in second society into rules of coexistence for all society.

Another important aspect of the concept of civil society in East-Central Europe is that most of the recent theoretical work on the topic – in parallel with the new social movements in the West (cf. Cohen 1985) – is presented in terms of the realities and experiences of movements opposed to state socialist societies (cf. Arato 1993).<sup>3</sup> These movements did not utilize the Hegelian “*bürgerliche Gesellschaft*” or inherited Marxist terminology, but among other things used these starting points to distinguish the concept of “*Zivilgesellschaft*”. A transformation in theory ensued along with the political events in which the old concept was rediscovered and significantly reinterpreted. The meaning of the concept of civil society is truly vague, but we can identify a layer of meaning that resulted from the experiences of recent decades.

In the following I will trace the main contours of this new conceptualization, emphasizing civil society’s localization in social theory and defining its normative problems. Then I will examine the period of the regime transformation from the point of view of civil society as a unique political actor. I will ask to what degree the utopia of civil society can be considered an effective utopia.

## The concept of civil society today

The prelude to today’s meaning of civil society has been considered in many articles,<sup>4</sup> and can be interpreted as a previously undifferentiated concept acquiring a more concrete shape. This history can be described through the continuous decrease in the concept’s sphere of influence, under which the identification of civil society has become limited to a narrow circle of social phenomena. The concept can be characterized with three ideal types. The *traditional* form of the concept is that used by classical thinkers – mainly Aristotle – pointing to the organized form of social life, but which does not distinguish the state from society. In opposition to this, the *modern* concept – e.g., in Locke, Rousseau or Hegel – is recognizable mainly through its distinction from the state. In many instances it is indeed opposed to the state. The *current* concept of civil society is characterized by a further limitation. It

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<sup>3</sup> For a methodological consideration of the history of the concept, see Kosseleck (2004), particularly *Begriffsgeschichte* and Social History and “Space of Experience” and “Horizon of Expectations”: Two Historical Categories.

<sup>4</sup> See for example Alexander (1998); Cohen and Arato (1992:83–116); Eberly (2000); Kosseleck (2002); Riedel (1975:721–722).

is not only distinguished from the state, but increasingly from the economy as well. In this way the sphere of effect of civil society today points to non-profit associations and various voluntary social organizations and social movements acting independently of state organs. This version of the concept of civil society is best represented in the works of Cohen and Arato (1992). Their work is the most comprehensive and detailed in the field, and for this reason I will deal primarily with their thinking.<sup>5</sup>

For Cohen and Arato, civil society is a unique social structure unit to which certain normative content is attached. To clarify they make use of Habermas' dual society theory. The logic of their thinking can be summarized in three steps.

*First*, Cohen and Arato follow Habermas in using differences in integration mechanisms to differentiate civil society from the state and economy. System integration is typical in the spheres of the state and economy, and coordination of action flows through the medium of power or money. Civil society, on the other hand, is the sphere of social integration and communicative action. In the *second* step they attempt to differentiate civil society from Habermas' lifeworld concept. In doing so they delineate two levels of the lifeworld concept of Habermas: on one hand they define the hermeneutic level (which is the background for language-culture), and on the other they define the institutions of the lifeworld, i.e., its sociological side. According to Cohen and Arato, civil society – along with social movements – is placed within this sociological level, as a dynamic factor.

It is our thesis nonetheless that the concept of the lifeworld, as Habermas advances it, has two distinct levels that, if adequately differentiated and clarified, will allow us to pinpoint the exact locus of civil society within the overall framework. On the one hand, the lifeworld refers to the reversion of implicitly known traditions, the background assumptions that are embedded in language and culture and drawn upon by individuals in everyday life. (...) Habermas' discussion of the structural components of the lifeworld focuses on reconstructing the form of the stock of knowledge, the relied-upon solidarities, and the abstract competences of personalities that our culture makes available to us. But this reconstruction involves a range of institutions that can be equated neither with the cultural background

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<sup>5</sup> There is no consensus on this point. As in the past, the concept of civil society remains a point of contention. Alternative conceptualizations can be found, for example, in Keane (1988, 1998) and Gellner (1994). For a discussion of past and present debates, see Seligman (1992). For a categorization of current conceptualizations, see Perez-Diaz (1998).

knowledge on which they draw nor with the steering mechanisms that coordinate action in the economy (money) or in formally organized, bureaucratically structured organizations (power). It is here, on the institutional level of the lifeworld, that one can root a hermeneutically accessible, because socially integrated, concept of civil society. This concept would include all of the institutions and associational forms that require communicative interaction for their reproduction and that rely primarily on processes of social integration for coordinating action within their boundaries.

(Cohen and Arato 1992: 427-429)

The motivation for the *third* step is the loosening of boundaries between certain and various areas in Habermas' social theory and their replacement with new spheres. "The abstract categories of system and lifeworld indicate only the *weight of coordination* lies in a given institutional framework. (...) But that does not preclude the possibility of introducing institutionalized forms of communicative action into state or economic institutions. All types of action can and do occur in societal institutions; not even the market economy can be understood exclusively in terms of instrumental or strategic calculations" (Cohen and Arato 1992:479). According to their argument institutions in Habermas' social theory like parliaments and parties on the one hand, and labor unions and business chambers on the other, cannot be marked unequivocally due to the rigid boundary between system and lifeworld. For this reason, the idea of a mid-level mediating sphere for such institutions should be introduced. For Cohen and Arato the mediating zone between the state and civil society is called *political society*, while the sphere between the economy and civil society is called *economic society*. Unlike Habermas, they argue that there is a continuum between the analytically separated areas of system and lifeworld. This spreads from the hermeneutic level of the lifeworld to the integrated subsystems that mediate for the state and the economy. The institutions of civil, political and economic society play a kind of mediating role between the two extreme poles.

The critical observations inherent in these modifications affect not only Habermas' social theory, but are important in terms of period diagnostics as well. According to the Habermasian colonization of the lifeworld thesis, the most controversial aspect of late modern society is that the system mechanisms of the economy and state encroach upon the lifeworld and obstruct its operation. In the view of Cohen and Arato this Habermasian thesis appears to be imprecise or one-sided. First, in the case of various social subsystems, we cannot speak of rigid boundaries as suggested by Habermas' social theory. We can indeed imagine "transfer" between the various

subsystems without the rise of problems in their mechanisms of operation. Further, when considering the relations between various subsystems, Habermas concentrates only on the negative effects of the system on the lifeworld. Cohen and Arato, on the other hand, assume that civil society actors can use the channels of political and economic society to execute their plans through mediation in all of the subspheres.

Herein lies the utopian and self-limiting aspect of civil society. The theory of civil society as opposed to various totalitarian ideologies (cf. Walzer, 1995; Alexander 2001) acknowledges the results of late-modern system formation, and accepts that complex societies cannot function without the representative institutions of civil society. It does not give up on the further democratization of these societies, which, according to these theories, lies in active civic participation and a robust civil society.

We can only speak of utopian aspects should democratization affect the authoritative relations of medium-led subsystems. However, the democratization of the state and economy, as emphasized by Cohen and Arato, has its own limitations. The differentiation or evolutionary process of the establishment of independent subsystems cannot be given up. The theory, however, assumes that various democratic institutions can be imagined, including those that can be matched with the logic of these subsystems such that they do not adversely affect their operational effectiveness. In the case of the political system, the democratization of representative democracy, for example the strengthening of participation, can be recognized through various forms of decentralization or the establishment of regional and local structures. Regarding the democratization of the economic system, labor unions, various consumer protection associations, and the institutionalized interest negotiation processes of employers and employees are of significance.

Democratization cannot stop at the boundaries of medium-led subsystems. Its most important area is civil society itself, or the institutions of civil society. The action coordination typical of the sphere of civil society is analytically characterized by the concept of social integration. However, it is difficult to characterize actual civil society through the idealized model of communicative action (cf. Alexander 1993, 1998). The foremost role of civil society is thus its own democratization. The democratization of medium-led subsystems becomes secondary.

## Civil society and democratic transition

The discovery of the concept of civil society in East-Central Europe is connected to opposition movements that were against the state socialist regime. “Civil society” appears as a political actor in the critiques and political strategies of these movements, where civil society articulates its own interests and stands up for them. It would be a mistake to explain the events of the past decades as solely attributable to the organization and initiative of civil society. It is imaginable and legitimate, however, to put forth an interpretation whereby civil society evaluates events as a unique political actor. Given this, the political role of civil society, or its mode of organization in the period of transition, can be broken into various phases (cf. Arato 1999, 2000). Changing inner structures and interest execution channels can be used to describe civil society in these phases.

The first phase was the “heroic period” of civil society, or, as Arato implies, the period of “the social strategy” of civil society. The beginning of this phase should be located in the second half of the 1970s and the formation of Solidarity in Poland. The Solidarity movement came about in 1980 as a protest against the price increase policies of the Polish government. It soon became a nationwide organization with significant membership numbers. Solidarity made it possible for wide groups of Polish society to experience voluntary political participation they had not known for some time. It was characteristic of the operation of Solidarity for disparate ideological orientation and social background groups to work together and take action in a unified manner (unlike in the operation of the state). The success of Solidarity was in part attributable to the fact that it made realistic political recommendations (given the relationship to the Soviet Union and the geopolitical position of Poland) and that it was capable of effectively pursuing these based on a significant mass of social support (Ash 2002).

Unified organizations of such significance and social breadth did not form in other countries of East-Central Europe. But the strengthening of civil society could be observed in such countries in the 1980s. In Hungary this was manifest in the appearance of various debate forums and clubs which were often tied to universities and which had various intellectual groups as their bases. Besides these informal institutions there appeared movements capable of mobilizing larger groups, e.g., the peace movement, the green movement, and various professional and interest groups including the establishment of various independent labor unions, the National Alliance of Entrepreneurs and the Publicity Club (Arato 1999, 2000). These various opposition institutions were connected through various forms of the second (non-state) public sphere, most notably with the help of *samizdat* publications. These semi-legal

institutions of civil society made it possible to articulate pressing social problems and various political alternatives.

From the beginning of the 1980s we could observe an increasing politicization of civil society which, in the interpretation of the participants themselves, was a foundation and starting point for a new strategy for the democratization of state socialist regimes. In an interview at that time, János Kis evaluated the political significance of Solidarity and civil society as follows:

In the history of Soviet East-Europe to this point, there have been two kinds of experiments. The spokesmen of these experiments promised they would result in a kind of independent, democratic system. The classic examples of one kind were Hungary in 1956 and Czechoslovakia in 1968. I don't believe that anyone could seriously believe that as long as the Soviet Union was the unchallenged leading power in the East-Central Europe region, that 1956 Hungary or 1968 Czechoslovakia could be repeated and result in a happy ending.

The other type is the series of reforms fed from the top, like the 1968 reform in Hungary, with its cultural and political repercussions. These do not invite Soviet military intervention, but they can be reversed at any time. Those that support the continuation of radical reform are not in independent positions from which they can defend their results and can force further concessions in the face of governmental opposition.

I think that today's Eastern Europe's road toward democracy lies somewhere between the two historic dead-ends: it is not the total questioning of the system's total authority, nor is it the grateful recognition of reforms from above. Instead it is composed of limited changes that are supported by forces that are independent of power and which are organized independently. This has been the tactical program of the Polish opposition since 1976, and it is proceeding in Poland today.

(Kis 1980:123)

Within the democratic transformation, the *second phase* of civil society is seen by Arato as the transition to political society (2000:61-63). Since 1988 in Hungary various institutions of civil society served as a basis for party-like organizations like the Hungarian Democratic Forum, the Alliance of Free Democrats, or the Alliance of Young Democrats. This was accompanied by the reformation of historic parties like the Independent Smallholders' Party.

These “proto-parties”, when compared to earlier organizations of civil society, were able to maintain the previously high level of citizen activity, had a more solid organizational background, and were able to articulate a unified political alternative within the framework of the Opposition Roundtable. Their political weight was attributable to the civic support they received. This made it possible for them to participate as actors equal to the state party (the Hungarian Socialist Workers’ Party) in front of a wide public in the National Roundtable negotiations. They were further capable of using negotiation to secure the key guarantees of the democratic transition, including free elections in 1990 (Bruszt 1990).

The *third phase* began with the first free elections (Arato 2000:63–80). The earlier key actors of Hungarian civil society, and the civic-based parties, became definitive (elite) actors in political society, filling roles typical of representative democracies. At the same time the demobilization of civil society was observable, given that civil actors’ participation in formulating collective goals and overseeing government decreased. While there was a rebirth of oppressed civic initiatives in state socialist societies and the development of a new culture of protest (Szabó 1998), these are not very significant politically. Parliamentary parties have become the key makers of political processes, while civic initiatives and various forms of civic protest – perhaps with the exception of the taxi blockade of 1990 – have remained politically insignificant (Kukorelli 1991; Szabó 1998).

The political role of civil society, or its mode of organization, requires some new terminology in light of the experiences of the past few years. One new term is that of *polarization* as used by Szabó (2004). This is a reflection of a new political activation of civil society, but in a constellation different from that of the 1980s. While before the regime change the plurality of opposition organizations was able to unify vis-à-vis the party or in terms of its goal of the democratization of state socialism, today the tension between key political parties is what forms relations within civil society and political society. One of the consequences of this change is that political activity is less and less connected to the civil society idea of civic initiatives, and is more a result of the impulses of dominant political parties. As such, fewer grassroots issues with the support of society pass through the filters of public life, while parties attempt to use extra-parliamentary forces to pursue their political goals. The most obvious and significant example of such party efforts is the Citizens’ Circles movement initiated by FIDESZ in 2002, but it is worth mentioning burgeoning grand political rallies by all parties and the creation of networks meant to collect party sympathizers, like the Socialist Party’s AMÖBA program. In this way parties export their partisan struggles and differences to

civil society. This is well demonstrated by the demonstrations and counter-demonstrations on the issue of the legalization of soft drugs.

Another term to describe the role and organizational mode of civil society is *globalization*. Increasing global integration in various aspects of life has not left the world of politics untouched (Falk 2000; Held 2000). This on one hand has weakened the traditional power positions of political actors, e.g., the weakened level of influence of national political elites within national territorial boundaries. On the other hand new political actors have come to light, including international organizations, or international civic associations and movements. These processes are observable in Hungary where various international NGOs like Greenpeace or Attac have opened Hungarian branches. Further, representatives of Hungarian civic associations increasingly participate in various international civic forums or significant demonstrations.

## **Democratic transition and the utopia of civil society**

Theorists of civil society add various utopian contents to the term. Can the utopia of civil society be evaluated as an effective utopia (cf. Mannheim 1936) that has successfully transformed reality in the direction of its own conceptions?

The changes in East-Central Europe in 1989-90 offer several reasons for us to state the practical success of civil society theory principles. Many arguments can be made to support claims of civil society's role in the forward progress of democratization and the increasing institutionalization of civil society. The institutions of representative democracy have been established in the countries of East-Central Europe. Unlike under state socialism, since 1990 various parties compete with one another through democratic elections. The principle of separation of powers is manifested in the institutional separation of executive, legislative and judicial forces. The centralized council (soviet) system has been replaced by a system of (municipal) self-governments. The various democratic institutions of interest representation – for example various professional chambers and unions – have been established. These changes have led to the creation of the institutional environment necessary for democratic politics.

Further, the hegemonic role of the state has ceased and institutions to defend fundamental human rights – like constitutional courts and ombudsman systems – have been established. The planned state economy has been replaced by a market economy where economic actors make decisions autonomously, based on market norms. The forums of pluralistic public life, including press and other communications media, have been established.

Freedom of association has been entrenched and institutional guarantees protect the private sphere. These changes unequivocally fit into the process of democratization and mesh with the civil society utopia. They are also in line with the Western representative form of constitutional democracy (Kis 2000). The civil society utopia may seek to move beyond this form, but at a minimum it aims to qualitatively improve such democracy.

In quantitative terms the years after the transition in Hungary have undeniably meant the construction of civil society and its strengthening. While in 1989 the number of civic associations (under various legal forms) numbered under 10,000, this number consistently increased up to the end of the 1990s. By the millennium the annual numbers indicated that civil society had stabilized, with fewer new organizations being established. The number of operational civic associations reached a rather high number of 50,000, and changes since then have been insignificant (Nagy, Sebestyén and Szabó 2007:34).

While numbers of operational NGOs are interesting, it is more important to track changes in fields of NGO activity (see Table 6.1). While before the regime change, in the period between 1949 and 1989, more than 60 per cent of non-profit organizations worked in the politically neutral areas of sports, or leisure and hobbies (27,4 per cent, or 34,6 per cent respectively), these spheres of activity have made up between 20-30 per cent in the years since the transformation. Organizations established after 1990 primarily deal with other areas of activity. Of note and quite apparent in the years immediately following the regime change is the increasing proportion of organizations active in the field of education (compared with an earlier 2,7 per cent, between 1990 and 1995 they make up 18,9 per cent, while from 1996-2000 they make up 16,9 per cent). There was also an increase in fields that are significantly connected to the political expectations of civil society theory, e.g., professional and economic interest groups, as well as organizations dealing with economic development and social services. Growth was also noticeable in the establishment of environmental organizations.

From an economic view, it can be said that the situation of civil society is stable. The income of organizations operating in the sector has steadily increased in the past years (see Table 6.2). The increase in income has not, however, been accompanied by a diversification of resources. A significant portion of the income of non-profits comes from the state through various channels. Further, there is a high degree of concentration in income. In 2004 those non-profit organizations that had income over 8 million HUF per year – which make up 14 per cent of Hungarian NGOs – had a share of 94 per cent of the total income. Another significant aspect is inequality across type of

organization and geographic location. Public-purpose companies make up 3,1 per cent of Hungarian non-profits and receive 33,2 per cent of total income. Organizations headquartered in Budapest make up 24,8 per cent of non-profits and receive 61,5 per cent of total income (Bocz et.al. 2006:41-45).

These observations only allow us to make quantitative statements on the institutionalization and strength of civil society. The data, particularly the remarkable increase in the number of operational organizations, would lead us to positive conclusions. However, a “statistically strong civil society” (Miszlivetz and Jensen 1998) does not necessarily mean that the reality of the civil society utopia has arrived. Other factors must be taken into consideration.

Table 6.1: The distribution of non-profit organizations according to field of activity and year of establishment (2005) (%)

Field of activity	Year of establishment							Total
	x-1948	1949-1989	1990-1995	1996-2000	2001-2003	2004	2005	
Culture	2,8	6,7	11,8	10,7	12,2	11,3	14,2	11,0
Religion	0,3	0,8	3,4	2,9	2,3	1,3	1,3	2,5
Sport	39,8	27,4	10,4	9,8	11,0	8,5	10,7	12,4
Leisure, hobby	17,0	34,6	10,1	16,1	18,4	19,9	18,0	16,5
Education	0,6	2,7	18,9	16,9	10,7	9,5	8,3	14,1
Research	3,7	2,9	2,6	1,7	1,6	1,5	1,2	2,1
Health	–	1,7	5,2	5,4	4,7	4,4	4,8	4,7
Social services	1,0	3,4	9,8	10,0	8,3	8,7	10,3	8,8
Civic defense, firefighting	23,3	2,2	0,8	1,1	0,8	0,8	0,5	1,5
Environment	0,1	1,9	2,1	2,2	3,2	3,2	2,7	2,4
Local development	–	1,8	4,3	7,6	8,3	10,2	7,3	6
Economic development	–	0,3	1,3	2,6	3,1	4,7	5,4	2,2
Legal defense	–	0,5	1,2	1,3	2,1	2,9	2,4	1,4
Public security	–	0,3	3,6	3,4	4,1	4,4	4,1	3,3
Multipurpose donation, non-profit alliances	3,9	2,2	1,6	1,1	0,8	0,8	0,7	1,3
International relations	0,3	0,9	1,5	1,3	1,6	1,9	2,3	1,5
Professional, economic interest representation	6,2	9,3	10,9	5,4	4,5	4,3	4,5	7,4
Politics	1,0	0,4	0,5	0,5	2,3	1,7	1,3	0,9
Total	100,0	100,0	100,0	100,0	100,0	100,0	100,0	100,0

Source: Nagy, Sebestény and Szabó 2007:126

Table 6.2: Development of non-profit sector income in exchange and fixed terms (1993-2005)

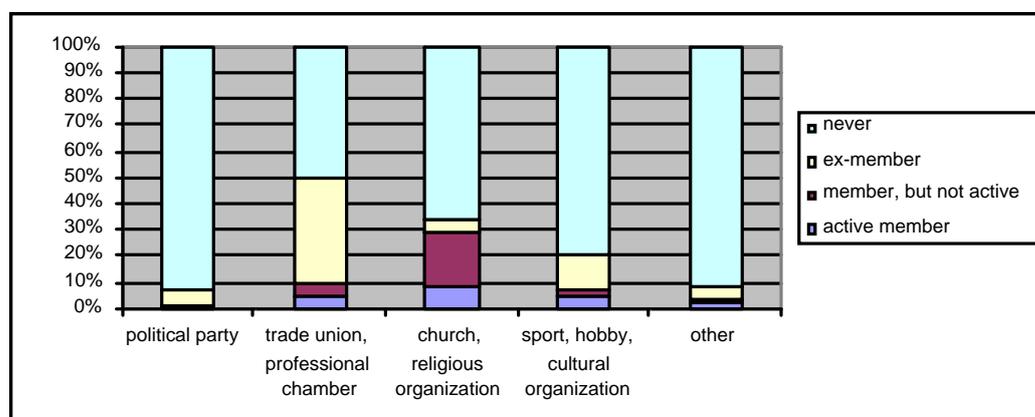
Year	Development of income in current prices		Consumer price index	Development of income in real terms	
	Millions HUF	Per cent of previous year		Millions HUF	% of previous year
1993	118475,4	...	...	118475,4	...
1994	139265,7	117,5	118,8	117227,0	98,9
1995	181916,3	130,6	128,2	119446,0	101,9
1996	239037,9	131,4	123,6	127012,7	106,3
1997	284362,2	119,0	118,3	127745,8	100,6
1998	358689,5	126,1	114,3	140883,5	110,3
1999	415582,4	115,9	110,0	148422,3	105,4
2000	495508,0	119,2	109,8	161193,2	108,6
2001	537407,6	108,5	109,2	160078,2	99,3
2002	697663,2	129,8	105,3	197354,0	123,3
2003	731053,6	104,8	104,7	197516,1	100,1
2004	806494,0	110,3	106,8	204025,0	103,3
2005	854755,1	106,0	103,5	208921,7	102,4

Source: Nagy, Sebestény and Szabó 2007:45.

Foremost we must consider citizen participation in various civic associations. The number of civic associations is a rather indirect indicator of this type of citizen activity. A consideration of other sources leads to less optimistic conclusions. First, despite the high number of civic associations, the level of citizen participation in voluntary organizations is rather low. Data from 2004 indicates that across all types of civic associations only less than 10 per cent of citizens are active participants or members (see Figure 6.1).<sup>6</sup> The highest numbers of citizen involvement are for church or religious organizations, where the proportion of active and inactive members is over 30 per cent. In all other cases the sum of these proportions is hardly over (or does not reach) 10 per cent. These numbers indicate that it is not only parties that are distanced from citizens – a fact that supporters of the civil society theory use to critique representative democracy – but that the same holds for voluntary organizations, given that civic participation in this case applies only to a small proportion of citizens. This – along with other factors – explains why after 1989-90 no civic-based social movements or collective actors that could

<sup>6</sup> The sources for the ensuing analysis are data from the ISSP 1990 *Role of Government II*, ISSP 1996 *Role of Government III* and ISSP 2004 *Citizenship* studies, the Hungarian databases of which were compiled by Tárki. I would like to thank the Tárki databank for giving me access to the data.

articulate collective goals or fulfill a role that influences the direction of social change came to being.

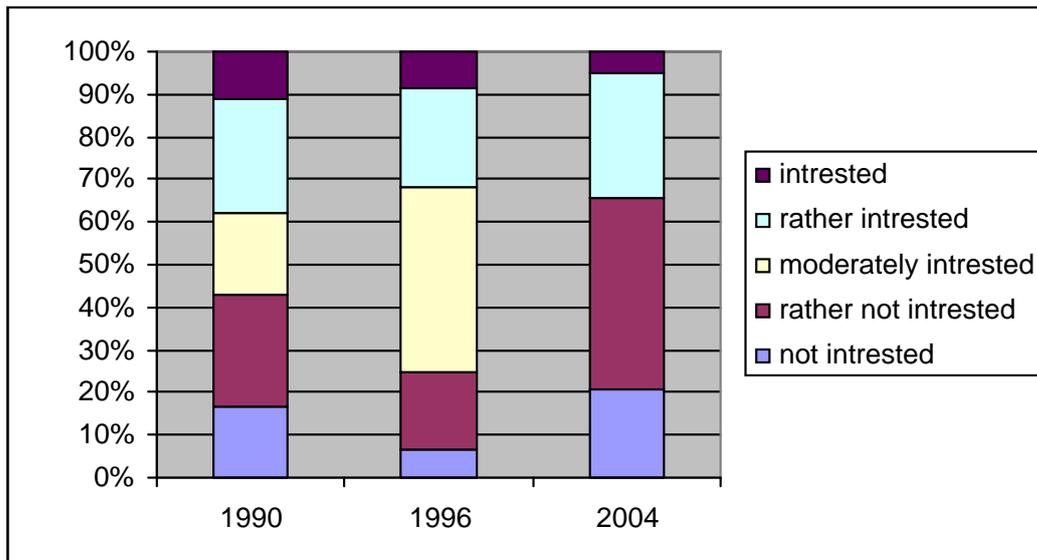


**Figure 6.1: Participation in various voluntary organizations (2004)**

Source: Author's analysis of ISSP data (2004).

Even more interesting than data indicating current levels of participation is a consideration of types of organizations where participation has decreased. Churches were the most capable of keeping their earlier members. Interestingly, party membership is rather stable. This is surprising mostly regarding membership of the former Hungarian Socialist Workers' Party, given that there has been migration out of parties that were (re-)formed in the years of the regime change. The largest decrease took place in unions and other interest representation organizations. These observations are indicative of the mode of operation of interest representation before 1990, but also of the observable weakening of unions and other interest representation groups since the transition (Neumann 2006).

Low levels of participation go hand in hand with political passivity and distrust in political institutions and actors. Parallel to data on participation in voluntary organizations, strong political activism is typical of only a small layer of society that is supplemented by a somewhat wider group of people interested in politics. Even at the time of the regime change, when most citizens felt that they were taking part in historic changes, only approximately 10 per cent of those questioned stated that they are very interested in politics. This number has steadily decreased since (see Figure 6.2).



**Figure 6. 2: How interested are you in politics?**

Source: Author's analysis of ISSP data (1990, 1996 and 2004).

A large portion of citizens is politically passive. In recent years members of extreme right wing groups have become increasingly active, yet this type of demonstration culture is difficult to reconcile with the utopian expectations of civil society theorists. In Hungary it seems that citizens do not see the institutions that came into existence after the regime change as capable of solving their problems. They either do not attempt to change this by establishing more effective institutions, or they put aside the principle of self-limitation and resort to unconstitutional methods.

This is in line with the wider spectrum of political attitudes, among them estrangement from politics and the level of apathy. In Hungary a vast majority agrees with terms like “you can never fully trust politicians” or “everyday people are always shut out from politics”. Politicians are generally considered careerists, and most Hungarians feel it is better to avoid conflicts that can arise through political participation (Felkai 1997; Körösényi 1997). The level of citizen trust in political institutions has been steadily decreasing since the years of the transition. The highest prestige is granted to those institutions that are in some way above daily political struggles and events, like the Constitutional Court or the President of the Republic. The harshest judgment is given to representative and executive institutions, namely parties, Parliament, and the government.

The most important expectation of civil society – and one that can be tested empirically – is that of an operational society in which citizens actively participate in public life. Such use of the term *politics* implies not only activity in political subsystems but also the articulation of collective goals and the

society-wide process of making collective decisions. Such a process is not the exclusive domain of political organizations *par excellence*, but that of all citizens and their various organizations. The events in East-Central Europe over the past twenty years do not support this point. The transition of 1989-90 brought about institutional change that multiplied opportunities for citizens to take part in political processes. However, the post-transition period has not brought about an increase in political activism. Current citizens – unlike those in the civil society theory – remain distrustful of various government institutions and parties. This is a constellation that leads not to an increase in political participation, but to increased apathy.

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# Chapter 7

## Civil society as will and imagination Theoretical outlines and empirical observations (in light of Hungarian experiences)

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### The conceptualization of “civil society” Variations on the concept’s social science and discursive use

The participation of European citizens in debates and decisions on problems, alternatives, proposed solutions and plans is an important condition for the further democratization of the European Union. This type of condition is bound to force politicians and social scientists to think through the problem of how to provide opportunities for participation, the exchange of opinions and public debate in the postmodern societies of the 21st century. The problem facing the European Union is multi-faceted: it seeks to establish a new, untested formation made of widely varying nation states of different economic, historical, and social-cultural backgrounds, the structure, operational mode and dynamics of which must be developed while in the making. While there is a wide consensus on normative visions regarding the importance of participation, debate, and discourse, securing such in concrete situations over actual issues in existing social realities through desired discourse and consensual decision-making is rarely possible thanks to numerous factors and fallacies. On a general level the problem is about the dichotomy between representative and direct democracy through a necessary search for new forms or reformations. On a concrete level it can be said that

European administrative decision-making unequivocally slows down society-wide debate. It is not in the interest of certain participants in the clash of interests to open debates up to the public, all while the citizens of Europe are neither active nor interested in all issues. European voters rarely feel themselves as engaged in common issues – if they have a sense of “commonality” at all – as their thinking is dominated by traditional communal interests (nation, ethnic group, etc.) that repress or blanket their more universal community of interests. Even though the rapid development of information and communication technology supports opportunities for participation in multidirectional and multilevel discourse (Keane 1995; Heller 2001), meaningful debate on common issues is often held back – in a paradoxical manner – by a factor which is seen as worth defending and valuing: cultural and linguistic pluralism.

The process of European Union expansion, and debates over drafting constitutions, has made it imperative that the Union’s decision-making bodies, organizations, nation-state actors and citizens’ relationships and contacts be examined. Further, the possible frameworks and conditions for oft-retarded discourse among them need to be studied. In this chapter we attempt to use Central- and East-Central European experiences to analyze the situation of the loose network of citizens’ free associations – namely civil society – and its relation to the public sphere and public discourse.

The concept of “civil society” is used in many different discourses with many different meanings and emphases. It is characteristic of the various discourses to use the term “civil society” in both a descriptive and prescriptive fashion. Those wanting to discuss “civil társadalom” or “Zivilgesellschaft” in contemporary Hungary or Germany ought not confuse these concepts with “polgári társadalom” or “bürgerliche Gesellschaft” as found in Hegelian or Marxist discourses. Besides philosophical and social science texts, the concept is also used in political and public texts, as well as media. A review of such texts reveals that “civil society” is not an empirical concept, but a constructed one: in public usage the term is imprecise, foggy, and used in accordance with contemporary games and strategies by various actors. Its meaning, content and connotations are changing as such.

The history of the sphere of influence of the concept and its precursors reveals re-orderings and primarily narrowing. In classical times the *politike koinonia* points to the organized forms of diverging social and *oikos* life, but it did not differentiate between the state and society. The social philosophy of the Enlightenment emphasized the examination of the relationship between the individual, the state, and society. It was at this time that civil society was connected to ideas of common issues, common good, civic virtues, agreement among citizens, debate, consensus and social contract (“opinion

publique”, “contrat social”). Locke, for example, sees civil society as having primacy vis-à-vis the state. In his view civil society’s sovereignty, inner structure and operational modes, and the self-organizing forces within it make it possible for the political state to avoid anarchy in times of crisis, allowing a new political state to replace the old.

### The theory of bourgeois society as subservient to the state (Hegel)

Hegel sees the world through three morally significant constellations: the family, bourgeois society and the state. The direct moral substance of the family is the natural community of humans; bourgeois society is the relation among independent individuals in a *generality* according to Hegel while the state executes the general at the highest level. Of these three phases the separation of the state and society, or the establishment of bourgeois society, is of the greatest significance. Given its middle position, it is the most important sphere for mediation between the general and the specific.

Bourgeois society is a collection of individual humans who are connected to one another in various ways. The institutions of bourgeois society delineate the modes of these connections. Foremost among these is the market of goods, or the “system of needs”, the basis of which is private property. While needs are subjective in the extreme, meeting needs commences through producing goods within a social framework. The market of goods in this sense makes the members of bourgeois society reliant upon one another and establishes a system of mutual dependence. The operational rules of the market of goods – or more generally the frame of relations between members of bourgeois society – are governed by the legal system. This marks the next institutional complex which – according to Hegel (1820) – connects the individuals in bourgeois society. While Hegel views relations constructed by law as abstract, the police and other social organizations are another source of social solidarity. By enforcing the law, the police constrain violators and move them back into the ties of bourgeois society. Organizations and other bodies of bourgeois society connect individuals on grounds of professions, callings, or work centred on specific issues.

Despite connecting individuals – or creating co-dependencies – through various means, bourgeois society is a peculiar empire in which “everyone is an ends to his/her self, all else is meaningless”, or where others are merely “means to a specific end” (Hegel 1820). In Hegel’s thinking the state is the institution that builds society-wide solidarity and which expresses the general interest of all society as opposed to the particular interests of bourgeois society.

## From the thesis of the state to its disappearance Marx's critique of Hegel

Marx's critique stems from the fact that Hegel offers a kind of justification for the modern state and bourgeois society. This is unacceptable to Marx given that "civil society, in its opposition to the political state, is recognized as necessary, because the political state is recognized as necessary" (Marx 1844). One characteristic of modern society is the separation of state and society from one another. What does this actually mean according to Marx?

In Marx's view – as well as in Hegel's – man in the modern age lives a dual life. The basis of this duality is participation in two divergent spheres, namely bourgeois society and the political state.

The perfect political state is, by its nature, man's species-life, as opposed to his material life. All the preconditions of this egoistic life continue to exist in civil society outside the sphere of the state, but as qualities of civil society. Where the political state has attained its true development, man – not only in thought, in consciousness, but in reality, in life – leads a twofold life, a heavenly and an earthly life: life in the political community, in which he considers himself a communal being, and life in civil society, in which he acts as a private individual, regards other men as a means, degrades himself into a means, and becomes the plaything of alien powers. The relation of the political state to civil society is just as spiritual as the relations of heaven to earth. The political state stands in the same opposition to civil society, and it prevails over the latter in the same way as religion prevails over the narrowness of the secular world – *i.e.*, by likewise having always to acknowledge it, to restore it, and allow itself to be dominated by it. In his most immediate reality, in civil society, man is a secular being. Here, where he regards himself as a real individual, and is so regarded by others, he is a fictitious phenomenon. In the state, on the other hand, where man is regarded as a species-being, he is the imaginary member of an illusory sovereignty, is deprived of his real individual life and endowed with an unreal universality.

(Marx 1844)

What distinguishes Marx's view from that of Hegel's is what is seen as the content of the dual life. In the Hegelian framework the state is the goal. The particularities of bourgeois society are ceased by the state, which expresses the general. Man's particular freedom is only possible through the ethical community established by the state. Marx, on the other hand, sees the relationship between state and society differently. His analysis of the French and American constitutions of the time leads him to emphasize the state's service of bourgeois society, where the general serves the particular. "Even in

moments when its enthusiasm still has the freshness of youth and is intensified to an extreme degree by the force of circumstances, political life declares itself to be a mere *means*, whose purpose is the life of civil society” (Marx 1844). Commonalities between persons are unimportant. Human and civic rights sanctify the isolated and separated individual’s rights as opposed to the general. In other words, the *bourgeois* is served over the *citoyen*.

For Marx subjective differences serve to maintain bourgeois society. Dissolution into the state is merely a form of political emancipation, but it is not human emancipation. This view does not resolve the tension between the particular and the general. Difference exported to bourgeois society is merely an expression of formal civic equality relations. In Marx’s view true human emancipation is found in moving beyond the dual relationship.

Only when the real, individual man re-absorbs in himself the abstract citizen, and as an individual human being has become a species-being in his everyday life, in his particular work, and in his particular situation, only when man has recognized and organized his “own powers” as social powers, and, consequently, no longer separates social power from himself in the shape of *political* power, only then will human emancipation have been accomplished.

(Marx 1844)

The discovery of the emancipating role of the working class, and the rejection of mediation between general and particular as espoused by Hegel entails changes in terminology. Marx sees the separation of bourgeois society and the state as characteristic of a temporary and specific historic period. He tries to demonstrate this again by contrasting the dichotomy with a more fundamental social theory dividing line. This is done by discussing the historical materialistic dichotomy of *foundation* and *construction*, which distinguishes the material and economic foundation from various social, political and cultural factors.

The separation of foundation from construction, or the use of an historical materialist argument, makes it possible for Marx to interpret the capitalist mode of production as merely a defined, passing phase. The separation of state and society – in juxtaposition to Hegel’s view – is merely the characteristic of a particular period in history for Marx. Its passing will change the economic base from one founded on private property to one based on a kind of communal production, he predicts.

Moving on beyond the separation of state and society means that Marx sees the social and political mediating institutions espoused as important by Hegel as being fundamentally without value. The state, which for Hegel is a “substantial foundation”, is for Marx an “illusionary form” in comparison to

the economic foundation. It becomes a field where various classes fight their conflicts. Various social associations and political interest groups become significant only in terms of their role in the struggle between classes.

The somewhat foggy Marxist view of the future prognosticates the withering away of the state and a type of self-regulating society. Marx's historical predictions claim that a defined social class – the proletariat – will be the force of change as the subject of the revolution. In this sense Marx had no need for civil society as a political actor.

### Civil society as a political actor in post-modernism

In the 20th century critical theory rooted in the Marxist and Frankfurt schools saw the concept of bourgeois society re-emerge in a rearranged, narrowed and reinterpreted fashion. “Civil society” was in Marxist revolutionary and class theory called to be heroic and a functional equivalent of the working class in its role in a time where views on traditional classes were weakened. In the language of the new left “civil society” became a home for intellectual thought, and it held the promise of change from below. This new style of “general” collective action was reflected, for example, in Habermas' idea of the prospect for universal social-political emancipation. This is not as a representative of class interests (as ideas of classical representation were also in decline) but as an active part of the “lifeworld”, in which civil society works with linguistic tools in the social public sphere to mitigate the dangers of universal interest. Habermas – in contrast with earlier pessimistic public theories – acknowledged at the beginning of the 1980s that civil society has a defining effect on the workings of politics (through agenda-setting, for example).

While Habermas' theory of communicative action sees civil society as markedly separated from the systems of the state and economy as a particularly active part of the lifeworld, other authors like Cohen and Arato (1992) see various mediations and transfers between the systems and the lifeworld.

According to Cohen and Arato's criteria civil society has four key characteristics: pluralism, publicity, privacy and legality.

[the] actors have in mind a normative model of a societal realm different from the state and the economy and having the following components: (1) Plurality: families, informal groups, and voluntary associations whose plurality and autonomy allow for a variety of forms of life; (2) Publicity: institutions of culture and communications; (3) Privacy: a domain of individual self-development and moral choice; and (4) Legality: structures of general laws and basic rights needed to

demarcate plurality, privacy and publicity from at least the state and, tendentially, the economy. Together, these structures secure the institutional existence of a modern differentiated civil society.

(Cohen and Arato 1992: 346)

## The use of the “civil society” concept in contemporary public language

The modern use of the civil society concept sees civil society as separate from – or even in opposition to – the state. In its most widely used contemporary interpretation it is separated not only from the state, but from the economy as well. The concept of civil society is used to identify social organizations and social movements which are independent of state bodies, not profit-oriented, and organized voluntarily. At the same time it is characteristic of the looseness of the use of the concept to have difficulty defining its boundaries: at times it is used to identify lobby groups and pressure groups. There is a vast grey area where the state is situated between a set of institutions and the lifeworld. In this sense the concept of civil society in its widest interpretation demarks all more or less organized and institutionalized groups from the most random and happenstance groups through hobby groups to hierarchically organized formal institutions (stamp collector groups, alternative lifestyle groups, sports clubs, tradition-preservation clubs, cultural self-education groups, unions, etc.). The wide variety of organizations makes the emergence of a wide variety of definitions possible. A review of some European countries’ websites on the civic sector reveals that organizations in civil society are handled according to various groupings, including: type of organization (association, foundation, club, organization, etc.), area of operation (culture, health, religion, interest representation, public life, etc.), and operational goals (charity, interest representation, etc.). Further groupings can be based on forms of ownership or financial forms.

The term “civil society” came into use over the last two decades in Hungary. It is a collective representation that has had a varied path. The term gained significant popularity at the time of the regime change, and it was at this time that it moved from social science discourse into the everyday language of the press. In the early 1990s the collapse of socialism was interpreted as civil society’s “freedom fight” with state socialism. This view expressed the lack of viability of terms like “class”, “strata” and “order”. An important phase in the concept of “civil society” was the sense of a “contract” or “agreement” among members of society, where their opposition to “the” state played a central role. The activist element in the imagining of “civil society” was strong, viewing civil society as composed of members who are concerned with public affairs, voluntarily organizing, responsible and active: (collective) actors bringing about social changes were defined in this way.

Though the term “civil society” became widely used at the turn of the 1980s and 1990s, the concept was already in use in the period preceding the regime change, as seen in two different discourses:<sup>1</sup>

The oppositional representation of “civil society” appeared in the 1980s. “Civil society” here on the one hand meant a “counter-project” that denied existing state socialism and offered a different picture or representation of the organization of society. On the other hand it was a concept that unified all that needed to be freed from the state socialist apparatus, or all that pressured such rule “from below”. This representation was connected to studies of the second economy and the problems of the “second public sphere”. Researchers of the “second society” (Hankiss 1989:119-120) viewed civil society as being built upon alternative organizational principles. As such it was incompatible with “first” official organizations. The important point is the opposition of “society” to the state. The “social contract” proposed in 1987 by the democratic opposition contained similar ideas (Társadalmi Szerződés 1987). The concept of civil society as a decentralized, autonomous, horizontally organized, “second” or “civil” society is typologically similar to the Anglo-Saxon concept. “Contractual” and market relations and processes in this representation were not delineated strongly from communicate, inter-subjective and regulated processes. This connection of market and communicative relations contained a critical element, as this type of representation expressed the rejection of state socialism’s regime aspects and – more narrowly – social aspects.

The reform-socialist or reform-communist representation of “civil society” emphasized the mediating role of civil society. In the second half of the 1980s this interpretation reflected the gradual decentralization of the system, the gradual adoption of market principles, and the changing legitimization of the political system. The role of “civil society” in these terms was to mediate between the spontaneous and everyday reproduction of society and the political system (Ágh 1989). “Civil society” was to demark the – as yet nonexistent – space where the socialist reform of the system could take place. In this sense and representation critical elements were also in the forefront. Although the role of “civil society” here was to have been the creation of new relations between politics, economy and society, emphasis was put on inter-subjective communicative phases (as opposed to contractual and market relations). This of course did not mean that market and economic relations were completely absent from this representation. These were reflected in

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<sup>1</sup> Here we will summarize the conclusions of a review of Hungarian discourses. However, the use of the term “civil society” developed in a similar way in other state socialist systems, even though divergent circumstances meant that the presence of the discourses were of differing degrees in given countries. The Hungarian and Polish “second public sphere” discourses were the strongest. On the Hungarian concept of “restricted public sphere”, see Heller et al. 1994.

forms of interests and interest reconciliation, i.e., in a characteristically mediating kind of way. “Civil society” was seen as activist here as well, but the radical opposition between “civil society” and the state – which is so characteristic of the previous school – is quite weak here.

While examining the concept of “civil society” it is worth reviewing the use of the term in research of the early phases of the regime change. Dénes Némédi showed how the uniquely Hungarian intellectual products of the period of the “restricted public sphere” (Heller et.al. 1994) underwent rapid change when the political field was rearranged in circumstances of inner conflict. Némédi studied (largely political science) analyses of the “taxi blockade” of Fall 1990,<sup>2</sup> which was the first major conflict to take place after the first democratic parliamentary elections. He considered to what degree these representations had independent dynamics, how they appeared in discourses on the social changes of the time, and how they were made use of in necessarily changing strategies in the given context.

Némédi’s discourse analysis (1991)<sup>3</sup> studied various meanings, contents and representative uses (as common in public discourse) of the concept.

In the “scientific opinion writing” analysis there are three movements in the spheres of thought on “civil society”: the use of the term, the phase of the power/society dichotomy, and the question of legitimacy and crisis of legitimacy.

The representation of “civil society” appeared unequivocally in the works of several of the authors. In this sense the two most important and common criteria were: the crisis of the unity of society and society’s stance against the government. These two phases had a close connection in earlier constructions of “civil society” as well (Ágh, Bayer, Konrád, Szelényi, Gáti).

The idea that power is “estranged” or that it was externally imposed on society is an emphasized element in earlier discussions of the society/power dichotomy. The construction – though it did not disappear after the regime change – was reconstituted.

The most common theme in the discourses analyzed by Némédi is the lack of trust or dissatisfaction (Gáti, Fricz, Szelényi, Bayer). The discussion of the theme of “political power versus society” contains two key motifs: the lack of

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<sup>2</sup> Taxi blockade: The Antall government raised petrol prices in October 1990. Taxi drivers and couriers blockaded key roads and intersections in the capital and countryside in protest, thereby crippling the country’s infrastructure. The population was quite sympathetic to the protest. For example, they provided the taxi drivers with food. For a short time the protesters used the representation of civil society in the media and in public discourse.

<sup>3</sup> Némédi’s sample covered twelve articles by eleven well-known political scientists. See reference list for full references to the text analyzed by Némédi.

political rationality in the sphere of power and the breaking of the relationship with 'society', i.e., the inability to reach agreement on the questions of competence and legitimacy. The term "crisis of legitimacy" comes up again and again in the studied texts (Tamás, Szelényi, Gáti, Fricz). The use of the legitimacy problem in analyzing the 1990 taxi blockade – which was a singular event driven by particular interests – is only justified if the authors view the blockade as an act of "civil society" or of all those who do not belong to the "political class". This necessitates the interpretation of the actors of the blockage not as members of a particular labour group, but as representative of a unified "society" as a whole. As such the use of the legitimacy problem is an indicator of the presence of the "civil society" representation. Several authors in the studied texts utilized interpretations of the taxi blockade using the "civil society" representation.

The idea of interests and interest conciliation were naturally emphasized in media reports on the taxi blockade and in intellectual discourse. Primary "facts" presented by the mass media were interpreted in many ways in intellectual reflections. Questions of interests, common interests and interest conciliation are some of the central tenets of the idea of "civil society", even though they are quite problematic (Ágh, Szelényi, Fricz, Bayer). In some texts the idea of going beyond "narrow interests" and matching them with "wider societal interests" is the most attention-worthy aspect of the taxi blockade. Another subset of the texts emphasizes corporatist interest conciliation. According to one of the constructions "civil society" (in opposition to the power structure) can only come to light based on unified interests, while another construction claims that society is actually stratified and diffuse, and thus there is no "civil society" to speak of. In a very general sense these two paradigms have a common element: it is assumed that an important element of "civil society" is "organic" interest stratification.

The problem of interests appeared in some texts without reference to the representation of "civil society" (Schlett, Sík). In these texts reference is made to either the functional problems of the political system or to specific stratum or group characteristics.

The texts of the 1990s political science analyses show that the issue of interests and interest conflicts is ambivalent from the point of view of "civil society". On one hand it puts interest articulation, the management of interest conflicts, interest representation, etc., into the sphere of "civil society". On the other hand the sense of "civil society" as agreement, consensual action, legitimization (and its withdrawal) vis-à-vis the authorities, and solidarity is also strongly present alongside interest considerations. This leads to the conclusion that interpretations of interest-based actions are not necessary for the representation of "civil society". Put in other terms: the more concretely one speaks of interests and interest conflicts, the less

concretely one can speak of “civil society” – even though interests, interest conciliation and interest representation are generally part of the original conceptualization of “civil society” The demand of “civil society” in this latter case becomes a banal wish for experienced interest presentation and representation organizations.

In opposition to the “civil society” interpretation, the taxi blockade was also explained by certain authors using “post-class” theories. That is to say that ideas were used that tried to explain the crisis through the structural positions of large social groups. This approach makes us ask the question of how it is related to the representation of “civil society”. A significant portion of the studied authors made no attempt to explain the taxi blockade in “class” or “stratum” theory terms (Ágh, Fricz, Gáti, Havas, Varga, Schlett). Other authors (Szelényi, Kolosi, Bayer and Tamás) used more general categories and as a result interpreted the events of the Fall of 1990 through the lens of a more general class- or stratum terminology: the taxi blockade was a symptom of general structural characteristics and tendencies. This supposes that certain analysts viewed the blockade’s presentation of itself as supporting society-wide solidarity (i.e., “civil society”) as mere ideology (Kolosi), or supposes the use of both interpretive frameworks (Szelényi).

Némedi’s analyses (1991) show that the representations of “civil society” in the studied texts lead to very ambivalent statements. He emphasizes that by logically considering the fundamental theory of “civil society”, the opposition between society and the state (and its ensuing legitimacy problems), one could only arrive at the concept of “continuing revolution” as a conclusion. In this point of view the expressions of social solidarity in the Hungarian blockade were part of the essence of “civil society”, and the emphasis on “wide” societal consensus were not myths or ideological statements but central elements of the constitution of “civil society”. If the mediating, interest conciliation role of “civil society” plays a central part (a relative majority in the Hungarian discourse of 1990 did so), then descriptions of radicalism seem to ring hollow, while communication of solidarity, wide consensus and wide support for the blockade are a useful ideology of interest bargaining. Those who represent “civil society” in this fashion pay closer attention to interest conflicts and interest conciliation while emphasizing the mediating function of “civil society”. In this sense the term “civil society”, even in the studied reflection, becomes a hollow formula.

The users of the representation of “civil society” were confronted by a dilemma: if they were to give up the utopian element in their representation, their texts would have become redundant where “civil society” would have become a mere rhetorical concept whereby their messages could be relayed without use of the concept. But should they insist on using its original content, they would have needed to use increasingly unrealistic assumptions

to explain the 1990 taxi blockade in “civil society” terms. Before the regime change, the representation of “civil society” stood above all conceptualizations of class or strata: the society/state dichotomy could not be explained in class terms. However, class was remarkably relevant in political terms. The returning motif of “class-like” representations in the texts is weak in the sense that they are difficult to reconcile with notions like the ideology and myth of solidarity. Thus they were unsuccessful when trying to interpret mass opposition to the socialist system.

In the years following the regime change in Hungary power-political games, economic and social processes, declining public interest and attention, the wide sense of disappointment and ensuing increasing nostalgia for the grey yet peaceful and secure period of state socialism made use of the concept even more problematic. While large portions of society viewed political processes or sharp and increasingly regular conflicts within the political elite with increasing suspicion, or turned a back on public life and isolated themselves in private life, parties and groups taking part in political conflicts needed to mobilize their supporters in the interest of strengthening their legitimacy. The result of this process can be interpreted as a continuation of the decades-long but ever increasing social divide in Hungary. This is a divide that makes the establishment of consensus between the two political camps (left-liberal and right-conservative-Christian-national) nearly impossible. Besides the political apathy of the masses, in a paradox manner, activism in Hungarian civil society has come to manifest itself in an environment of strong division through primarily increasingly rough street demonstrations (vandalism, protest, aggression, flash mobs) and ever-strengthening extreme-right organizations (see below).

## **Civil society or nation?**

The countries of Central and East-Central Europe – given their divergent historic and societal experiences – have representations of civil society that differ from those of Western Europe. These have a close connection to the uniqueness of societal development in this region.

While our discussion of the taxi blockade revealed how references to civil society in 1990 worked against a conservative-national government, we must not forget that the region (and Hungary) makes use of another representation of a society that is homogenous, able to be mobilized in a unified manner, and classless. This is the notion of the nation. The fiction of the unified Hungarian nation has been central in all right-wing narratives and has remained so to this day. The macro-subject of this populist discourse is also used enthusiastically at times in left-wing rhetoric. However, the two opposed representations have significant differences.

The private sphere – as separated from the sphere of power – is undeniably a central tenet of the concept of civil society, indicating freely acting individuals and the voluntary relations that arise among them. The traditional view of the nation – which dates back to the 19th century and is visible today – moves the emphasis from the individual to the collective through “patriotism”. Here the individual melts into the collective, and his/her most important defining characteristics are found through membership in the group. To understand the differences between the two representations we must make use of not only the private/public dichotomy, but of the sacred/profane dichotomy as well. The vacuum left by weakening traditional religions in the 19th century was filled by “national religions” giving the nation sacred meaning. National awakening (which was late in this region compared to movements in Western Europe) and the stormy political and geopolitical changes of the 19th and 20th centuries, as well as instable situations and interest conflicts, made the concept of “nation” the most important community-building framework, offering acceptance and protection to given ethnicities. Today’s forms of nationalism – e.g., symbolic politics – have preserved such transcendent and sacral characteristics. Anderson (1983) emphasizes the national imagination’s pull toward religious symbolism, which is manifested primarily in its fascination with death (eradication, death of the nation).

The tension between the two movements and representations (civil society – nation) is planted within the complicated relations of the region’s historical processes. The evident weakness of civil society in East and East-Central Europe is explained through many factors. Social development did not proceed uninterrupted in the region, at least as not much so as in Western Europe. Considering social development and civilizational processes, Norbert Elias (1930) delineates two models: the Western model of civilization (English, French) is based on the nation-state, whereas the model characteristic of Central-Europe (Germany, Italy) is cultural-national in its emphasis on culture and language. Other researchers (Bibó 1986; Szücs 1988), after further studying the societies of Central and East-Central Europe, build a three-level picture of Europe. Central and especially Eastern Europe has for centuries characteristically been left behind in terms of Western models of development, resulting in the inability to choose among models and the pressure to catch up. Considering phases and degrees of national and social development, Szücs (1988) speaks of the three regions of Europe. Though Europe’s most important cleavages are not agreed upon by social scientists or politicians – and there is confusion and strategic divergence in political and everyday discourse regarding whether countries and nations should be classified as Central or East European – differences experienced in historical development are still manifest in many areas and are still the sources of numerous conflicts.

In Hungary, as in the other countries of the region, there is a characteristic “confused stretch” vis-à-vis Western Europe. Bibó treats this as a dead-end process in his works, and he speaks of this characteristic as a distorted Hungarian temperament. When looking at Hungary we need to consider Eastern European development insofar as this century’s key Eastern European characteristic is civic transformation that was never wholeheartedly executed and a personality type that traps him/herself in its own web. [...] When defining regions of Europe the West-East dilemma is best reflected in the relationship between civic nation states and national identity. In Western Europe the civic nation state gives birth to national consciousness that produces a certain pride. On the other hand in Eastern Europe the absence of a civic nation state, or the feeling of “jealousy” that accompanies this, leads to a character that is far removed from the former national identity which is self-sustaining and proud.

Most all the states in this region were characterized by the presence of foreign oppressors, and as a result obstacles to national and social development are characteristic of the development of personalities. While in [19th century] Western Europe the strengthening of bourgeois society had a close relation to the spread of individual rights, giving the individual a progressive social-critical role, in Eastern Europe this is the time where the struggle for the nation state and the rights of the individual start simultaneously. The facts of the recognition of the natural freedoms of the individual and the impossibility of national independence appeared in parallel and caused a tension that developed constructive-destructive personalities.

The struggle for an independent nation or national survival basically defined the political behaviour of the region from the 18th century on. The sphere of action in Eastern Europe was limited by pressure from the Great Powers and a non-transparent and confusing set of relations between coexisting peoples. Struggles for existence tightly tied the concept of freedom to history, and the result was the “cramped patriotism” that continues to attempt to justify its historical existence.

(Csepeli 2004)

Necessities resulting from lateness of development in the countries of the region systematically trumped Western civilizational models based on the Enlightenment, democratization, secularization, and capitalist economic transformation. Necessities arising from late national development brought local, inner, patriarchal based, often utopistic and ungrounded models of development to the fore. These models emphasized national identity, the protection of language and culture, and romantically valued national-ethnic

traditions even at the expense of creating opposition to neighbouring peoples facing similar developmental problems. Lateness of development was characteristic of the region going back to the end of the Middle Ages, and this lagging behind was only heightened by foreign invasions and wars, and the centuries-long rule of occupiers.

In Hungary the frozen feudal social structure, the nobility that opposed all reforms and modernization, and the Habsburg rule that followed Turkish occupation were all obstacles to the development of citizens who were free, autonomous, and interested in public affairs in an enlightened way. That is to say that a civic culture did not develop. Although in the 15th century Hungary under the rule of Mátyás Corvinus was a strong European power with ties to Western European cultural development, and the Torda national assembly (1568) was the first to legally guarantee freedom of religion, these strands of development (which were tightly bound with European developments) could not continue in the country as partitioned by the Ottomans and Habsburgs. Processes that are still observable in society retarded the development of civil society. The Hungarian population – similar to populations in neighbouring countries – characteristically has identity problems stemming from late development and long foreign rule. Factors that obstructed and put a brake on modernization included a series of lost wars and unsuccessful revolutions,<sup>4</sup> a nobility that clung to its privileges, a large economically and intellectually backward gentry class, a Habsburg strategy that divided the peoples of the Empire and pitted them against one another, and fear of local German and Jewish citizens (who were further along in terms of capitalist development) and ensuing xenophobia.

The past two centuries of rapid and radical change in political rule, where authoritarian political regimes of various ideological slants changed with one another, led the population to turn its back on politics and seek refuge in private life. Several generations have experienced politics as “trivial games for gentlemen”, where it is best for the “little people” to keep their distance from the political sphere. Large parts of the population built high fences around their private lives for protection and became skilled at tactics like amnesia, hiding, pretending and acquiescing. Given the necessary and well-established distance from politics and public issues, social solidarity only applies to members of in-groups, as well illustrated by familial networks, village “kaláka” traditions,<sup>5</sup> and similar social relations. This all shows that individual, familial and historical experiences of the population laid the foundation for turning inward, for the differentiation between collective memories and

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<sup>4</sup> Cf. the 1514 peasant revolution, the 1526 loss to the Ottomans at Mohács, and independence struggle at the beginning of the 18th century and in 1848–49.

<sup>5</sup> A traditional economy of mutual favors: a system of favors granted to blood relations, fellow ethnics and neighbors where favors proffered are expected to be returned in due time.

experiences, and for the primacy of pre-modern – i.e., primordial – relations (blood, family, ethnicity) over modern relationships. Given the lack of a solid social value system, the consequence of the survival of pre-modern relationships is a type of *baksheesh* system, whereby corruption, networks of contacts and the proffering of “favours” as a system continues to function. Regular regime changes, retributions, and the demands of authoritarian systems for “coerced legitimization” led to the development of a “retarded national character” in the region (Bibó 1986; Hanák 1992).

A result of geopolitical characteristics, the closely packed national and ethnic groups of the region have a long history of tension. The Treaty of Trianon, which closed the First World War period and in which Hungary lost significant portions of its territory and population, only increased these tensions. The countries of the region – especially Hungary, which as a result of the shock of Trianon pursued revisionist politics – were drawn to Hitler’s Germany. The new order after the end of the Second World War only reinforced earlier decisions and did not ease national-ethnic grievances and tensions. This is all well illustrated by the wars that followed the dissolution of Yugoslavia, a region that has still not settled its problems and in which tensions may escalate again should external (European Union) interference not take place.

Although national tensions were frozen in the system that emerged in Central and East-Central Europe after the Second World War, the consolidation brought on by the state socialist system, and in Hungary particularly the Kádár system from the 1960s on, was based on a silent compromise between the central political regime and the population. This of course did not bring about the end of the population’s earlier infantilism, and it further obstructed the already late development of a bourgeois strata. The Kádár system further encouraged the population to seek refuge in private life, given that this was the key to the regime’s legitimacy. The population did not interfere in politics, and in return the authorities granted a kind of freedom in the private sphere, which was accompanied by a gradually growing consumerist freedom. It is this compromise that explains why the Hungarian population was the least active and interested of all the regime-transforming populations in East and Central Europe, and why the transition in Hungary had the highest number of losers. These recent negative experiences further strengthened the Hungarian population’s traditional pessimistic outlook, its emphasis on private life, its strong belief in traditions, its unfounded belief in ‘ancient glory’, and its rejection of participation in public issues.

## **Civil society and political system**

Observers will note that in 21st century Hungary the idea of civil society is prevalent in the public sphere and that civic rhetoric is widespread. At the same time, actual civil society is weak; the masses are apolitical, demobilized and passive regarding even issues that directly affect them.

A number of studies prove that Hungary (and perhaps all of Central-East Europe) does not have a true civil society. The years of transition saw a weakening of community solidarity, and after the short period of hope after the regime change the masses have become apolitical. Political science treats low aptitude for participation in public life and a low level of acceptance of democracy and inherent institutions in Hungary after the transition as fact (Szabó 2005). Political participation peaked with voter turnout in the 2002 parliamentary elections. Voter turnout has declined in subsequent elections, and this decline has not been accompanied in an increase in non-institutional political participation.

The weakness of today's civil society in Hungary can be attributed to both external and internal factors. According to analysts the Hungarian political system of the early 21st century contains a kind of pairing of "the demobilization strategies of the political elite and the lack of a civil society mobilization dynamic" (Szabó 2005). This tradition is based partly on the authoritarian culture of feudal Hungary, partly on the heritage of the Kádár system (as described above), and partly on the "negotiated" (i.e., not revolutionary) nature of the transition. Even though there was an observable spike in interest in public life at the end of the 80s and beginning of the 90s, the transition itself proceeded through negotiations that were not open to the public, where decisions, conflicts and bargains were struck between old and new elites behind closed doors. This all led to strengthen the old notion whereby politics and the management of public affairs is a job for the elites without true participation from the population and active and responsible cooperation of the masses in the creation of social consensus. The process of transition became a kind of media "show" in the eyes of the pluralizing medium of the time, whereby the population came to play the role of mere "spectators".

The weakness of civil society in Hungary is further compounded by the mode of operation that resulted from extremely taut political and party conflicts. In such game situations participants struggle primarily for party goals: debates are centred on the attempt to de-legitimize the opposing camp. Participants in this conflict resort to symbolic and discursive tools. A ruffian atmosphere and the everyday use of extreme language is a result of such bitter conflicts. The political-ideological duality of society and the conflict between opposing camps are serious impediments to the development, learning and

practice of responsible participatory models at local, national and European levels. The right wing has been successful at mobilizing its own supporters at times (though temporarily) in the interest of gaining power. However, the political actions of small extreme political groups and the now-stabilized political rift have resulted in deep scepticism regarding the entire political institutional system in the wider society.

Although there was a society-wide sense of positive anticipation during membership negotiations with the European Union and before the accession referendum, these positive attitudes soon withered away. The bureaucratic nature of joining European Union institutions was not something citizens could embrace and feel. The feeling experienced in the EU on the non-transparency of decision making from the civilian standpoint soon reached Hungary. The public campaign before the accession referendum relayed little accurate information and instead focused on symbols and symbolism. It built on society's already positive (mainly economic) expectations of the West. The campaign made use of rather narrow concrete information and kept the public distanced from an actual debate, as had been experienced in the (lack of) social debate preceding NATO accession (Heller and Rényi 2003a, 2003b). Further, the EU and Hungary (as well as other accession countries) were represented rather unequally in the campaign: Hungary and other accession countries were significantly subordinate to the EU (and NATO) in media reports on accession negotiations.

Analyses uncovered several discourse scenarios where, for example, the accession countries were portrayed as young students waiting for the decisions of a strict and judgmental teacher while competing with one another (ibid 2003a, 2003b). The positive opinion and expectations of the population were based on widely accepted representations that hoped accessions would establish the advantages of Western-styled consumerism, a Western lifestyle and economy (possibly through EU subventions) or a symbolically significant "return to the West" reparation profit. This latter representation was to a large degree present in the countries of Central and East-Central Europe, which had historically suffered various setbacks and offences, whereby the countries justifiably interpreted events as Western Europe "reaccepting" countries formerly belonging to the Soviet bloc. Discourse analysis uncovered a kind of geopolitical scenario change whereby the countries of the region were characterized by a shift in orientation from East to West. However, EU accession – which was celebrated with some vigour – did not and could not deliver the hoped-for advantages. The citizens of Central and East-Central Europe could hardly feel advantages of accession in their day-to-day lives, in their quality of life, or even in the system of symbols of accession: they did not experienced the expected sense of European solidarity, and in many respects felt treated as second-class citizens

of Europe who have no connection to processes and decisions, nor to symbolic goods.

### **“Civil society” or the “civic sector”?**

Populations in Western and Eastern Europe have different relations to their governments and political parties. In Eastern Europe movement between parties and the civic sector is more direct (i.e., the two sectors are closer connected) than in the West. In Western Europe today's civil sphere is backed up by centuries of the history of bourgeois society and institutionalized individual freedom in the economy and the political sphere within a legal framework and with cultural models. In Hungary and the other countries of the region the totalitarian regimes of the 20th century were built upon a late semi-modernizing economic and social structure that had either stopped or frozen the development of bourgeois society. It is no wonder that the civic sector is dependent, bereft of support, and easy prey for political parties. The creation of legal regulations for the civic sphere came “from above” during the regime change, but the “filling-in” of the sphere from below is incomplete and weak. It has made it possible for various interest groups to expropriate the sector.

The state establishes or regulates from above the spontaneously sprouting forms from below. At the same time interest groups from below become macro-societal, or political powers (unions, parties). The partly or fully autonomous organizations of civil society are defence mechanisms against state interference, or they transform state interference into mediating mechanisms, and they act like immune system reactions. So, civil society is “privatized” due to the reasons and degree to which it broke from the earlier state. It is in opposition to its own state that it establishes its own relatively independent and autonomous community structure through a process of genesis. The manifestation of the public – or public good and public interest – is not found in the state, although this is how it legitimizes itself and declares civil society to be part of private society. The state itself is but a centralized carrier of “public”-ness from the point of view of centralized public power.

(Ágh 1989)

In terms of the relationship between the state and the civic sector, there are marked differences between new and old member states. Western democracies have long been characterized by cooperation (as opposed to opposition) between civil society and the state. It is a unique fact that despite its etatist-centralized communist traditions, civil society in Eastern Europe received less state support than it did in Western democracies. The institutionalization of state-civic relations

proceeded after 1989 and led to the establishment of institutional models in new member states resembling those in the West. Hungary is interesting not only (and not primarily) for its statistically high number of organizations among new member states, but for the innovative–progressive traditions of establishing the institutional environment for civil society, and for its current tendencies.

This tendency began in the time of crisis of the Kádár regime, in the 1980s, when the right to establish foundations was reborn, as seen in the political decision to allow the Soros Foundation to operate here. The tendency continued through the association and assembly laws that governed the peaceful transition in 1989. These were passed by the last Communist parliament. After 1989 the tendency manifested itself through tax breaks for foundations, the 1 percent law, and the participation and redistribution frameworks of the National Civic Basic Program. Reflection on the regulation of civil society in the new democracies shows that in the last fifteen years there have been a higher number and more interesting initiatives than in the legal systems of Western Europe. But the execution of the new regulations has been less effective than in traditional Western societies, and regulation is somewhat unstable (consider for example the drastic changes in foundation tax breaks in Hungary!). In an interesting manner the new member states can offer useful experience on change and the development of civil society to civil society actors long stable and effectively executed Western systems. In the old EU processes of Eastern expansion, global civil society, European cohesion and integration, and regionalization have led to a greater importance of civil society policy and a renewal of regulation in many countries and at the EU level.

(Szabó 2005)

The problem of conceptualizing and defining civil society can be traced in public documents. A document from the Hungarian government states that

civil society is wider than the sum of civic organizations as civil society encompasses informal communities and individual initiatives. International academic literature precisely defines characteristics of civic organizations: institutionalization, inner organizational structure, independence from government, self-representation, self-governance, ban on distributing profit, voluntarism. Organizations established for direct political activity and religious activities are not considered part of the classic sphere of civic organizations.

In Hungary according to Act L paragraph 14 point b of the 2003 Act on the National Civic Base Program, civic organizations are those established

according to Act II of 1989 on associations, are legal persons as social organizations, alliances (except parties, interest groups for employees or employers, insurance associations and churches), and foundations established as legal persons through Act IV of 1959 on foundations (not including Public Foundations).

Hungarian government informational documents on civic policy classify civic organizations as follows:

- Activity-organizing;
- Service;
- Donation-collection and donation-distribution;
- Interest-representation groups;
- Alliances and umbrella organizations for the above.

State administration, legal texts and statistical measurements do not use the term “civil society” but “civic sphere” or “non-profit sector” instead.

“By civic non-profit sector we mean those social organizations organizing their own activities and that are self-organized, which are motivated not by profit or the execution of state public responsibilities, but all activities aimed at meeting community needs”. This thus includes all organizations that are non-state, non-lucrative, and not of a private nature.

Criteria used in legal and administrative texts are thus different from those used in social science texts on civil society, as we saw above in Cohen and Arato (pluralism, publicity, private nature, legality).

In administrative texts the civic sector is characterized with the following qualities (Bíró 2002):

- Meeting community needs;
- Organizing their own activities;
- Organized voluntarily;
- Functioning outside of state frameworks;
- Not profit oriented.

Compared to the political connotation employed in the struggle against state socialist regimes, this use of the concept is wider with a broader meaning. While before the regime change civil society was clearly about political disagreement, opposition to power and used as an “oppositional term” based on civic courage, in today’s meaning we use not the classic polemic, but a newer duality based on distinguishing “non-profit” and “non-governmental”. The use of the term “civic” entails that we are in an area where neither the

state nor the economy dominates (Of course the reality of this dichotomy can be questioned, see below.) Further, this sphere is distinguishable from the fully private sphere filled by family, intimacy and emotions, though the dividing line is not entirely clear. As we will allude to later, the operation of civil society and the organization of groups in civil society are cut across by private relations. The establishment and operation of civic organizations has an important role in communicative relations in the private sphere and advances new and old tools and modes of communication.

## Non-profit sector, third sector and NGOs

The terms “non-profit sector”, “third sector” and “non-governmental organizations” all reflect fundamental characteristics of civic organizations, but from different aspects. One emphasizes financial management style, and places primacy on the fact that the goal of such organizations is not the distribution of profit to owners, i.e., they are not for profit. The next approaches the term from the output side, and emphasizes that the operation of such organizations is for the public good. The third is not an economic but a political-science type view, where the emphasis is on voluntarism, differentiation from official organizations, etc.

(Ernst 1994)

The term NGO (non-governmental organization) is commonplace in American discourse, but it is misleading: it mistakenly communicates that all organizations that are not governmental fit in this category, despite the fact that only organizations that meet defined criteria are actually part of this sphere, and these criteria are usually defined in law.<sup>6</sup>

According to the American term the most important characteristic of these organizations is that they function in a not-for-profit manner, i.e. “their profits can not be distributed to their leaders, members or employees. It is worth emphasizing that gaining profit is not out of bounds; the criteria of non-profit status only stipulates that profits should be invested into developing services, or spent as donations to or support for natural or legal persons.

(Hansmann 1989)

This definition draws attention to the fact that we are dealing with service organizations that fall into a unique status based on their activities. This can mean a special tax status or tax breaks. Such organizations thus function in a unique way in terms of the process income generation, income distribution

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<sup>6</sup> In Europe state organizations are usually distinguished from non-state (social) organizations, whereas in the USA the term governmental (or administration) is used instead of “state”.

and redistribution. This entails a unique relationship between these organizations and various levels of state organizations. This relationship can be complimentary (e.g. USA, Netherlands) or oppositional. Civic organizations in some countries can operate fully independently of governmental bodies. The latter two forms are most characteristic of developing countries (Ernst 1994).

Civic organizations offer services to society that are of a special type and which are important enough to “deserve” self-control on the part of government apparatus to make possible a drop in tax income in return for such services. The nature of these services is reflected in a German (and one of the Hungarian) terms for civic organizations: they offer public-purpose styled services, or are geared toward collective consumer goods, or public goods. “The function of such organizations is to provide “public goods produced in the private sphere” (Hansmann 1989, based on Weisbrod’s observation). Such services include environmental protection, and human rights (social, cultural, economic and political rights) activities (Ernst 1994).

Another fundamental characteristic of civic organizations is reflected in English terminology: voluntarism and active participation in public issues. Civic organizations are such that people associate in the interest of voluntarily cooperating to solve social, societal, etc. problems that are important to them. Organization, in this sense, is characteristically constructed “from below”, or from the civic sphere. Active citizens freely and voluntarily associate in the interest of solving a given problem, and their activities are coordinated toward common goals and the solution of common problems.<sup>7</sup> We can find examples, however, where the state encourages or even establishes civic organizations to solve social, cultural, economic and political problems. This takes us back to the difficulty of providing civil society with a precise definition: there is a wide grey area between strictly private and strictly governmental spheres of activity in terms of financing, goals, and tasks. Further, as seen above, the concept itself goes through significant spatial and temporal changes (across different societies or over even short periods).<sup>8</sup>

The definition of the civic sphere reflects several problems reflecting the theory of the establishment of the non-profit or third sector. The relations between and (reasons for the) development of the three sectors are seen differently by different theories. According to some scholars the voluntary civic sector came to being in those areas where the first (state) sector was unable to deliver services. The non-profit sphere accepts responsibility for

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<sup>7</sup> New and old communication tools are of fundamental importance in terms of organization and execution.

<sup>8</sup> For example, the use and meaning of the term before and after the regime changes in East and East-Central Europe.

meeting social needs for collective goods, where market or government efforts fail. Weisbrod claims that non-profit organizations provide collective goods that are aimed at meeting the needs of given segments of society, as opposed to the needs of society as a whole (Salamon 1987). Other theories (e.g. Hansmann) see the development of civic organizations as rooted in contractual relations and the failure of the market. The basic thought here is that “in the case of certain products and services the roles of customer and consumer diverge. At this point the non-profit sector that service charitable goals is better situated to gain the trust of customers. Those providing such services are not inclined (or less inclined) to damage the interests of the customer as opposed to those who may gain extra profit by doing so” (Ernst 1994).

Another factor in the establishment and strengthening of the third sector is that its operation is cheaper and more flexible than that of large, bureaucratic state service apparatus. “Therefore the solution of some social problems can not only be funded despite lower tax income, but there can be a quicker reaction to new problems arising in these areas” (Ernst 1994).

There are however theories that are radically different from those outlined above. These use a completely different logic to explain the relation between the civic sphere and the state. “According to the theory of the failure of voluntary action” (Salamon 1987) it is the reverse – the state ought to be seen as an institution that responds to the failure of voluntary action and that can move beyond the inner obstacles of the non-profit sector to take on a role in financing and delivering collective goods” (Ernst 1994). In this sense the civic sphere is a network operating with too large a hole. It is incapable of effectively providing for the needs of all groups in society. Thus the state and its strictly organized institutions take on the task of meeting these needs. The non-profit sector is merely a supplement in this provision activity.

## **The decline of civic participation and the rise of the “third sector”**

As a result the New Left critics of consumer society (Marcuse, Habermas, etc.) after the decline of the student revolts of 1968, protests against the Vietnam war and the hippie movement, from the end of the 1970s American social science – and its popularizing educational corollary – saw the emergence of theses on the decline of interest in public issues, the strengthening of the private sphere and the emphasis on intimacy. Richard Sennett’s (1977) and Christopher Lasch’s (1979) works on intimate and narcissistic society brought attention to such trends. In many of his studies Robert D. Putnam (1993, 2000, 2002) articulated the assumption that civil society in the United States was in decline given the breaking or weakening of societal relations, the weakened interest of citizens in public affairs and

their lower participation in collective life, all while they were becoming less trustful of one another and of institutions. Putnam's earlier research in Italy drew the conclusion that the economic development and institutional capacity of various regions could be foremost explained by civic networks. In his studies on the United States he used several indicators (voter turnout, newspaper readership, associational life, etc.) to show that so-called "social capital" was in decline in the paradise of civic community life.<sup>9</sup>

In his famous article "Bowling Alone" (2000) Putnam writes that between 1980 and 1993 membership in bowling clubs declined by 40 percent, while the number of individual bowlers increased by 10 percent. The lonely bowler became a symbol for the atomization of American society. Similar conclusions could be drawn from data on voter turnout, activity in religious life and union membership. Trust in government declined as well, as did membership in voluntary organizations, which Putnam viewed as the most important indicator. He saw these changes as predicting America's decline in economic vitality, given that in his view a society's stamina grows from the cultural soil of its local associations.

The results of an international research project published in the same period (1999) showed that the past few years saw strong interest worldwide in institutions operating outside the "holy ground" of the market or the state (Salamon and Anheier 1999). The researchers claimed the existence of a "global associational revolution" proceeding on the grounds of the well-known institutional circle of "non-profit", "voluntary", "civic", "third" or "independent" sectors.

The emergence of the non-profit sector can be attributed to several factors of which the most important is surely the crisis of the state in its various forms in various regions of the world. Salamon and Anheier (1999) take into consideration the crisis of the traditional welfare state in the Nordic countries, the deception of state-led development policies in the South and the fall of state-socialism in Central and Eastern Europe. Civil organizations gained more respect throughout the world because they were able to formulate criticism and express citizens' malaise concerning state policies. But the main activity that gained most attention to civil organizations and NGOs was that they were able to set on the agenda problems that were left unsolved and most often even unconsidered by state institutions. Criticism coming from NGOs thus, managed to raise questions on the very essence of capitalism. Green movements, organizations against pollution, nuclear energy, etc. drove in the middle of public debates the market based economic policy of the contemporary capitalist state. Neoliberal economic policy based on the

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<sup>9</sup> Putnam's use of social capital differs from Bourdieu's use. For him, trust is dependent on degrees of reciprocity, correlation norms and voluntary participation in community networks.

private sector has been the main target of civil discontent and the growing inequality and the deepening financial crisis have reinforced the offensive.

At the same time, the successful public visibility of the problems tackled by civil society movements and their own growing visibility became a push in the growing numbers and importance of civil society organizations. With the growing concern and doubt about the state's capacities of solving the problems (problems that are becoming more and more global themselves, thus escaping from the reach of the nation-state), concerned citizens are looking for different solutions. Uniting civil skills and competences seem to be a solution for various problems, local, regional or global. The attempt to unite citizens' lay competences and skills led to the emergence of civil society organizations in the diversified forms. The quick growth of the civil sector has constantly been pushed by the malaise and frustration of concerned citizens and it was technically facilitated by the availability of more and more adapted and comfortable means of communications.

In accordance with this statement, political leaders from a number of countries searched for a way of harmonizing market values with the advantages of wider social welfare. This principle was seen in Tony Blair's "third way" statements in the United Kingdom, in Gerhard Schröder's thoughts on the "new middle" and in former French Prime Minister Lionel Jospin's short credo "Yes to the market economy, no to the market society".

Given the unique location of civil society's organizations outside the sphere of the market and state, their relatively small size, flexibility and unique relationships with citizens, and further their ability to mobilize "private forces" and collect "social capital" for public goals, they play a strategically important role in finding the "golden middle" between the exclusivity of the market and state.

The large-scale international research project mentioned above (Salamon and Anheier 1999) aimed at measuring the sector's size, structure and financial background, the factors effecting the sector's current situation and development (including obstacles), and the effectiveness of organizations in the sector.

In 1994, in the first phase of the research, eight countries were examined.<sup>10</sup> In the second phase in 1999, besides updating data for the previous countries, new countries were included, taking the sample size up to 28 countries (of which there was complete data collection in 22, with nine Western European, four other developed, four Central-East European, and five Latin American countries).

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<sup>10</sup> United States, United Kingdom, France, German, Italy, Sweden, Hungary and Japan.

1. *The non-profit sector is a significant economic contributor.* The first observation was that in most of the studied regions the non-profit sector was an important economic factor in terms of employment and GDP – independent of social and political significance.

In the 22 countries studied the non-profit sector – excluding religious organizations – was a branch worth 1,1 trillion dollars, employing close to 19 million full-time persons. The proportion of non-profit employees among those not employed in agriculture was almost five percent, making up ten percent of those employed in the service sector, and 27 percent compared to the number of those employed in state administration (Salamon and Anheier 1999).

2. *There are significant differences in size across countries and regions.* The size of the non-profit sector varies across regions, but it is a significant factor in the economy. It is more significant in developed countries compared to developing regions (e.g., Latin America or Central-East Europe. Western Europe has the largest non-profit sector and the highest proportion of volunteers).

Based on the number of employees several Western European countries (Netherlands, Ireland and Belgium) and one of the “other developed countries” (namely Israel) have in relative terms a larger non-profit sector than the United States. The non-profit sector in the United States – which is considered the cradle of non-profit activity – is today not among the largest (Salamon and Anheier 1999).

The difference in size of the sector across countries can be explained by government welfare expenditures (or lack thereof). Based on the data the researchers rejected the common assumption that higher social welfare spending results in a smaller non-profit sector. Despite differences in order of magnitude there are several common elements across countries regarding non-profit sectors’ inner structure and composition, although there are instances of significant differences.

Considering the area of operation of employees in the non-profit sector the research strengthened early assumptions regarding spheres of activity: two-thirds of employees concentrate on traditional welfare services; 30 percent work in education, 20 percent in health, and 18 percent in social services. Not far behind is the proportion of employees working in the field of leisure and culture, which comes in at 14 percent (Salamon and Anheier 1999).

The international data used in the research revealed that there exist regular deviations from the above in Central Europe. Here leisure and culture have a much bigger role among areas of activity for the non-profit sector. According

to available data (Salamon and Anheier 1999), one third of the full-time employees of the sector in the region work in cultural and recreational organizations. A second important type: organizations representing professional group interests make up for 11 percent of non-profit employment. The importance of all these organizations might be a remnant of the socialist period when such organizations were highly subsidized by the state, and they were in good position at the moment of the system-change to reorganize themselves according to the new contexts. Civil organizations specializing in the protection of rights (human rights, freedom of expression, environment, etc.) are much younger than the previous ones, they have grown in the turmoil of the system-change and often with help from outside (from Western or global NGOs or Western political forces). Organizations with traditional welfare goals are weak because problems of education, health, social protection, etc. are still mainly considered as being in the scope of the state's activities and functions.

The researchers identified five relatively distinguishable structure types in the non-profit sectors of the 22 countries examined:

- The dominance of education (England, Ireland);
- The dominance of health (United States, Japan, Netherlands);
- The dominance of social services (foremost Western European countries: Austria, France, Germany, Spain);
- The dominance of culture and recreation;
- The balance model (Australia, Columbia, Finland).

The four Central European countries in the study had a model that is fully distinguishable from those listed above. Here the fact that most of the employees of the civil sector belong to big and rather stable organizations of the sphere of culture, sports and leisure can be traced back to the former system of state subsidies and the opportunity offered by the turmoil of the system-change to turn these institutions into foundations that the states continue to subsidize to a certain degree.

It is also clear that private charitable or philanthropic activity is much less frequent than in Western societies. This fact can be attributed to various social characteristics mentioned above like traditional reliance on state protection, lack of trust among social actors and publics, paternalism or the lack of positive social consensus and wide spread feeling of negative destiny.

Salamon and his team established that civil society in Central and Eastern Europe could best be characterized by its duality (Salamon and Anheier 1999). Despite a huge effort the non-profit sector has not reached its peak of

development and capacity and certain vestiges of the communist era in the functioning and the scope are still present.

The coexistence of the old and new systems caused tensions in the region that are still visible. The roots of the problems have not always been recognized. Non-profit organizations – unlike in developed regions – function in only limited ways in areas commonly associated with the welfare state, like social services, health care and education. This makes it necessary to continuously develop the non-profit sector in Central-East Europe and to improve its effectiveness.

Regarding the non-profit sector in Central-East Europe the researchers considered the strengthening of legality most important. They emphasize that difficulties and the low public consideration and participation are to be imputed to some early scandals in the sector after the system-change when the legal framework was not complete and this situation gave way to some loud public frauds and strengthened the citizens's lack of confidence and trust.

Through making use of experiences and models the newly formed legal frameworks designed in the region at the time of the regime changes are in several aspects more developed than Western regulation, which can be haphazard. The behaviour of non-profits is often unacceptable, and given the lack of social experience legal development is often lagging behind. Given deficiencies in models for individual and group responsibility and a lack of practical experience the sector is still judged by society through the lens of "losing one's illusions".

Regarding Western Europe the researchers emphasized the importance of renewal. Although in this region the gradual withdrawal of the state and the emergence of private initiatives in social service increased the importance and the scope of the sector, some of these organizations grew into huge bureaucratic institutions and citizens seem to feel them too distant, too institutionalized or on the contrary, too commercialized (Salamon and Anheier 1999).

## **The civic sector in Hungary**

In terms of effectiveness and density the civic sector in Hungary is much weaker than it is in Western Europe. There are two and a half times more registered civic organizations per person in France than there are in Hungary. In Hungary there are 60.000 organizations<sup>11</sup> in a population of ten million, while in France there are one million organizations for a population of 64

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<sup>11</sup> According to the Central Statistical Office, 47 thousand of these are operational.

million. The difference is not only quantitative, but qualitative as well. In Hungary the number of civic organizations that function as “franchises” of universal networks dealing not with national but global issues is negligible (Amnesty International, Greenpeace, ATTAC) while there is a relatively high number of domestic rights protection organizations – perhaps as a result of the tradition of Hungarian legal thought. The typology introduced below offers just a dim picture of the actual spheres of activity of organizations as well as their effectiveness in their given tasks. The true distribution of organizations over covered areas and tasks reveals a rather leaky network. Some of the sectors elements cover true civic social responsibilities while others sustain old and anachronistic social relationships, attempt to build network and social capital for self-interested profiteering or are servants of political forces.

### The “greying” of the civic sector

The civic sector ought to keep relatively strong boundaries between itself and the state and private economy. In reality however – for financial and operational reasons – it is forced to blur those boundaries on a wide scale.

A glance at categorizations on a website for Hungarian civic associations reveals an interesting “exception”. The Civil Híradó website categorizes civic organizations in the following manner<sup>12</sup>:

*According to operational type:*

- Foundation.
- Association, club, etc.
- State Budgetary Institution (!)
- Public Foundation.
- Public Purpose Corporation.
- Alliance.

*According to area of operation:*

- Health.
- Social and family policy.
- Youth.
- Leisure and sports.
- Education.
- Cultural.
- Animal rights.
- Environmentalism.
- Cohabitation.

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<sup>12</sup> See < <http://www.civilhirado.hu/> > (accessed 10 December 2008).

- Churches.
- Assisting businesses.
- Minority associations.
- Research.

The presence of “State Budgetary Institutions” among operational types contradicts the principles discussed above. The examples of such organizations listed on the website include:

- “VIRTUS” Sports Center Association
- Friendship Circle
- Budapest Cultural Center
- Compass Youth Information and Advice Office/Vizöntó Club
- Service to Assist Hospital Volunteers, Újpest
- Office for the Preservation of Cultural Heritage
- Marczibányi Square Cultural Center
- Ökoszolgálat (Eco-service) Foundation
- Museum of Fine Arts, Antiques Collection
- Virányos Community Center

This unusual list is an example of our earlier observation whereby the grey area that emerged over the last two decades between the state (public) and private sector has widened.

In a normative sense the two “spheres” should not overlap, but in practical reality this occurs in various areas for financing, regulative, ownership and functional reasons. It is typical of modern societies to undergo an expansion of the zone between public and private, given that state legal regulation and support has been extended to a number of areas that were traditionally the domain of the private sphere (e.g. child care, health care, education), and more and more civic organizations fulfil public functions in these areas. The grey area between the two poles also grows because the private economy is under wider state regulation, all while former state owned properties have been privatized. A portion of the economy is under mixed ownership: e.g., the energy sector is a public service branch but in partly private hands. Professional, corporatist organizations (chambers) are not state organizations, but they do perform some state-styled functions (e.g. only members of the Medical Chamber are qualified to be medical doctors). Various public functions are carried out by not only public institutions and public foundations, but by private foundations as well (e.g. Rotary Club, Maltese Charity Service, or the French “Resto du coeur” serving the homeless, etc.). Private foundations establish museums or collections containing significant national treasures and handle state functions like the support of various

cultural or educational institutions. These organizations and institutions are for public purpose, they fulfil public functions, but they manage private property while the state regulates them and oversees their activities all while making funds available to them. The overlap of civil, state and economic spheres is a tricky question that could be better managed with unambiguous legal regulation and strong ethical norms. However, Hungarian experience shows that – for reasons of making gains in political, power and profit terms – the majority of actors have an interest in opaqueness.

### One-sided mobilization and “uncivil society”

Within today’s Hungarian “civil society” the most active, visible and most public attention garnering organizations are those with either close ties to political parties or that serve as extensions of political parties (built from above and movement-like). The weak traditions of the workers’ movement and the false left wing mass organizations from the state socialist period are striking examples of how inactivity in 1968 resulted in the lack of left-wing social movements in Hungary. No strong new left wing, green or feminist movements have emerged, and the anti- or alter-globalism movements are weak.

At the same time there is a much stronger capacity for mobilization in today’s Hungarian right. FIDESZ, the strongest (opposition) party among extreme right and conservative minded voters, has made open transition possible. Since the regime change the right has used various tools to try and expand its pool of supporters. It appears that they do not trust enough in the will of voters to express their opinions every four years and thus feel they must consistently keep the emotions and activities of their supporters on the front burner. This style of mobilization strategy plays on visceral emotions and not on debates, interest and value competition in a rational public sphere. The “Hungarian Way Circles” organized by the far right in 1992, and then the “civic circles” attached to FIDESZ in a pseudo-civic cloak are easy to mobilize during referendum and election campaigns, but also during other periods when the right (while in opposition) wants to express its dissatisfaction with government decisions or just means to demonstrate its strength and thus apply pressure. Leftist voters are in turn passive and more trusting of representative democracy and the institutional system of the rule of law and they decisions of their own political leaders. The politically active right-wing community is dominated by anti-modernism, belief principles, exaggerated national identity and euro-scepticism. Their campaigns, mass movements and rhetoric are characterized by authoritarianism and aggressiveness. The exceptionally active far-right groups are found on the perimeters of the right. They are expert at making use of widely interpreted democratic rights – which were established quickly during the regime change in the hope of building societal consensus – for their own purposes. The

aggressive anti-democratic groups make use of freedom of speech, freedom of opinion, freedom of association and other liberal rights to give voice to their anti-democratic and intolerant views and opinions. Their activities do not reflect true civic values, but instead mobilize national-ethnic anti-minority passions. Given the historical tendencies described above, the majority of society is rather apolitical, does not believe in utopias, and is oriented toward pragmatism: it is satisfied with prospects offered by consumer society, and does not seek out opportunities for autonomous social action. Hungarian society is divided along a political-ideological cleavage where one side is forced to get used to escalating street and media violence utilized by the other.<sup>13</sup>

### The “theft of civil society”: Civility as a mask of virtue

As we mentioned before, a large portion of Hungarian civic organizations is tied to political parties. An under-organized society, a population that is indifferent to public issues, passivity that leads to concentration of private matters and the weakness of civic-mindedness makes it easy for particularistic interest groups to speak in the name of civil society, to wear the mask of civil society, and to present themselves as (voluntary and self-sacrificing) participants in public-interest debates. These groups are led by economic or political interests, or often by both. The oligarchization of political parties has led to “the development of a hierarchical and non-transparent personal-financial-political dependence system” (Miszlivetz 2008). Personal attempts at enrichment occur elsewhere (e.g., the ARC scandal in France) and lead to the private use and embezzlement of funds earmarked for public goals, but there is here a significant number of foundations, organizations and associations that function to serve power-structure, political goals. A series of scandals shows that many Hungarian civic organizations are fronts for political parties or political interest ambitions, or are mechanisms for the private use of public funds. The non-transparent nature of the tender-based financing system means it is very difficult to trace which civic organizations – through re-tendering, for example – pass on funds to whom. It is also difficult to follow how support and donations are collected and spent.

This mask of civic virtue has served and continues to serve political forces well. A characteristic example regards the “civic” oversight of public media, National Radio and Television Commission (ORTT), and its numerous ensuing scandals, pressure tactics and political influence. In 1996, after a lengthy struggle in Parliament, the newly passed law on media was unable to manage several problems. In fact, the law reinforced the influence and control

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<sup>13</sup> See for example the storming of the state Hungarian Television office in 2006, the “camping” demonstration in front of Hungarian Parliament (which lasted for months over 2006-2007 and was assisted by paying homeless persons), and street violence on national holidays.

of parties over public media, especially electronic media. The boards of public media outlets, and foremost the board of the media authority (ORTT) are filled by party delegates who make up the presidencies of the boards. The law demands an even split between governmental and oppositional appointees (four each), but political power struggles have led to scenarios where delegates from opposition parties that supported the government (though not members of governing coalitions) have led to serious imbalances. This situation applies not only to the presidency, but to the boards themselves, where the law prescribed the participation of civil society in order to guarantee civilian oversight. Thus, besides the members of the presidencies, the boards were to contain twenty-one civic organizations each. These organizations are to be chosen by lot, whereby they could provide delegates. The civic organizations stem from the following large groups:

The National Minority Self-Governments of national and ethnic minorities living in Hungary, or, in the absence of such, national associations; the four historic Hungarian churches; national human rights organizations; national professional cultural associations; national professional education and science organizations; national alliances of unions; national professional and interest-representation organizations of employers and entrepreneurs; national professional and interest-representation organizations of journalists; national organizations of environmentalists, natural habitat protectors and animal right activists; national interest-representation groups for women; national interest-representation organizations for children and youth; national interest-representation organizations for pensioners; national interest-representation groups for the disabled; national interest-representation organizations in the field of sports; national interest-representation organizations for municipal governments.

(Act I of 1996)

The civic delegates of the boards only represent Hungarian society in terms of the letter of the law. Some of the drawn organizations are so meaningless that their very existence and operation must be questioned.<sup>14</sup> Of most of them it can be said that they are the mouthpieces for particular interest groups or, most often, for political parties or other ideological groups.

However, the drawn civic organizations often do not even represent the specific social groups mentioned in their names when working in the boards. Despite the annual lot it is common to see the same people staying on the board year after year, only representing a different civic organization each

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<sup>14</sup> For example, Hungarian Marble-sports Alliance, Hungarian Carpathian Association, Alliance of Catholic Women and Girls, “Stalactite” National Association for Those with Poor Vision, Ferenc Erdei Society, Hungarian Forrester’s Alliance, “Shelter” Charitable Association, etc.

time. At the time of the lot most organizations do not have any staff that are well trained in public issues and media issues. Thus, they are forced to “hire representation” from ‘professional’ board experts/hyenas. That is to say that the organizations that are supposed to represent society are themselves represented by professional board members who are supported by political groups. This is a situation that cannot be sustained, as it forces public media to serve unabashed political groups an interests in an environment where public media is suffering from open competition: the so-called media war (Heller 1996) for influence over the media has been going on for two decades and has been weakening public life in Hungary through strengthening societal passivity and scepticism. The ORTT report of March 2008 describes the same scenario:

The Media Act established the Boards of public media public foundations to defend the independence of public media. The decisions of these boards are strongly influenced by the civic organizations that are drawn by lot every year by the ORTT. The last draw – like in previous years – was such that many civic organizations farmed out their representation to individuals whose credentials for the representation of given constituencies or organizations were not clear. This tendency makes us question the relationship between the board member and the organization he/she is supposed to represent, and also makes us question the independence of the given civic organizations. There is also a scenario whereby by representing a number of civic organizations certain individuals are members of several boards. Further, we do not have a clear definition of which (kind of) civic organizations can participate in media regulation. Thus, some organizations that lack the ability to provide meaningful service end up as members of the boards. The recurring tendencies of the system – which are seriously criticized from year to year – show that the civic participation in media regulation as called for in the Act has not delivered on its democratic promise, and that this representation has become a parody of social oversight of government activity.<sup>15</sup>

An interesting difference between new and old member of the European Union is that those societies that underwent regime changes expected that the privatization of mass media would lead to the development of a pluralist public sphere, where in Western Europe the very same was hoped of the strengthening of public media, whereby public issues could be debated in a pluralist public sphere and where media programming would go beyond meeting short-term and popular needs (Keane 1995; Bourdieu 1996). The private control over press and electronic media has had well-known results in

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<sup>15</sup> National Radio and Television Commission (ORTT) Közlemény. Available at <[http://www.ortt.hu/hirek.php?hir\\_id=297](http://www.ortt.hu/hirek.php?hir_id=297)>, accessed 10 December 2008.

both Eastern and Western regions. Thus, not only can we not expect the public media boards to guarantee civic representation and influence, but we can not expect it of private media either. The civic sector, or at least a particular slice of it, is undoubtedly active, but the motor of such activity is often not public service but the representation of particular interests.

Today we are beyond the observation that political power makes it possible to gain economic power and influence. It is now indeed the opposite: suddenly rich entrepreneurs can buy political influence, votes, and even regions of the country. They make no secret of their power, and actually brag about it. The civic population feels powerless in the face of the mafiaization of the economy and political sphere and the lull in public life. This process has effected municipal governments, media, industrial chambers, regional councils and civic organizations.

(Miszlivetz 2008)

Despite the historical reasons for the weakness of civil society, current tendencies do not reveal a solution. The result of the loosening of ethical norms, the lack of civic values and practices and spreading anomie is that general civic distrust is spreading like a virus from institutional political actors to the civic sector. Social solidarity has weakened considerably, all while the societies of Central and Eastern Europe cannot expect solidarity from a stronger and richer Western Europe. Several interviews and surveys indicate that the citizens of the new EU member states feel that they are “second-class European citizens”. Accession and the growing feeling of being left behind do not help increase social activism nor weaken anomie.

As a result of this scale in the growth of anomie, those citizens that were socialized under paternalism either completely withdraw or, if they have nowhere else to turn, accept the protection of some invisible interest group... The various forms of feudalism in Eastern Europe have demonstrated great resilience and depth.

(Miszlivetz 2008)

### “Uncivil society”: Challenging normative approaches in the study of civil society in East-Central Europe

In a paradox manner, while speaking of the weakness of civil society in East-Central Europe, we must not neglect the fact that the region – and particularly Hungary – has seen rather active “public role-playing” by a particular segment of the population. While large portions of the population distance themselves from discussions of public issues or direct participation in public life, various extremist groups draw attention to themselves through visible acts, violence, aggressive behaviour and street hooliganism. Making use of the liberal legal framework passed at the time of the regime change

(including Acts on the freedom of association and opinion) and its inherent opportunities, such groups execute their programs of “visceral” politics, hate mongering, provocation, and exclusionary speech. Examining the concept of civil society, which assumes a kind of cooperation and tolerance on the part of the members of the population, we must also study the “uncivil society” based on rejection-based and violent political mobilization.

In their book entitled “Uncivil society? Contentious politics in post-communist Europe”, Petr Kopecky and Cas Mudde point out the traps of the normative approach to studying civil society in East-Central Europe. They challenge the ‘Western’ or ‘Eastern dissident’ conceptualization of civil society and argue for “a theoretical and empirical focus that moves beyond the relatively narrow sphere of ‘pro-democratic’ organizations.” (Kopecky and Mudde 2003: 2) Further, they propose the inclusion of new social movements that express political protest or contentious politics in the concept.

Suggesting a readjustment of the conceptual understanding of civil society in general, and in post-communist situations in particular, they believe that, in Neera Chandhoke’s words, “our normative expectations about the sphere of civil society should not derange our analysis of actually existing civil societies” (Chandhoke 2001: 5).

Kopecky highlights the lack of studies that treat violent nationalism and populism as part of mobilization and collective action. He argues that “civil society remained reserved for those forces perceived as pro-democratic, which mobilized against those considered ‘national-populist’” (Kopecky and Mudde 2003: 23).

Mudde points out that “subsequent exclusion of certain organizations from the sphere of civil society seems to be the result of normative rather than empirical/academic arguments. One of the criteria to separate “civil” from “uncivil” society is the ideology of the organizations. “Uncivil” ideologies (most notably nationalism) are seen as “bad”, while civil society is considered as ‘good’” (ibid.: 160-161).

To highlight the contradictory nature of the normative approach of civil society, Mudde uses the example of East European movements, NGOs and individuals participating in them. These same actors were once classified as part of civil society when they were fighting against communist regimes (including the Slovak National Movement, SNM), but they came to be considered “bad” in the early 1990s when they were labelled as nationalists.

To explain this shift in the (Western) normative attitude, Mudde claims that the figure of the “enemy” is the key factor:

This difference in classification does not reflect a change in the character of SNM. They fought for national independence and (their interpretation of) democracy in both struggles. Rather, it reflects the difference in ‘enemy’, and the perception of it [...]. Thinking in simplistic antagonistic models, nationalists were good when they opposed a bad regime (communist Czechoslovakia). But they turned ‘bad’ when they started to oppose a ‘good’ regime (post-communist Czechoslovakia). And given that civil society is always good, this means that nationalism was one time part of civil society, one time not. (Kopecky and Mudde 2003: 161)

As national movements were part of the oppositional forces against communist regimes, they obviously continued to play an important role not only in politics but in civil society as well. However, the degree of radicalism of these civil society organizations varies. In several East European countries former nationalist groups turned out to be less nationalist. This was the case regarding the SPOT in Serbia, an ultra-radical group that turned against Milosevic’s nationalist regime and established itself as the official interlocutor of Kosovo Serbs for the international community.

In the liberal Western European interpretation Central and Eastern European civil societies were composed primarily of those movements opposed to communist regimes. We can assume that civic organizations with political goals in post-socialist states have an *ab ovo* inner contradiction. One-time dissident movements transformed into political parties and participated in the dismantling and remaking of former totalitarian states. The fact that most regime-transformation elites (who were part of the “civic opposition” or were dissidents) became part of the political elite, and that their earlier civic organizations are now part of the legitimate political system, holds true for most Central and Eastern European countries. That is to say, “the mobilization of “civil society” against the state was followed by the inclusion of civil society into the state” (ibid.: 168).

Of course the transformation differed in the various countries. Considering the relationship between political systems and civil society, Mudde finds that in the 1990s civil society was effective in those countries where “nominal democracies” or semi-authoritarian regimes developed. “Nominal democracies with authoritarian tendencies, like Croatia under Tudjman and Slovakia under Meciar (and possibly even former Yugoslavia under Milosevic) seem to be particularly conducive to developing a strong, pro-democratic civil society (ibid.: 163). This confirms our view that civil society becomes important and effective when and where it is constituted in

opposition to the existing power structure. In these situations they appear on the public stage as the critics of power representing concrete issues through oppositional activity. Their ability to represent wide social groups and to mobilize citizens is highest in this structural position.

Nonetheless, these regimes (especially Meciar and Tudjman) never actively oppressed civil society organizations: NGOs were largely supported from abroad. The collapse of the above-mentioned regimes has transformed such organizations as well. For example, pro-vote movements eventually became war veterans' associations in Croatia (*ibid.*).

Many studies dealt with the low social impact of pro-liberal democracy that civil society (used in the Western normative sense) often hailed in Western policy circles and academia. This failure, Mudde argues, can be explained by the fact that "they have few if any ties to the national grass roots and communicate mainly if not exclusively with the international donors." They also "often address the concerns of the foreign elites, rather than the grievances felt by the domestic population". Therefore "uncivil movements are more authentic representatives of civil society in post-communist Europe." In Mudde's view these civil society organizations may play an important role in democratization since "they are true social movements unlike elite-driven NGOs detached from society", even if they are expressing contentious politics like Slovak nationalist groups or Croatian war veterans' associations. According to Mudde these contentious political views are often seen with scepticism since they can endanger fragile democracies. But if they are non-violent they can be perceived as voices that are expressed according to the rules of the democratic game and as legitimate protesters against the ruling elite (*ibid.*: 164).

As mentioned above, contentiousness is a legacy of dissident movements under state-socialism that highly influenced democratic consolidation in the post-communist regimes. Parallel to this, the unfulfilled expectations of the political and economic transition and of the recent accession to the European Union, as well as the sentiment of "stolen revolution", prevail in Eastern Europe. Therefore, Central and East European "uncivil movements" often consider themselves the authentic representatives of "real change", or as the protagonists of the revolutionary idea. This explains their violent protests against the new elite (i.e., those who stole the revolution). This is why they use the repertoire of symbols of the anti-communist protests in both action and rhetoric (e.g., demonstrations and rallies organized just as before the regime change). Mudde also points to the continuity in the organizational structure of these uncivil movements. For example, the Hungarian anti-communist skinhead subculture already existed before 1990, and it survives to this day under extremist right-wing political banners (*ibid.*: 167).

Besides organizational legacies there is also an ideological continuity: these uncivil movements usually distrust and oppose the State and especially the political elite. Their most common slogan is “elite-change” and their most widely shared grievance is that the system-change “did not change the elites”. Their other ideological legacy is militarism.

Although communist regimes officially preached world peace, and heavily supported the peace movement in the West, their own societies were installed with militaristic outlook. This was particularly the case with young people, who were socialized in strict hierarchical, almost paramilitary, organizations like the Pioneers and the various national, Komsomol-like youth groups. [...] This has created a fertile breeding ground for the skinheads in Hungary, whose martialistic bonding rituals perfectly fit the value structures of the post-communist youth (that were socialized during communism).

(Kopecky and Mudde 2003)

Speaking about the cyclical nature of civil society mobilization, Mudde points out the Western misunderstandings about the longevity and stability of dissident civil society organizations that had participated in the 1989-1990 revolutions of Eastern Europe<sup>16</sup> as well as actual NGOs. “Most NGOs in post-communist Europe are cadre organizations with no grass-root support whatsoever, i.e. their members are full-time employees and not working as volunteers. On the other hand, “uncivil” movements do represent and involve parts of the society though in a more fluid and ad hoc manner” (ibid.).

As for separating civil and “uncivil” society, Mudde claims “it makes sense only in a normative framework and then exclusively with uncivil society defined as a sub-set of civil society. In empirical research particularly of a comparative nature, the distinction obscures more than it highlights. [...] [Civil society organizations] are often difficult to classify as “civil” or “uncivil”, as their goals and actions are highly influenced by their environment” (ibid.: 169). It is important to note that there is no direct relation between the ideology of civil society organizations and their effect on democracy, meaning that civil (pro-democratic) movements are not by definition good, and uncivil movements are not by definition bad for democracy or democratization. That is why both types of civil society organizations are important for associational life and should be included in the study of civil society (ibid.: 170).

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<sup>16</sup> They were numerous and could not mobilize as many people as it is believed.

Though the aforementioned book was published in 2003, and the analysis based on case studies reflect East-Central European civil society in the context of the late 1990s, the conclusion is still valid despite the profound changes in the political, social and economic systems (e.g. the fall of the semi-totalitarian regime in Slovakia or European Union accession for most Central European countries).

The validity of Mudde and Kopecky's concept is rooted in the study of the term "uncivil society" and the questioning of the Western European normative scheme. That is to say: can we truly learn more about (civil) society and the operation of political systems by limiting the study of civil society to only pro-democratic organizations bent on establishing liberal democracies? Are such studies legitimate, are they scientifically viable, and are they of any use if we exclude "uncivil" society from the term civil society?

The relevance of this approach is further supported by the observation that "uncivil" movements – perhaps as a result of EU accession, among other factors – are on the rise in many Eastern European countries. In Hungary there has been an astonishing strengthening of the nationalist extreme right wing "uncivil" sphere especially since the extreme right wing protests of September of 2006. According to some this tendency of increasing strength dates back to the conservative failure to win the elections of 2002. The scope of this article does not make it possible to examine the reasons for, characteristics of and consequences of this phenomenon. Instead I will concentrate on some research questions regarding the radical right wing civic movement, particularly in the Hungarian context. Consideration of these questions can help future research gain understanding of the structure, operation and conceptual development of civil society in the early 21st century.

## The characteristics of "uncivil society"

### *Organizational efficiency*

Extreme right wing groups – which previously were sporadic – have visibly improved their organizational structure. It is still a multi-dimensional system, but one which can now absorb a higher number and more heterogeneous groups. There is an increasing number of forums – which make it easier to move between various segments of the far right – available to young fans of extreme right musical subculture, older intellectuals carry anti-Semitic and ultranationalist culture, visitors to irredentist and anti-Semitic websites, football hooligans, politically active right wing radicals, and further the frustrated residents of economically and culturally underdeveloped regions (who are mobilized by the anti-Gypsy Hungarian Guard). Numerous new technological tools have made communication and open discourse easier, and serve as community-building methods that bring the members of these

diverse subgroups closer together. Thus, those who may get into fights or sing racist or anti-Semitic slogans at a Ferencváros football match are now likely to participate in political rallies, hence increasing the risk of such events turning violent.

The higher level of organization can be attributed to the mobilization of those who are dissatisfied with general politics and the economy, the “worse off you are, the better off we are” *Dafke*-strategy, and to multi-level communication among a growing number of efficiently operating and inclusive extreme right organizations (Hungarian Guard, Hungarian Self-Defence Movement, 64 Counties Movement, etc.).

### *Mobilization*

The study of the phenomenon of “uncivil society” is also important because, as expressed by Mudde and Kopecky, it has a higher capacity for mobilization than any of the “Western-styled” civic organizations professing European liberal democratic values. This has been shown to be true in Hungary several times in the recent past. At a demonstration against anti-Semitism in April 2008 there were almost as many anti-Semitic counter-demonstrators as there were people demonstrating for tolerance. In July of 2008 a Gay Pride parade was held in the capital. This event had been held annually for ten years, and until 2006 it was held without incident. In 2008 there were considerably fewer participants than in 2007, when street atrocities began. In a paradox way, the 2008 parade saw participants and their liberal civic supporters outnumbered by counter-demonstrating radicals and homophobes who physically attacked the parade members. The Gay Pride parade participants were supplemented by so-called Western, human rights, pro-democratic civic organization activists. Even so, the total number of participants was under five hundred.

Since the Fall of 2007 a paramilitary group comprised of extreme right volunteers, wearing uniforms of the style of World War II Hungarian Nazis has been (with high publicity) organizing provocative parades in towns with high Roma populations. Often the local Roma are organized by the local Minority Self-Government to counter-demonstrate, but Western-styled civic organization representatives are usually absent.

### *Ideological messages*

It may seem outdated for Mudde and Kopecky to see the roots of post-communist societies’ civic organizations in former dissident movements and regime changes. But even though there are more factors in play today (e.g. a number of international NGOs have been successful in establishing roots and adapting their activities to Hungarian circumstances, e.g. Amnesty International, Greenpeace, ATTAC), their approach still has relevance especially when considering ideological messages. The movements of the

extreme right should by all means be seen as grassroots, that is to say foreign organizations or persons at best minimally influence them. The ideology they represent is obviously an expression of principles born of Hungarian society. Mudde views revolutionary and protest emotions as well as anti-state and anti-elite views as the heritage of dissident movements. All these are present in “uncivil” organizations that are demanding that the Hungarian political elite return their “stolen revolution”.

A good example of this is the unrest of the Fall of 2006, in which radical right wing participants viewed themselves as the young revolutionary men of Budapest of 1956. They rose up against the political elite in power – who they saw as dictatorial. That is to say they stood up against those who stole the revolution from them, in the meantime coming into conflict with the state’s institutionalized means of violence, i.e., the police. The street violence turned into hand-to-hand combat with police forces.

The ideology of “uncivil” organization lies in the dangers and threats these groups feel they face. This is one of the reasons that in both Western and Eastern Europe national-ethnic traditions become valued in the face of globalization. “Strangers” and modernization are blamed for problems, increased competition, ensuing insecurity and frustration. Groups unable to keep up with rapid development look for scapegoats and profess isolation. They expect that old traditions and folk, national and ethnic essentialism will solve their problems, and they seek a return to traditional ties. The Hungarian far right is basically nationalist, irredentist and anti-Semitic, and operates based on historical grievances. It has, however, “globalized” by incorporating anti-Americanism, anti-capitalism, opposition to globalization and the EU, and has changed the repertoire of political thinking by adapting anti-Israeli ideas that make anti-Semitism more publicly acceptable. These latter principles are to be found in most all Western European “uncivil” movements and may represent a transition to or common ground with the world-views of other European radical movements.

#### *Upshots of the study of “uncivil” society*

Mudde stresses that non-violent uncivil organizations are legitimate, whatever their normative base, even if those diverge from the Western-style pro-democratic civil society concept. These movements make use of the opportunities provided by democracy and are practitioners of opinion voicing. At the same time Mudde is too accommodating or too naïve concerning post-socialist uncivil movements. The argument neglects that the aggression so criticized is more and more the goal of these radical organizations.

In any case the argument holds true in the view that the existence of radical protest movements can actually contribute to improving the system. The

movements allow several unsolved problems to come to the surface, and at the same time society is forced to try and react to the phenomenon. In the last two years in Hungary fundamental questions like the lack of trust in violence institutions (the police) and the transparency and efficiency of police and court procedures have come to the fore. However, the aggressive, anti-Semitic, mob-like protesters' actions (vandalism, arson, hate-mongering) have gone unpunished: the courts, which appear to lack confidence, have treated the small number of police detainees lightly. The Hungarian Guard's actions can turn attention to the plight of coexistence of Roma and non-Roma in backward regions, to the majority society's general rejection of the Roma, and to the Roma's general helplessness (especially in the face of violence directed against them). The topics of how to respond to hate speech and the reform of laws on freedom of association (which might end up restricting freedoms without weakening the far right) are recurring ones. Another important observation is the complete lack of trust in the Hungarian political elite, and the inherent dangers of this situation.

Last but not least, it has become clear that the kind of civil society that professes the values of liberal democracy, can stand up to extremists collectively and is pro-active in the Western normative sense is not only weak, but is almost non-existent.

## **Information society and civil society**

Finally, it is worth considering the question of "European civil society". For the European Union to move beyond being a constellation where members cooperate at times but generally compete against one another, or move beyond being a loose organization of nation states with divergent interests, we must consider the need for and viability of a European demos. Does the organization of civil society stop at national borders, or is it possible for a civil society organizations and movements established and growing across the Union to act? Or is this only possible on a global level (to find solutions to global issues, e.g. climate change)? Research has hardly begun to deal with these questions, and European and international research traditions have no easy answers to them.

The study of the conditions for the emergence of a European civil society reveals that the main obstacles are developmental. The traditional structure of the nation state, divergent economic interests, differences in economic and cultural development and global challenges are given. Traditions of isolationism as a defence mechanism and violent intolerant movements using anti-foreigner mobilization policies are factors that obstruct development. But linguistic pluralism and symbolic communication with an over-reliance on ethnic, national and religious traditions are also obstructive, and the possibility of communication is the most important catalyst for the (potential)

development of a European demos and the strengthening of a European civil society network. Despite the obstacles mentioned above, communication, the public discussion of common issues and the conditions for building common interest have changed considerably in the last few years.

The rapid development of new information and communication technologies (ICTs) in the past few decades have led to the posing new questions in the area of social development. The development of civil society in the late 20<sup>th</sup> and early 21<sup>st</sup> century is closely related to the spread of new communications technologies. New ICT tools have not only multiplied and eased opportunities for personal communication, but have made it possible for citizens concerned with public issues to voice their opinions, organize themselves in groups, and mobilize. Theoretical work on the information society brings up the question of whether new communication tools can reverse the trend toward passive consumerist behaviour. Several researchers (Habermas 1962, 1981; Meyrowitz 1986; Castells 1996, 1997; Keane 1995) have studied the characteristics of the public sphere as effected by electronic mass communication, touching on topics like the Habermasian “emptying”, private interest, the influence of advertisements, the growth of the entertainment function, “infotainment”, changes in concepts of privacy, voyeur publicity, tabloids and their growth, etc. This developmental period has been characterized by deepening tendencies caused by the vertical communicative nature of electronic mass media and deepening competition. Tendencies are thus such that mass communication tools have specialized into means of meeting the entertainment needs of various economically viable strata, neglecting their function as critical components of the public sphere able to debate public issues. This mass communication structure is such that the public can hardly participate actively in discourse on public issues, and its freedom of choice is limited to channel surfing or turning off the television set.

Several researchers expect that the spread of new information-communication technologies will bring a change or a reversal of the trend: new technologies can help the democratization of societies through offering active participation and interactivity (Castells 1996, 1997; Wellmann 2001; Lievrouw and Livingstone 2002). Theorists of information society not only expect radical changes in the structure of the economy, transformation in the structures of companies, change in workplaces and private life and the relationship between the two, but also expect the renewal of civic participation and the opportunity to have a say in public life. The new tools have led to growth and diversification in human communicative activism in terms of both strong and weak connections. But these tools, online presence, developing virtual communities and easily managed and transferable digital content can effectively increase two-way dialogue, civic responsibility and critical culture in society. These prognoses are possible through the assumption (behind hierarchical publics (Keane 1995) and the zones between

them) of (obstacle-) free movement of participants and issues between micro, mezzo and macro levels.

Many empirical studies deal with this issue and research whether civic activity grows noticeably through the spread of information technologies in given societies (Wellmann 2001; Parks 1996; Rheingold 1993; Putnam 1993, 2000, 2002; the Pew project, etc.), or whether increased on-line activity leads to a decrease in participation in traditional groups based on face-to-face contact. Various studies indicate an increase in civic activity while warning of the deepening of a digital divide that can result in wide groups in given societies – or entire regions of a globalizing world – being left behind.

The spread of new IC technologies in Central and Eastern Europe has been remarkably uneven. The spread of supplementary entertainment and private-communication tools has increased over the last few years, despite high entry and operational costs (mobile phone versus internet). Regarding the strengthening of civil society, the communication opportunities offered by tools that are always at hand have played a role. For example, during the 2002 parliamentary elections in Hungary, especially in the period between the two rounds of voting, a new, never before seen phenomenon appeared in the already fierce propaganda campaigns. Activists on the right and left not only made use of traditional political propaganda and advertising tools, but made full use of mobile phone (sms) and internet opportunities. Huge numbers of ironic counter-campaign texts, jokes, caricatures, limericks, political picture collages, etc. spread through the new communication channels.<sup>17</sup>

Political events, demonstrations, flashmobs, petitions, debate forums and blogs have all become significant fields of civic activism. New forums established through new IC technologies have become quite significant in Hungary given their role in mobilizing voters for heated activism, organizing street demonstrations and debating public issues. In this sense the public has a set of new forums and spheres that exist in parallel to traditional forums (Parliament, daily newspapers, etc.). Studies of civil society should pay more attention to these forums than they have in the past. New areas of a European public can come to be through the use of network, digital and mobile tools, and these new forums may be the cradles of the groups of a new European civil society. Though such European forums are at this point quite weak and/or difficult to recognize, their potential significance is undeniable. The participation of European citizens in public affairs, public debates, the management of global issues (green movements, etc.) will no doubt

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<sup>17</sup> The Open Society Foundation collected these for its urban folklore collection, and has been collecting similar materials ever since.

strengthen through these new forums, in turn strengthening European civil society.

A review of the development of Hungarian civil society shows that significant global movements could successfully establish national movements joined to wide international or global organizations: e.g., ATTAC, Greenpeace, etc. The organization of global-level actions (Porto Allegre, Seattle, etc.) is done with the help of new info-communication tools. The same can only be said to a lesser degree regarding networks between various levels and European movements of cooperation.

According to our observations the issues resulting in wider civic activity are those at the universal level that feed off demonstrations against global capitalism, or that try to solve the problems of global development. It must be added that such movements hardly exist at the EU level, and the existing ones are weak.

There are many reasons for the relative lack of Union level civil society movements: the problems of EU citizens tend to appear at the above-mentioned global level (environmentalism, sustainable development, etc.) or deal with laws and decision making at the national or nation-state level. EU regulations and *acquis* tend to affect EU citizens at the nation-state level, especially because laws must be ratified by national parliaments, meaning that this is the level where *acquis* become visible to citizens.

The citizens of EU member states rarely feel EU decision-making in a direct manner. This was the case for the EU constitution as well, not only because only very few states used referenda for ratification but because communication of the proposal's content (and consideration of the proposal's consequences) did not flow properly through available communication channels. Public discussion of the Constitution was often about externalities and about the communication of scandals. Citizens were left with the impression of a decision imposed from above, from the powers that be onto the people on a vertical path using an out-of-date mass communication scheme. The EU was not able to make use of new ICTs and to spark meaningful debate in hierarchical publics on the various aspects of the constitution.

A few questions that actually did garner a Europe-wide debate on aspects of the Constitution (e.g., the issue of Christian traditions) lacked appropriate Union-level forums in which communities and citizens could actively exchange their opinions. The problems themselves were inadequately framed and presented at the Union level. Most such questions were presented to the European public through specialized civic organizations or even lobby groups.

Compared to lobby groups, which have taken on increased significance in the EU's modus operandi in the semi-public and semi-transparent decision-making mechanisms in Brussels and Strasbourg, civil society's non-lucrative, voluntary and transparent organizations are weak and at a disadvantage. Given the weakness of the European public sphere, EU citizens do not have enough information about the operations of civic organizations in the EU.

The concept of the European public sphere is weak, or hardly exists. Forums for debates on European issues among the citizens of various member states do not exist. Theoretical literature on the role of the civic public sphere and its development and functions (Habermas) points to those forums and areas of communication where topics and issues affecting communities can be debated, where decision makers must legitimize their decisions with active debating citizens. But these forums either do not exist in the current structure of the European Union, or are fragmented for reasons that go beyond language differences.

Citizens of Central and Eastern Europe feel these gaps to a higher degree. Although the new members of the European Union are legally equal to the old member states, the citizens of the recently joined states intensely feel the East-West divide in their daily lives.

Research on the democratization of the European Union must pay greater attention to the examination of the relationship between a European public sphere and European civil society. It is important to trace the development and operation of public forums, the agenda setting of important European issues (Kelly et al. 2004), the development of opinion and value expression of various social groups, the operation and communication of cross-border organizations, and the process of forming a European identity.

## **Instead of conclusion**

Research on civil society proves that there is a great diversity in the conceptualizations and the uses of civil society, civic sphere, civic sector and the related categories. Not only everyday lay conceptualizations and political discourse differ in the handling of categories and meanings attached to relevant categories but scholarly usages are also divergent. This is not only the case because of divergent goals and insufficient collaboration among these spheres but also because the very field under scrutiny is affected by ongoing social changes. We found that the main underlying structure that has to be taken into account when researching civil society is the way the public/private opposition is conceptualized and treated in Europe, in various European countries but also in various fields of social activities. The public/private dichotomy did not always have the same effect on conceptualizations of social topics and domains but it has played an increasing role since the

emergence of a liberal, secularized society. But the contents and meanings, the delimiting borderlines between the two concepts have undergone modifications in the course of the centuries and they are still subject to new definitions and alterations as societies develop. It is quite natural that problems of various social domains affect the citizens' concern and contemporary societies moving towards deliberative democracy should be able to find satisfactory delimitations and means of participation for concerned citizens and groups. But in the meantime, it is also important that social control over this type of activities should be reinforced and more forums and more attainable legal networks are needed to permit citizens' participation and to channel their concern, efforts and energy.

Social sciences have to be able to treat this very divergent "grey zone" of the life world where private and public responsibilities, activities, ownership, funding and financing are interwoven in rather complicated structures. Problems arise in society's life world and while legal frames, institutions or the state are sometimes late in trying to propose solutions to these problems, affected citizens' activities and responsibility-taking are often seen to get activated. Citizens' attempts in problem-solving reach various forms and are channelled into various organizations but these are not always in good collaboration or even communication with each other or with established state or private organizations and institutions or other problems-solving instances. The fact that legal frames are in delay in handling the profusion of organizational forms and goals leave uncontrolled "holes" for "mask" organizations to set their feet into this very varied field and to attain hidden goals which may be successfully veiled behind publicly communicated and socially respectable goals. Such affairs then if they get denounced affect citizens' trust and willingness of participation. Social control over the grey zone and the various civil society organizations should be enhanced through more open fora in local, regional and European public spheres.

We also found that important differences can be detected among civil society conceptualizations and realizations among European member states. We found strong evidence while examining various European civic organizations and regions that historical and social experience of the citizens play an important role in their expectations from civil society and in their willingness of participation. Historical, political, economic and social experiences among the member states are highly different and their influence on people's attitudes towards the state and the institutions are decisive. It is well known from both quantitative and qualitative European research that the level of trust, solidarity, responsibility and concern are on very different levels among European member states and societies. It can be argued that the reinforcement of European-level civil organizations, increased communication among engaged and active citizens could enhance the development of a strong civil society even in the marooned countries. The

exchange of experiences, values and methods is all the more important that “uncivil society”, aggressive, extremist organizations have become more active and more visible in various European countries. They are present not only in Central and Eastern European countries where the system-change had negative influence on citizens’ social and economic status, feelings of trust and security, solidarity while outdated traditions still sustain lack of autonomy, populism and paternalism. Similar trends of citizens’ unrest and aggressive social attitudes can be observed in some of the well established Western democracies, as well. These events testify citizens’ growing malaise in a world of globalization and growing crisis and inequality. Solidarity in one’s own society is weak and it is even more fragile among European member states. A well developed, strong European public sphere where experiences can be exchanged, new topics debated and problems discussed could rapidly increase the level of engagement in civil organizations.

These problems, as we tried to argue so far, are in direct relationship with the European public sphere and its feeble implementation. Not only such a public sphere could directly help civil organizations to find each other and discuss their problems and activities, it could also facilitate the communication among civil society and the EU, the member state(s) and their institutions but also it would increase the visibility of civic action and would thus radically strengthen the European citizens’ concern, feelings of belonging and responsibility. It would certainly approach citizens to the European Union and to deliberative democracy.

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# Chapter 8

## Conclusion

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The report started from the assumption that the European Union would trigger off a new kind of dynamics for reconstituting democracy from below. Such processes take place, above all, in relation to social movement mobilisation and civil society activism across national borders. The European political arena was found to contribute to further increasing the level of inclusion and participation of civil society. Such effects of Europeanisation become particularly salient in Central and Eastern European accession states. As shown by Rakusanova Guasti (Chapter 2) EU-accession offered a strong opportunity for local civil society to enter partnerships with regional and national government but was also experienced as a threat by smaller grassroots level organisations, which lacked the administrative capacities to ask for European funding.

In its ideal form, European governance in different sectors would be realised in partnership with civil society. However, as stressed by Trenz in Chapter 3, such evolving forms of partnership governance were also linked to new inequalities and misrepresentations that become more acute in a multi-level system of interest aggregation. Also Della Porta and Caiani (2004: 285) conclude from their survey on public claims-making that “processes of Europeanisation strengthen those who are already nationally strong while, in fact, marginalizing the weak even more”. By focusing on civil society in relation to political representation, Trenz proposes a new research agenda that will allow to analyze more systematically the necessary trade offs between participatory and representative governance in the EU. It is then emphasized that European civil society is itself a central component of complex order of representative democracy that is evolving in the EU.

This agenda of re-thinking political representation (Mansbridge 2003) for linking civil society organisations and individuals in the multilevel polity of the EU is also taken up by Liebert (Chapter 4). To the extent that equal opportunity, equal treatment and non-discrimination have been championed as key principles of “procedural justice” aimed at redefining “social solidarity”, social citizenship, individual and collective welfare in Europe, new social constituencies emerge that are not fully represented by organised civil society in the Member States and claim for fair material redistribution, cultural recognition or political representation at the EU level. In this sense, civil society is found to play a key role in the monitoring of gender equality policies in the member states as well as in the promotion of new transnational forms of solidarity.

Finally, the report seeks for conceptual clarification with regard to the heterogeneous terminology that is used for the categorization of civil society actors in the different member states. Serdyska (Chapter 5) opens a comparative legal perspective that helps to classify different practices of demarcating the non-profit sector in each particular member state. In providing such an overview we hope to be able to provide an important input to European decision-makers and their commitment to the development of an over-arching policy on the European level. Last but not least, our conceptual overview will hopefully contribute to the development of shared understanding across member states as to what the concept of civil society actually means, and what it might embrace.

The relationship of European multi-level civil society and of the European multi-level system of governance remains ambivalent. Instead of a co-evolutionary development towards a more integrated polity, we identified a couple of structural constraints for the strengthening of civil society organizations and their wider involvement in EU affairs. The steering of EU-society relations from above with the aim to develop new partnership arrangements has not always brought about the desired effects (Kohler-Koch 2007). Unintended consequences in terms of grassroots exclusion, ruptures of representative chains or the alienation of wider publics point to the insufficiencies of intermediation between institutional actors, organised civil society and the so-called “ordinary people” of Europe. In many respects, the European multi-level civil society as a channel for the mobilisation of democracy from below remains a normative desiderate, but it is also increasingly perceived as a functional requirement for the efficiency and legitimacy of new governance arrangements and as a self-legitimatory discursive representation that guides the expectations of EU-institutions, organised actors and their different constituencies towards a more integrated polity.

On the basis of these ambivalent findings on civil society's role and performance with regard to the reconstitution of democracy in Europe, the mediating structures of the emerging public spheres in Europe need to be further analyzed. This regards, above all, the tracing back of possible feedbacks from broad societal debates and the role of organised as well as unorganised (spontaneous) civil society therein. For understanding preference formation and the structuring of pro-European and anti-European attitudes it is further essential to include "uncivil society" in our research designs. In this sense, the future research agenda on European civil society needs to address the pressing issue of Euroscepticism and compare the performance of Eurosceptic groups, which, as already shown by Rakusanova Guasti in Chapter 2 are becoming a central player in building political knowledge and mobilizing citizens on European issues.

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# Appendix

RECON WP 5 Kick-off – International workshop  
**Reconstituting democracy from below**  
**New approaches to Civil Society and the Public Sphere**

*Hanse Wissenschaftskolleg Delmenhorst, 17-19 May 2007*

The workshop brought 40 Scholars to Delmenhorst, about half of them junior researchers, for two and a half days. Keynote speaker was Prof. Sidney Tarrow from Cornell University, Ithaca, USA. The workshop consisted of four panels.

Panel I Reconstituting democracy from below  
European experiences

The aim of this panel was to identify the mechanisms that translate formal democratic principles and procedures into citizens' practices and from there into processes of transnational institutionalisation and constitutionalisation. The changing roles of *civil society* in relation to the *public sphere* are conceptualised as the social and communicative infrastructure of an unfolding post- and transnational European democracy. Post-Laeken constitutionalisation in the enlarged Europe is conceptualised as a more encompassing political opportunity structure for social inclusion and political participation. Different scenarios for reconstituting democracy are explored, depending on the forms of organised civil society's engagement with the public sphere in the framework of constitutional debates during the ratification, crisis and the reflection period.

## Panel II Constituting a European public sphere Innovative approaches to media, communication and discourse analysis

This panel focused on media publics, asking who frames public opinion and attitudes, how, and for what reasons:

- It presented methodologies for analysing political discourses and how they can be applied to the EU-constitutional process, ratification failures, the reflection period and the re-launching of constituent politics;
- It explored links between media framing and the formation of citizens' preferences, as expressed in referendum votes and public opinion surveys;
- It discussed specificities of how popular attitudes are shaped by different sectoral contexts and social differences, namely by gender, social class, and cultures of security;
- It assessed the role of EU sectoral policy studies for understanding the scope for and limitations of institutional designs of public relations and pro-active public communication strategies.

## Panel III Civil society and democracy in Europe Theoretical frameworks and empirical approaches

This panel aimed at analysing the conditions, forms and consequences of how civil society supports the reconstitution of Europe. The guiding question was whether democratic practices are conducive to what kind of European polity: Is civil society constrained to the preservation or reconstitution of national democracies, do civil society organisations take part in the construction of a federal polity through the emergence of representative structures and multi-level public spheres, or do they promote a novel, postnational and deliberative democracy embedded in global civil society and world discourses of justification? Adopting a cross-national and cross-sectoral comparative perspective, the contributions to this panel explored the conditions and dynamics of *democratisation from below*:

- Theoretical conceptions and frameworks for analysing civil society and citizenship;
- Empirical approaches for exploring the citizens' support for and resistance to European governance.
- Comparisons of particular sectoral publics (public intellectuals; religious communities; youth; ethnic minorities; gender based groups).

## Panel IV Quantitative-qualitative methodology of media discourse analysis

A proper understanding of the mechanisms and power of the national media in moulding citizens' preferences and forming identities in European constitution-making is essential for evaluating the prospects of postnational democracy 'from below'. This research objective goes well beyond existing communication studies and survey data analyses. We combine these in the framework of transnational comparative research of political communication and media publics:

- The theoretical framework of RECON, and the methodology for transnational media discourse analysis;
- Media political impact assessment, based on methodologies for public discourse, media and communication research (Atlas.ti-software-based instruments);
- Cross-national databanks for attitudinal research that are relevant for evaluating the empirical legitimation of the EU constitutional project in light of alternative models of democracy, analyzing linkages between media frames and citizens' preferences, with the aim to identify the need for follow up research.
- Overcoming the fragmented state of the art and developing synergies between subfields of comparative behavioural, attitudinal and communication research: European elections and referendums, European public opinion, European political communication and media publics in Europe.

## Programme

Thursday 17 May 2007

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- 13:00 Welcome and introduction  
*Wolfgang Stenzel* (HWK)  
*Ulrike Liebert* (CEuS) and *Hans-Jörg Trenz* (ARENA)
- 13:15 **Keynote speech: 'Polanyi in Brussels: Why a European Civil Society is Possible - And the Strange Way it May Happen'**  
*Prof. Sidney Tarrow* (Cornell University/Ithaca)
- 14:00 Commentary: *Christopher Lord* (Reading)
- 14:10 General discussion
- Panel I Reconstituting democracy from below: European experiences  
*Chair: Christopher Lord, Reading*
- 14:30 *Stijn Smismans* (Trento)  
 'Reconstituting democracy through new modes of governance? Towards more active European citizenship, or the end of citizenship?'
- 14:50 *Hans-Jörg Trenz* (ESF, Oslo, Berlin)  
 'The imaginary of a European civil society'
- 15:10 *Thorsten Hüller* (Mannheim)  
 'Democratizing from above? Assessing the European Commission's strategy of civil society involvement'
- 15:30 Commentary: *Florian Rödl* (Bremen)
- 15:40 Discussion
- 16:30 *Ulrike Liebert* (CEuS, Bremen)  
 'The future of democracy in Europe in the light of constituent practices'
- 17:00 *Hagen Schulz-Forberg* (Mannheim)  
 'Democracy without politics? On the European crisis of legitimacy'
- 17:30 Commentary: *Florian Rödl* (Bremen)
- 17:40 Discussion

Friday 18 May 2007

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Panel II Constituting a European public sphere: Innovative approaches to media, communication and discourse analysis

*Chair: Ulrike Liebert, Bremen*

09:00 *Claes de Vreese* (Amsterdam)

'Framing Europe Revisited: How news frames affect citizen understanding of and support for European integration'

09:30 *Monika Mokre* (Wien)

'Media discourses on the European Constitution: Results of a research project on media coverage of the ratification process'

10:00 *Hartmut Wessler* (Jacobs University Bremen, Sfb 597) 'Moving towards explanation: Determinants and mechanisms of the Europeanization of political media discourse'

10:30 Commentary: *Cathleen Kantner* (EUI/FU Berlin)

10:40 Discussion

11:30 *Ann Zimmermann* (Karlsruhe)

'Europeanisation and the potentials of online public spheres'

11:50 *Christoph Meyer* (King's College, London)

'Europeanisation of public spheres and mediatisation of European politics: Empirical and conceptual observations'

12:10 *Alexander Gattig* (CEuS, Bremen)

'Europeanisation and transnationalisation of constitutional debates: quantitative comparative media analyses'

12:30 Commentary: *Cathleen Kantner* (EUI/FU Berlin)

12:40 Discussion

Panel III Civil society and democracy in Europe: Theoretical approaches and empirical methodologies

*Chair: Hans-Jörg Trenz, Oslo*

14:30 *Maria Heller* (ELTE Budapest)

'Discourses about Enlargement and the Representation of the EU'

14:50 *Galina Michaleva* (RGGU, Moskau)

'Civil Society, Trust and Democratization in Russia'

15:10 *Petra Rakusanova* (ConstEPS/UniHB & ASCR, Prague)

'Civil society in Central Eastern Europe'

15:30 Discussion

16:30 *Jutta Joachim and Birgit Locher*

'International organizations and civil society: the role of NGOs in the UN and the EU'

- 16:50 *Emanuela Bozzini* (CIVGOV, Trento)  
‘Organized civil society and European governance: Findings and contributions to the state of the art’
- 17:10 *Asimina Michailidou* (Bristol)  
‘Emergent Partisanship? Political Claims-making by Parties over Europe’
- 17:30 Discussion

Saturday 19 May 2007

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- Panel IV Quantitative-qualitative methodology of media discourse analysis – Research training unit for national media analysts  
*Chair: Alexander Gattig, Bremen*
- 09:00 Media discourse analysis: research experiences  
(1) *ConstEPS research group (UniHB)*  
Tatjana Evas (Estonia/ Latvia), Alexandra Wyrozumska (Poland), Petra Rakusanova (Czech Republic), Kathrin Packham (UK), Sönke Maatsch (France)  
(2) Brit Helle Aarskog (Bergen)  
(3) Jacek Kolodziej (Krakow)  
(4) *Participants of RECON Media Summer School*  
*Presentation of PhD projects related to media analysis*
- 11:00 2007 RECON Media Summer School preparation unit  
(1) *Regina Vettters* (Berlin): Constructing National Media Samples: instructions, schedule, problems  
2) *Sönke Maatsch* (CEuS, Bremen): Getting familiar with Atlas.ti software

Wrap up and programme discussion for the RECON Summer School in Bremen (Trenz, Liebert, Vettters, Maatsch, Gattig).

# ARENA Reports

- 08/6: Ulrike Liebert and Hans-Jörg Trenz (eds): “Reconstituting Democracy from Below: New Approaches to Civil Society in the New Europe” (RECON Report No 5)
- 08/5: Christian Joerges and Poul F. Kjaer (eds): “Transnational Standards of Social Protection: Contrasting European and International Governance” (RECON Report No 4)
- 08/4: Agustín José Menéndez and John Erik Fossum (eds): “The Post-Sovereign Constellation: Law and Democracy in Neil D. MacCormick’s Legal and Political Theory”
- 08/3: Andreas Heskestad: “Fra nasjonale enklaver til multinasjonale enheter? En kartlegging av Europakommisjonens kabinetter 1995–2007”
- 08/2: Nina Fredrikke Meyer Stensholt: “Between Norms and Interests – EU Democracy Promotion in the Mediterranean Neighbourhood”
- 08/1: Martine Matre Bonatjee: “Primus inter pares? The Parliamentarisation and Presidentialisation of the European Commission: between European integration and organisational dynamics
- 07/8: Erik O. Eriksen (ed.): “How to Reconstitute Democracy in Europe? Proceedings from the RECON Opening Conference” (RECON Report No 3)
- 07/7: Joakim Parslow: “Turkish Political Parties and the European Union: How Turkish MPs Frame the Issue of Adapting to EU Conditionality”
- 07/6: Jonathan P. Aus: “Crime and Punishment in the EU: The Case of Human Smuggling”
- 07/5: Marit Eldholm: “Mot en europeisk grunnlov? En diskursteoretisk analyse av Konventet for EUs fremtid”
- 07/4: Guri Rosén: “Developing a European public sphere – a conceptual discussion”
- 07/3: Hans-Jörg Trenz, Maximilian Conrad and Guri Rosén: “The Interpretative Moment of European Journalism – The impact of media voice in the ratification process” (RECON Report No 2)
- 07/2: John Erik Fossum, Philip Schlesinger and Geir Ove Kværk (eds): “Public Sphere and Civil Society? Transformations of the European Union”

- 07/1: Agustín José Menéndez (ed.): “Altiero Spinelli – From Ventotene to the European Constitution” (RECON Report No 2)
- 06/2: Even Westerveld: “Sverige eller svenskens EU? ” – hvordan ulike oppfatninger av EU kan påvirke valget av prosedyre for ratifisering av EU-grunnloven.
- 06/1 Erik Oddvar Eriksen, Christian Joerges and Florian Rödl (eds): “Law and Democracy in the Post-National Union”.
- 05/9: Camilla Myhre: “Nettverksadministrative systemer i EU? En studie av det norske Post- og teletilsynet”
- 05/8: John Erik Fossum (ed.): “Constitutional processes in Canada and the EU compared”
- 05/7: Espen D.H. Olsen: “Mellom rettigheter, kultur og *cosmopolis*: En teoretisk og empirisk analyse av europeisering og statsborgerskap”
- 05/6: Marianne Takle: “From Ethnos to Demos? Changes in German Policy on Immigration”
- 05/5: Ingvild Jenssen: “The EU’s minority policy and Europe’s Roma: Cultural differentiation or cosmopolitan incorporation?”
- 05/4: Grete Berggård Feragen: “Europeisering av norsk gasspolitikk”
- 05/3: Erik O. Eriksen, John Erik Fossum and Agustín José Menéndez: “The European Constitution: the Rubicon Crossed?”
- 05/2: Helene Sjørusen (ed.): “Enlargement in perspective”
- 05/1: Gitte Hyttel Nørgård: “Mod et netværk-administrativt system i EU? Et studie af den danske IT og Telestyrelse”
- 04/9: Agustín José Menéndez and Erik Oddvar Eriksen (eds): “Fundamental Rights through Discourse. On Robert Alexy’s Legal Theory – European and Theoretical Perspectives”
- 04/8: Geir-Martin Blæss: “EU og Habermas’ diskursteoretiske demokratimodell. Et prosedyremessig rammeverk for et postnasjonalt demokrati?”
- 04/7: Veronika Witnes Karlson: “EU – en normativ internasjonal aktør?. En analyse av Russland i EUs utenrikspolitikk”
- 04/6: Frode Veggeland: “Internasjonalisering og styring av matpolitikk. Institusjoners betydning for staters atferd og politikk”
- 04/5: Carlos Closa and John Erik Fossum (eds.) “Deliberative Constitutional Politics in the EU”
- 04/4: Jan Kåre Melsæther: “Valgt likegyldighet. Organiseringen av europapolitisk informasjon i Stortinget og Riksdagen”
- 04/3: Karen Pinholt: “Influence through arguments? A study of the Commission’s influence on the climate change negotiations”

- 04/2: Børge Romsloe: "Mellom makt og argumentasjon: En analyse av småstater i EUs felles utenriks- og sikkerhetspolitikk"
- 04/1: Karen Fløistad: "Fundamental Rights and the EEA Agreement"
- 03/7: Øivind Støle: "Europeanization in the Context of Enlargement. A Study of Hungarian Environmental Policy"
- 03/6: Geir Ove Kværk: "Legitimering gjennom rettigheter? En studie av arbeidet med EUs Charter om grunnleggende rettigheter, og sivilsamfunnets bidrag til dette"
- 03/5: Martin Hauge Torbergson: "Executive Dominance in a Multi-level Polity. Europeanisation and Parliamentary Involvement in the Spanish Autonomous Communities"
- 03/4: Caroline Rugeldal: "Identitetsbygging i EU - En studie av EUs symbolstrategi"
- 03/3: Elisabeth Hyllseth: "Lovlig skatt eller ulovlig statsstøtte? En studie av norske myndigheters respons i konflikten med ESA om den norske ordningen med differensiert arbeidsgiveravgift"
- 03/2: Erik O. Eriksen, Christian Joerges and Jürgen Neyer (eds.): "European Governance, Deliberation and the Quest for Democratisation"
- 03/01: Maria Hasselgård: "Playing games with values of higher importance? Dealing with 'risk issues' in the Standing Committee on Foodstuffs".
- 02/11: Tommy Fredriksen: "Fra marked til plan. Europeisering av norsk lakseeksport".
- 02/10: Thomas A. Malla: "Nasjonalstat og region i den nye økonomien. En studie av hvordan betingelsene for politisk regulering av næringslivet i EU endres gjennom utbredelsen av markeder for elektronisk handel".
- 02/9: Anne Elizabeth Stie: "Preconditions for Democracy: National Identity Versus Constitutional Patriotism. A Theoretical Analysis of the German Federal Constitutional Court's Maastricht Judgement".
- 02/8: Marianne Riddervold: "Interesser, verdier eller rettigheter? En analyse av danske posisjoner i EUs utvidelsesprosess".
- 02/7: Helene Sjørusen (ed.): "Enlargement and the Finality of the EU"
- 02/6: Various contributors: "Democracy and European Governance: Towards a New Political Order in Europe?" Proceedings from the ARENA European Conference 2002
- 02/5: Erik Oddvar Eriksen, John Erik Fossum and Agustín José Menéndez (eds.): "Constitution Making and Democratic Legitimacy"
- 02/4: Heidi Moen: "Fører alle veger til Brussel? En studie av Vegdirektoratets tilpasning til EU og EØS-avtalen"

- 02/3: Trygve Ugland: "Policy Re-Categorization and Integration – Europeanisation of Nordic Alcohol Control Policies"
- 02/2: Julie Wedege: "Sosial rettferdighet og normativ legitimitet – En analyse av potensielle sosialpolitiske utviklinger i EU"
- 02/1: Øyvind Mehus Sjørnsen: "To motpoler konvergerer – En analyse av britisk og tysk tilnærming til politi- og strafferettssamarbeidet i EU"
- 01/8: Erik Oddvar Eriksen, John Erik Fossum and Agustín José Ménéndez (eds): "The Chartering of Europe – The Charter of Fundamental Rights in Context"
- 01/7: Jarle Trondal: "Administrative Integration Across Levels of Governance – Integration through Participation in EU-Committees"
- 01/6: Marthe Indset: "Subsidiaritetsprinsippet i EU etter IGC-96"
- 01/5: Liv Kjølseth: "Konflikt eller samarbeid? En analyse av medlemsstatenes adferd under Agenda 2000-forhandlingene og det institusjonelle forhandlingssystemet i EU"
- 01/4: Various Contributors: "Shaping the Union? Nordic Presidencies in the EU" Proceedings from the ARENA Annual conference 2000.
- 01/3: Svein S. Andersen (ed): "Institutional Approaches to the European Union – proceedings from an ARENA workshop"
- 01/2: Maria Martens: "Europeisering gjennom overvåkning – En studie av ESAs opprettelse og virkemåte"
- 01/1: Inger Johanne Sand: "Changes in the functions and the Relations of Law and Politics-Europeanization, Globalization and the Role of the New Technologies"
- 00/8: Ulf Sverdrup: "Ambiguity and Adaptation-Europeanization of Administrative Institutions as Loosely Coupled Processes"
- 00/7: Helene Sjørnsen (ed): "Redefining Security? Redefining the Role of The European Union in European Security Structures", Proceedings from an ARENA Workshop
- 00/6: Christian Henrik Bergh: "Implementering av EU-direktiv i Norge, Postdirektivet – Nasjonal tilpasning i forkant"
- 00/5: Morten Dybesland: "Til felles nytte? Interesser og verdier bak nordisk utenriks- og sikkerhetspolitisk samarbeid"
- 00/4: Andreas Holm Bakke: "National Welfare and European Capitalism? The Attempt to Create a Common Market for Supplementary Pension"
- 00/3: Ingeborg Kjærnli: "Ikke bare makt og nasjonale interesser? En analyse av EUs utvidelse østover i et integrasjonsteoretisk perspektiv"

- 00/2: Jon Helge Andersen: "Fra atlantisk sikkerhet til europeisk usikkerhet? En studie av utenriksdepartementets og forsvarsdepartementets responser på endrede sikkerhetspolitiske rammebetingelser"
- 00/1: Various contributors: "Nordic Contrasts. Norway, Finland and the EU." Proceedings from the ARENA Annual Conference 1999
- 99/5: Elin Kristine Karlsson: "Babel i Brussel og Oslo? Flerspråkligheten i EU og respons i norske institusjoner"
- 99/4: Frøydis Eldevik: "Liberalisering av gassmarkedet i Europa. EUs gassdirektiv av 1998"
- 99/3: Theodor Barth & Magnus Enzell (eds.): "Collective Identity and Citizenship in Europe. Fields of Access and Exclusion"
- 99/2: Simen Bræin: "Europeisering som rettsliggjøring. EØS-avtalen, EU og det norske alkoholmonopolet"
- 99/1: Various contributors: "Between Autonomy and Influence - Small states and the European Union", Proceedings from ARENA's Annual Conference 1998
- 98/2: Heidi Olsen: "'Europeisering' av Universitetet: Fullt og helt - eller stykkevis og delt?"
- 98/1: Kjetil Moen: "Fra monopol til konkurranse. EØS, norsk legemiddelpolitikk og Norsk Medisinaldepot"
- 97/5: Jon Erik Dølvik: "Redrawing Boundaries of Solidarity? ETUC, Social Dialogue and the Europeanisation of Trade Unions in the 1990s"
- 97/4: Stig Eliassen & Pål Meland: "Nasjonal identitet i statsløse nasjoner. En sammenliknende studie av Skottland og Wales"
- 97/3: Frode Veggeland: "Internasjonalisering og Nasjonale Reformforsøk. EU, GATT og endringsprosessene i Landbruksdepartementet og jordbrukssektoren"
- 97/2: Vebjørn Dysvik: "The Road to Maastricht. Dynamic and Formative Forces in the EMU Process"
- 97/1: Jon Erik Dølvik: "ETUC and Europeanisation of Trade Unionism in the 1990's"
- 96/2: Tom Christensen: "Adapting to Processes of Europeanisation - A Study of the Norwegian Ministry of Foreign Affairs"
- 96/1: Various contributors: "Enlargement to the East". Proceedings from 'European Thresholds' - ARENA Conference Series

The EU is considered the world's most advanced regional multilevel polity. It has effective governance capacities in a broad range of public policy fields but does not amount to a supranational state. Over the past two decades, civil society has played a pivotal role in Europe, from the demise of Communist rule and the democratisation and economic transformation of East Central Europe, and the dissolution of the iron curtain that divided Europe for over four decades, to the reunification of Europe and the enlargement of the European Union.

This report brings together contributions aimed at mapping the current state of the art in civil society research empirically and theoretically. The present compilation reflects 'work in progress', and is an effort to bring together normative democratic theory, legal, political and sociological analysis as well as case studies and comparative analyses. It seeks to stimulate conversations among different accounts of what role civil society play in the enlarged EU, a dialogue that is important for understanding the intellectual, disciplinary, cultural and social boundaries that continue to shape - and fragment - contemporary Europe. The editors argue that in the enlarged EU, the normative foundations and political functions of civil society have undergone profound changes generating new problems and questions, but have also stimulated search for conceptual clarifications and theoretical innovations.

★ ★ ★ ★ ★

Reconstituting Democracy in Europe (RECON) is an Integrated Project supported by the European Commission's Sixth Framework Programme for Research. The project has 21 partners in 13 European countries and New Zealand and is coordinated by ARENA – Centre for European Studies at the University of Oslo. RECON runs for five years (2007-2011) and focuses on the conditions for democracy in the multilevel constellation that makes up the EU.

