

Civil Society

Liberty has never come from the government. Liberty has always come from the subjects of it.

Woodrow Wilson

Civil society¹ has never been in the public eye so much as it is today. The political and economic upheavals following the end of the Cold War have profoundly affected the distribution of power. Previously, states had claimed a monopoly on power under the guise of state sovereignty, today that authority is in decline. Now, power is increasingly being claimed or contested by globalised business and by civil society. Around the world, “soft law” in the form of guidelines and recommendations are emerging as a wide-ranging body of global practice, not yet with the force of international law, but which states ignore only at their own peril.

At the national level, free trade has eroded the power of governments to influence the activities of business, who in many industries have the option of taking their business to a more receptive country. Moreover, civil society is frequently challenging the governments’ legitimacy to speak on behalf of the people, and is frequently being used to channel development aid in ways that by-pass their officials. Today, NGOs deliver more official development assistance than the entire UN system². In many countries they are delivering essential community services that faltering governments can no longer manage.³ On the other hand, governments have now only the appearance of free choice when it comes to setting economic rules. Increasingly, these rules are being set by the markets, enforced with their own power.⁴

At the international level, questions of pollution, of international organised crime, and concentrations of power in the media have rendered borders almost irrelevant. Indeed, when 122 countries agreed to stop using and selling landmines in December 1997, the success was attributed not to the work of government officials, but to the determination of the 1,000 or so non-governmental organisations in 60 countries. At the signing ceremony in Ottawa, Jody Williams, the campaign’s co-ordinator, remarked that NGOs had come into their own on the international stage. “Together,” she said, “we are a superpower.”⁵

But there are limits inherent in the nature of the power of transnational civil society. It works indirectly, by persuading governments or corporate leaders or citizens or consumers. The networks remain powerful only so long as they retain their credibility.

And sometimes civil society gets it very wrong indeed. Humanitarian relief organisations found their credibility badly damaged in 1996 by what turned out to be their exaggerated reports of suffering and death among refugees from Rwanda. To the extent that transnational

1 Includes those organisations, structures and net works which are separate from the legislative, administrative and Judicial power of the state, but interact with it in a variety of ways.
2 This excludes loans from the World Bank and IMF.
3 The classic discussion is by Jessica T. Mathews in “Power shift”,

Foreign Affairs, January/February 1997. Pp.50–66 from which this chapter draws in part.

4 Mathews, *supra*; p.57.

5 Quoted in Michael Shaw Bond, *Special Report: The Backlash Against NGOs*, Prospect, April 2000, pp.52–55..

civil society networks provide inaccurate or misleading information (whether deliberately or inadvertently), they undermine their effectiveness. “When transnational civil society forgets that its power is soft, not hard, it not only fails to achieve its immediate objectives but also undermines the moral authority that is its real claim to influence.”⁶

Thanks to the Internet, the importance of proximity and prohibitive costs of communications have been virtually eliminated. International networks can be formed swiftly and vast amounts of information exchanged at little or no expense – “dial locally, act internationally” as Jessica Mathews puts it.⁷ Global civil society’s response rate has risen dramatically, especially by human rights groups who within hours of the occurrence of an event galvanise responses from around the world. The growth of international movements has been such that in some areas they have come to dwarf their counterparts within the UN system. Amnesty International, for example, is now better resourced than is the human rights arm of the UN.⁸

Too big for their boots?

In a global world without global government, NGOs have stepped in to fill the gap. But there is now a backlash against their unaccountable power. Have they become too big for their boots?

- Should we worry about this shift?
- Is it safe to grant a mandate to change the world to unelected organisations which operate under the banner of democracy, but which answer only to their directors, fund-holders or members and who are far less transparent than most political parties? The same question is asked by NGOs of multinational corporations. But are the champions of the oppressed in danger of mirroring some of the sins of the oppressor?
- More importantly, how responsible have NGOs been in wielding their newly-won power?

Michael Shaw Bond, Special Report: The Backlash Against NGOs, Prospect, April 2000

At the same time, the trend to decentralise within the sovereign state has rendered central governments still weaker. With decisions being taken at the lowest appropriate level (“subsidiarity” in European Union parlance) a whole range of traditional government functions is increasingly being discharged by regional and local governments, from education and health through to town planning and transportation.

As the authority of governments has been eroded and as there was a perceived shift of power in the direction of global business, so, too, did civil society emerge as a much more potent actor than hitherto. To some, at least, it would appear that civil society is filling at least a part of the power vacuum left as governments have retreated. As representing “the people in the market-place”, civil society is in a position to take a stand against the business practices their various movements consider unacceptable.

The motives behind the activities of various civil society groups, too, can be questionable. Particularly in the aftermath of the street riots in Seattle in 1999 that derailed a meeting of the World Trade Organization, the aims of the various elements represented in the riots illustrate the contradictory nature of civil society: some were protesting to save jobs in their own, developed countries; others were protesting at the exploitation of workers in the developing world.

The scenario is a fascinating one, and it is, as yet, far from being played out.

But, who, and what, is civil society?

For the purposes of this discussion, civil society is referred to as the sum total of those organisations and networks which lie outside the formal state apparatus. It includes the whole gamut of organisations that are traditionally labelled “interest groups” – not just NGOs, but also labour unions, professional associations, chambers of commerce, religions, student groups, cultural societies, sports clubs and informal community groups. As such, it embraces organi-

6 Dr. Ann Florini (Resident Associate, Transparency and Civil Society Project, Carnegie Endowment for International Peace) *Transnational Civil Society Networks*, Managing Global Issues Seminar Series, 14 March 2000.

7 Transparency International itself is an example of this phenom-

enon. Fully operational only from 1994, within six years it had established national chapters and chapters in formation in nearly 100 countries, and in every part of the world. Such growth would have been unimaginable in the pre-Internet era.

8 Bond, *supra*; p.53.

sations whose objectives are diametrically opposed to each other, such as hunting groups and groups of animal rights activists.⁹

“Civil society” can be traced back to the works of Cicero and was developed by political theorists over the past 200 years as a domain parallel to, but separate from, the state: a realm in which citizens associate according to their own interests and wishes.¹⁰ It is a much broader concept than simply non-governmental organisations (important though these undoubtedly are). Moreover, the causes pursued by elements within civil society are not necessarily noble and in the interests of the public good. If one limits civil society to those actors who pursue high-minded aims, the concept becomes “a theological notion, not a political or sociological one”.¹¹ Many civil society groups are single-minded in the pursuit of their particular cause and have no interest in balancing their aspirations within the wider public good.¹²

A long line of political commentators have commented on the impact of the civil society participation, on the quality of governance. Alexis De Toqueville credited the strength of democracy in the US to the proliferation and vigour of “a thousand different types” of associations of citizens pursuing a common purpose. A recent study of the relationship between civic participation and governance found that in those civic communities marked by active participation in public affairs, citizens “expect their government to follow high standards, and they willingly obey the rules that they have imposed on themselves.”¹³

Enhancing the role of civil society in demanding accountability from government “involves the most basic questions about power, transparency, participation and democracy”.¹⁴ The top-down and closed structure of state-controlled and autocratic governments in many countries has, in the past, stunted the growth of civil society and permitted public officials to operate in an atmosphere devoid of public accountability or transparency.

The failure of communism and of military dictatorships in Latin America, Asia and Africa to provide effective governance, protect civil liberties and facilitate social and economic development has begun to transform the political and economic landscapes in countries around the world. In the public sector, constitutional governments and multi-party democracies have emerged with the expectation that democracy and deregulated economies will eventually yield various solutions to age-old problems.

Among these emerging democracies however, even those officials genuinely seeking solutions have not always applied the basic principles of democracy. Applying these principles, would, by definition, call for a robust public policy debate, a responsiveness to the demands of citizens, and a receptiveness to the inputs of civil society as solutions are hammered out. Instead, the state has been reluctant to include civil society as a partner. At times, some governments

Civil society does not speak with one voice! It can also be susceptible to misuse and manipulation, as witness the following:

“To counter Transparency International, French NGO confers distinguished statesman award on President Biya....”

In a move widely considered as intended to attenuate the humiliation suffered by the Biya regime after Transparency International declared Cameroon the most corrupt nation, a Paris-based NGO has conferred on President Biya this year’s most distinguished statesman award.

Janette Brutelle-Duba, president founder of the NGO *Centre d’Etudes Politique et Sociale (CEPS)* hurried to Yaounde last Tuesday to inform President Biya that he had won the award which would be officially conferred on him on a date to be announced....

Duba made the announcement to the press but refused to declare the criteria used by her NGO to chose Biya for the statesmanship award. She, however, said that the CEPS would explain its choice on the day of the award. The date is yet to be fixed.

*The Herald (Cotonou, Benin),
October 5/6, 1998.*

9 Thomas Carothers in *Civil Society in Foreign Policy*, Winter 1999–2000, p. 18.

10 Ibid. The article addresses such questions as Has civil society gone global? Does the rise of civil society mean the decline of the State? Does “real civil society” not take money from the state? Is civil society crucial for economic success? Does democracy ensure a strong civil society? Does a strong civil society ensure democracy? All of the writer’s answers are qualified. In the US, a survey shows that non-profits receive twice as much government funding as they do from private giving. In Europe, human rights and environmental groups that take on their governments still receive official funding.

11 Ibid, quoting David Rieff.

12 The National Rifle Association in the USA is cited as an example of a myopic civil society grouping, preoccupied with its own agenda to the exclusion of competing claims and the rights of others. By contrast, Transparency International has always insisted that it is not fighting a “crusade” against corruption, and that efforts to combat corruption must respect other basic societal values and, most importantly, fundamental human rights.

13 Robert D. Putnam in *Making Democracy Work*, p. 89: Citing Democracy in America by Alexis De Toqueville, pp. 513–514.

14 Claudio Orego in *Citizen Participation and the Strengthening of Accountability in Chile’s Municipal Governments*, April 1995, p.6.

have seen it as a rival, both in terms of power and influence, and in terms of the outside aid it diverts from channels which have traditionally been the exclusive preserve of government. Such governments, in ignoring civil society, have failed to implement mechanisms which would institutionalise accountability and build public trust.

One commentator on the Mexican experience notes that “no one would quarrel with the statement that a pluralistic public policy debate is crucial to the very existence of a democratic process. Developing public policy debate in a society that is gradually building democratic institutions, however is a far more complex issue.”¹⁵ Adding to this complexity is the fact that civil society is also in a state of transition. In what has been called “an unprecedented worldwide phenomenon”¹⁶ the past two decades have seen a global proliferation of civil society organisations working at the grass-roots and policy level in the developing world, promoting democracy, human rights, development and other objectives.”¹⁷

Donors and policy-makers have come to realise that nascent democratic institutions in transitional phases are fragile, and that market forces alone are inadequate to ensure social and economic equity without the countervailing participation of civil society in the decision-making process. Even so, civil society organisations in developing countries often face difficulties in securing adequate funding and access to information while retaining independence and avoiding accusations of being foreign-dominated. However, as people increasingly demand greater participation than that afforded by a voting booth every few years, civil society, in both developing and developed countries, seems likely to occupy a more central place in the scheme of things than it has the past.

And from where, then, does civil society get its legitimacy?

Civil society, in essence, gains its legitimacy from promoting the public interest, hence, its concerns with human rights, the environment, health, education, and, of course, corruption. Its motivation is a special interest, not personal profit. It is characterised by a strong element of voluntary participation: thus people participate because they believe in what they are doing, and not simply for spending another day in the office.

This is seen most sharply when one looks at some of the actors within civil society. Trade Unions, for example, see themselves as acting in the public interest – but not always, for there will inevitably be times when they are pursuing the narrow self-interest of the group they represent. They have, then, one foot in civil society and another out.

The same can be said of the private sector. As yet, there is no consensus on whether the private sector has any place at all within civil society. That members of the private sector are individually accountable to their shareholders, and to them alone has been a traditional response. However, the growth of social accounting and the recognition that business must, in its own enlightened self-interest, see itself as being a part of the community, and as having broader responsibilities than those crudely dictated by a “bottom line”, have led many business leaders to see the role of the private sector as being, at least in part, aligned with civil society. The same can be said of professional organisations, particularly doctors, lawyers, accountants and engineers.

15 Luis Rubio in *Democracy and Institution Building in Mexico: A Case Study*, in *Citizens, Strengthening Global Civil Society*, CIVICUS, p.291.

16 Rosika Darcy de Oliveira and, Miguel Darcy, *The Case for a Global Civil Society*, *National Civic Review*, Spring 1995, pp. 131–133.

17 There are “tens of thousands” in Latin America and the Caribbean (see “Toward an Inter-American Development Bank (IDB) Strategy for Strengthening Civil Society,” Conference of the IDB, Washington DC, September 1994). There are at least 80,000 registered voluntary organisations in Eastern Europe according to the CIVICUS report, *supra*.

Critics are on firm ground when they ask “who elects civil society?” – for no-one does. Groups form themselves, usually around a charismatic figure. Trade Unions’ members elect their leaders. Public companies’ shareholders elect their directors. There is, however, a particular crisis of legitimacy for NGOs, and they are very much the bread-and-butter of civil society – and often mistaken for being its totality.

Responsible NGOs ensure that they are run democratically and accountably, but it is also true that many NGOs are run in neither fashion. Indeed, many are formed for the sole intent of gaining aid funds from donors for the personal benefit of the NGOs’ founders. Efforts are under way to foster the adoption of codes of conduct and transparent accounting practices by NGOs to help meet responses to these criticisms. However, the driving force behind NGO reforms should be the recognition that civil society is in no position to demand higher standards in public affairs from its governors, than the standards NGOs themselves are prepared to apply to their own.

As Michael Bond concludes in his critique of NGOs, “When they are good they are very good: a catalyst for positive change. But when they are bad, they are self-promoting and irresponsible.”¹⁸

The role of civil society in countering corruption

Civil society encompasses the expertise and networks needed to address issues of common concern, including corruption. And it has a vested interest in doing so. Most of the corruption in a society involves two principal actors, the government and the private sector. Civil society is typically the major victim. And as power devolves from the centre to local authorities, opportunities for corruption shift downwards towards new actors who are in more direct contact with civil society. This means that the ability of civil society to monitor, detect and reverse the activities of the public officials in their midst is enhanced by proximity and familiarity with local issues. Indeed, this may be the training ground needed to gain the experience and confidence necessary for action at the national level.

Civil society’s response to the problem has, in the past, been fragmented. Lawyers may be policed by laws and bar associations or accountants by their professional bodies, but few within civil society have taken the broader view: to contemplate what the integral parts of their society’s integrity system can and should look like, and to press for relevant reform against a holistic blueprint.

None are without problems. In Australia, for example, free BMWs, cash kick-backs and overseas holidays are said to be just some of the bribes being offered by pathology companies to favoured doctors, according to a leading pathology organisation. The Australian Association of Pathology Practices has been calling for a review of corruption laws to stamp out a culture of “creative fraud” within the industry. Its president, Dr Ben Haagsma, is quoted as saying that although corruption was only a minor problem within the industry, new laws that will make prosecutions easier were needed to encourage doctors to blow the whistle on bribery.¹⁹

“A dangerous weed...”

Kenyan Cabinet Minister Julius Sunkuli has declared non-governmental organisations to be a ‘dangerous weed which must be weeded out’. Mr Sukuli, of the Office of the President, urged Members of Parliament to refuse to be used by NGOs, saying they were headed by unscrupulous and greedy people out to enrich themselves in the name of democracy.

East Africa News, 22 July 1999

Another horse to back....

Referring to the need to incorporate civil society in governance, one policy analyst observed that “the development business has spent three decades betting on the state and one decade so far gambling on the markets. It’s time to try a third, to hedge those earlier bets through checks and balances on the excess of state centralism and market cruelty.”

The Rise of the Non-Profit Sector, Foreign Affairs, July/August 1994, Vol. 73, No.4.

¹⁸ Bond, *supra*, p.55.

¹⁹ Sharon Verghis, “Doctors accept BMW bribes in ‘kickback culture

of creative fraud’ “31 July 2000; <http://www.smh.com.au:80/news/0007/31/text/pageone2.html>

It is also important to note that civil society can be a part of the solution or a part of the problem. For example, the business communities have all too often become inured to paying bribes to public officials to gain business.²⁰ There is a sharp reluctance in many influential quarters to introduce any apparent change in the ground rules that might result in their losing business. The challenge here is to achieve a scenario in which the rules change for all, so that there are no “winners” and no “losers.” The only winner would be society as a whole.

A triangular relationship exists between government, capital and civil society. Corruption can take root in all three parties to the relationship. It is thus both theoretically and in practice impossible for just one of the parties to address the issue of corruption on its own and in isolation from the other two—and it is arguably impossible to tackle the issue effectively without the participation of all three.

Government therefore has a duty to provide a legal and regulatory framework which allows the necessary space for civil society to operate, including, of course, freedom of expression, freedom of association, and freedom to establish non-governmental entities. Laws governing the formal constitution of an NGO and its tax status will vary greatly, but these should be clearly understood, accessible, consistent with international norms, and not needlessly restrictive or cumbersome. Public officials handling any accreditation procedures should clearly understand that the law must be applied even-handedly, without broad discretionary powers. In this context, any requirement to register is best served where decisions are made by a court or other independent body.

In civil society, there are many people who have a fundamental interest in achieving an effective integrity system for their own countries. And, in a number of countries, members of civil society are involved as independent participants on ad hoc oversight boards.²¹

Sometimes, if the government does not respond to public concerns, civil society can, and will, organise to defend its essential interests. For example, tired of abuses of power by privatised monopolies in New Zealand, a loose-knit group of largely commercial interests has come together to create MUMS (Major Users of Monopoly Services) in the absence of legislation covering monopoly businesses and their accountability. MUMS oversees interests ranging from international airlines and telecommunications activities to pulp-and-paper producers and film production companies.²²

Transparency International's strategy to involve civil society

From its inception, Transparency International (TI) argued that governments could not hope to tame corruption without the help and support of their people – and that the way to build this support is through serious-minded NGOs who were prepared to form cooperative but independent and critical partnerships with their governments. Where there was no such willingness in civil society, then the chances were that the government was not seen as being serious, and that anything it tried would probably fail.

20 See, for example, the many businessmen in Italy who are presently claiming as a defence against the payment of bribes to tax investigators the allegation that the tax officials threatened to over-assess them for tax should they not pay bribes to be under-assessed.

21 A classic example of this occurred in New Zealand where, after a massive nation-wide protest campaign to save Lake Manapouri from inappropriate power development, the New Zealand parliament established, by law, a “Guardians of the Lake” committee. The committee was empowered to provide an independent monitoring of developments, activities and had full rights to consultation. Other examples of how to involve

civil society include the Hong Kong Independent Commission Against Corruption, which has an entire department devoted to community relations and advisory committees that incorporate significant involvement by the private sector and other elements of civil society. Neighbourhood Watch schemes are now established features in many countries, with citizens harnessed to provide support to policing efforts. In Australia, workers in some occupations are involved in industry safety inspections and New South Wales consumer groups help to identify hazardous products on sale in the state.

22 *The Evening Post* (Wellington, NZ) 14 September 1994.

In the intervening years, this approach has come to be endorsed by governments, aid agencies and international institutions, but its impact has necessarily been limited by the fact that in the countries suffering most acutely from corruption, civil society tends to be very weak. A priority for TI has been, therefore, to build capacity at the grassroots level.

5

TI has based its approach to fighting corruption on three basic tenets. First, it aims to build broad coalitions against corruption by bringing together groups that are expressly non-partisan and non-confrontational. Consultations draw in other relevant segments of civil society – typically business leaders, journalists, religious figures, academics, existing NGOs with shared aims, members of chambers of commerce and other professional bodies – to test the interests and feasibility of forming a national chapter. In some instances, well-established NGOs of high public standing have amended their constitutions to adopt the TI approaches and then become their country’s national chapter.²³

The second basic tenet of TI—and its most important structural feature—is the crucial role of national chapters. Not only are the TI chapters the “owners” of the TI movement²⁴, but they are free to define their own mandates and work programmes. However, they must follow two important rules of conduct: 1) they will not investigate and expose individual cases of corruption as such activity would undermine efforts to build coalitions which promote professional and technical improvements of anti-corruption systems; and 2) they must avoid party politics as partisan activity would damage TI’s credibility.²⁵

As there are no global recipes against corruption, national chapters tailor anti-corruption programmes to the needs of their own regions. In common with other organs of civil society, TI national chapters have to win the confidence of the country’s administration—a task which is even more difficult in countries where NGOs are generally regarded with suspicion by governments because of both their access to external funding and their agendas.

The third element of the TI strategy is to involve civil society in an evolutionary manner. Rather than arguing for dramatic, sweeping programmes that attempt to cleanse the stables in a single onslaught, TI argues for achievable and highly specific plans of action in a step-by-step process towards problem solving.

For example, the prevalence of corruption can dishearten individual firms or even nations from taking the first step to end the practice. When everyone pays bribes, no one wants to be the first to stop and end up empty-handed. To counter this, TI has developed an approach it has called “Islands of Integrity,” where in a specific project, all parties enter into an Integrity Pact (or Anti-Bribery Pact).²⁶

The “Islands of Integrity” approach is also being developed in areas of government activity which are particularly susceptible to corruption (e.g. revenue collection). In such cases, it can be feasible to hive off the department concerned, ring-fence it from other elements in the public service, pay the staff properly, and have officials raise their standards.

TI is also developing the catalytic approach of building “integrity networks.” These involve a small number of individuals encouraging relevant existing NGOs to coalesce around the

23 E.g. Poder Ciudadano in Argentina.

24 A first priority for TI has been to democratise the movement. All movements generally depend on a small core of committed people to get the movement off the ground, and in this TI has been no exception. The initial group, however, took the strategic decision that it should hand control over to the chapters at the earliest opportunity, as soon as there was a critical mass of

national chapters. That stage was reached within five years.

25 These approaches were agreed to by the national chapters at the first annual general meeting of TI, in Quito, Ecuador, May 1994.

26 Integrity Pacts are discussed later, in the context of public procurement.

integrity issue, act collectively to project the issue in a broad and holistic framework, and identify possible steps for action.

Some of the most dramatic work to date has been undertaken by chapters who have undertaken surveys which have highlighted deficiencies in service delivery, and even gone so far as to successfully challenge the prices being paid for goods and services, driving these down and improving services as a consequence. Monitoring privatisations has been accomplished successfully, and in circumstances (e.g. a single bidder for a telephone company) which would have given rise to public suspicions had the chapters not been involved. Others have conducted surveys to document where in the public service the core of the problem really lies, and these have helped to raise public awareness and to elevate the fight against corruption on the national political agenda.

The above few examples highlight the role that civil society can play in strengthening ethical practices – especially where such practices mesh with the private and public sectors. Lessons learned from the above scenarios, and from others too numerous to mention, tend to suggest that the role of the citizen lies more in the field of prevention and information supply, than in the actual enforcement of anti-corruption laws.

In other words, the real role must be for civil society to claim and defend its own core values, and not leave this integral function to those in power.

Some indicators for Civil Society

- Are there restrictions on the ability of civil society to organise itself through the formation of non-government organisations?
- If so, are these reasonably necessary in terms of ensuring accountability by the NGOs? Or do they constitute unjustified obstructions?
- Are there restrictions on the holding of public meetings which act as a barrier to the mobilisation of NGOs?
- If there are requirements for the licensing of meetings (e.g. by local police) are licenses issued as a matter of course where there are unlikely to be problems of maintaining law and order?

Legal profession

- Is the legal profession subject to disciplinary measures?
- Are lawyers who are detected as behaving corruptly likely to lose their right to practise?

Accounting/Auditing profession

- Is the accounting/auditing profession subject to disciplinary measures?
- Are those who are detected as behaving corruptly likely to lose their right to practise?

Medical profession

- Is the medical profession subject to disciplinary measures?
- Are those who are detected as acting corruptly likely to lose their right to practise?
- Are health workers in the public service also permitted to have private fee-paying practices? If so, are there effective procedures to contain potential conflicts of interest?