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The Contours of the European Civil Society

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This article aims to critically examine the question of whether there is anything particularly ‘European’ or ‘civil’ in European Civil Society, ECS herein. For the purpose of explaining the ‘European’ attribute, I develop a conception of a civil society that portrays it as a product of the dialectics between the European single market and the governance structure. I would claim that at the EU level we have the necessary preconditions, a new polity with regulatory prerogatives and a regional economy, for the emergence of the ECS. The EU governance framework, although not a state in traditional sense, has the attributes of a public authority that is backed by a combination of its own EU law, binding rules and other non-binding measures. Likewise, the EU economy is not a mere sum of its member state’s economies, but represents a deep integration of these markets. In purely abstract terms there is an external necessity, for the ECS, however thin, to emerge. I deem the pursuit of the European civil society as a promising endeavor, thus after the theoretical elaborations, the paper will proceed with examining the existing evidence of the Europeanization of the civil society. The article would conclude by a discussion on the contours of the ECS with a special focus on the relationship between it and the EU institutions, where a critical reading of three alternative conceptions would be provided.

Key Words: civil society, European Union, European governance, Europeanization, governmentality

1. Introduction

A brief survey of philosophy would demonstrate that the term civil society has undergone a remarkable conceptual evolution throughout history. Philosophers have used the same term to denote different phenomena. Much of the meaning of civil society has changed today from its ancient origin in the Greek *koinonia politike* and the Roman *societas civilis*, except for its salience. The early modern political thinkers, Locke and Hobbes did not make a difference between the state and the civil society, but rather they used them interchangeably to signify the negation of the state of nature (Keane 1988). The concept reached a special moment of maturity with Hegel redefinition of it as a special realm that mediates between the family and the state. He was the first to give contours to the concept by stating clear membership criteria in that *bürgerliche gesellschaft* was the arena where private interests meet. By looking at reality as a contingent historical process that unfolds in a dialectical pattern, Hegel took *bürgerliche gesellschaft* to be the antithesis in the process in which the *Geist* comes to know itself. The undifferentiated unity (thesis) represented by the family and the differentiated disunity (antithesis) exemplified in the civil society gave birth to the differentiated unity (synthesis) embodied in the universal state (Bobbio 1988).

Both history and Marx proved Hegel’s conclusions about the state erroneous. In his famous illustration of reality through the base and superstructure, he allocated civil society to the economic base, thus making it a structural phenomenon and the state to the superstructural level. However, it was not until Gramsci that we witnessed the first divorce of civil society from the economy when he situated civil society in the superstructure alongside the state. In his conception of reality the superstructure is not epiphenomenal and subordinate to the base like in Marx. To the dialectics that takes place between the base and the superstructure, Gramsci adds a second one that happens through the social struggles between the civil society and the state (Bobbio 1988 and Friedrichs 2009). For Marx what will make the state obsolete is the antagonism in the base between the social classes, “while for Gramsci it is principally a superstructural process (enlargement of civil society until its universalization)” i.e. absorption of the state within the Regulated Society (Bobbio 1988: 94).

Civil society occupied a central role in Habermas’ theory of communicative action where it is situated in the public sphere and mediates between the decoupled lifeworld and system (the state and the functional network) (Armstrong 2006). Nowadays we are witnessing even greater maturity of the conceptual development evident in the global civil

society scholarship of the likes of Kaldor, Bartleson, Keane and the social movement accounts of Keck, Sikkink, Tarrow etc. Although we lack a consensus of what civil society is, nobody conflates it neither with the state (contractual theories) nor with the market (Hegel and Marx). It is usually portrayed as a rule-governed and value-laden entity that is free of coercion. Civil society is marked by a non-profit orientation and norms of pluralism and freedom of association, although it is noteworthy that the debate of whether it is other-regarding instead of conglomerate of private interests, i.e. populated by Kanthian ethical subjects or homo economicus, has not reached a closure.

In this essay, by accepting the premise that civil society is the force that mediates between the market and the political system, I identify an external necessity for the existence of the ECS. I am making this claim without making a historically grounded analysis of the emergence of the ECS and without speculating on the contingent causal mechanisms. The structure of the paper is divided in four parts. Following the introduction, the second section aims to provide a brief outline of the single market and the EU political realm. The third chapter elaborates the contours of the ECS. The endeavor concludes by drawing attention to the social relations that define the ECS.

2. The European Single Market and the Political System of the EU

While the existence of a truly global market has been criticized by some as a wishful thinking, the same cannot be claimed about the EU market. The single market has grown to become the largest in the world overpassing the USA economy by almost two trillion dollars (Eurostat 2011). The EU integration project is not instantiated only upon trade and custom union, but a common market with its own rules and procedure. Starting from its inception, the EU has witnessed an incremental removal of barriers, tariffs and institutional impediments to the four freedoms, with the end result being a deep integration of the member state's markets into a coherent regional economy. Transaction costs have been reduced further within the Euro area and its 17 members with the creation of the monetary union.

The freedom of movement of good, capital, services, and labor has been guaranteed by Treaty provisions and facilitated by many secondary legislative instruments, such as Directives and Regulations. The principle of mutual recognition, established through case law, has amended hidden forms of distortions in the trade of goods. The freedom of establishment and the provision of cross-border services, which are guaranteed by the Treaties, are strengthened with the recent Service Directive (2006). Although the Bolkestein directive was watered down by the removal of the 'country of origin' provision due to fears of potential 'race to the bottom', the ECJ has played a proactive role in enabling freedom in services, which is evident in the Laval and Viking cases (Höpner and Schäfer 2010). Without doubt there has been a restructuring along neoliberal lines, especially in the attempt of harmonization of standards and liberalization of markets even when it comes to certain public service provisions (Frangakis et al. 2009). Besides outlawing capital controls, the EU has attempted to integrate financial markets by the establishment of a Single Euro Payment Area, and regulating banking, investment, insurance etc. Finally, the phasing out of the restrictions on labor movement for the new member states is coming to a close. In addition, a new Directive that will replace the old one regulating the recognition of professional qualifications is in the making (Directive 2005).

Single market has augmented its potential from the time when the European Economic Community was created with the Treaty of Rome in 1957. The fresh impetus provided with the Single European Act in 1986 was furthered with the Maastricht Treaty in 1992 that envisaged a formation of a monetary union. The most recent Single Market Act follows the established objective of complete removal of even the institutional barriers that distort competition within the market (COM 2011).

One might venture the theory that the lack of common fiscal policy and economic governance prevents the EU economy to be as integrated as the national one. It is noteworthy that although tax is not harmonized, there is a common framework on VAT (Directive 2006) and a ban on Preferential Tax Regime (Kemmerling and Seils 2009). Regardless certain policies that remain outside of its prerogatives, the EU has exclusive competence in trade, customs, competition and monetary policies that resulted in a linear progression towards ever integrated market. The paper accepts the premise that there is a truly European economy governed by common rules and procedures, thus signifying something more than a mere interdependence among economies typical for the global market. However, due to space constraints the paper does not explore the specific geography and spatio-temporal distribution of the economic activity within the single market.¹

Having argued for the existence of a truly integrated European market, this paper now turns to the discussions of the political system of the EU. There is a fair amount of scholarship that deems the EU as a mere intergovernmental ordering with an extensive delegation of powers. Nonetheless, in this paper I will further the claims that there is a truly unique political system, which although does not represent a state in a traditional sense in that it does not command over the monopoly of violence and taxation, it populates a political realm that engages in regulative and redistributive decision-making (agriculture, regional policy).

There has been a proliferation of research streams that have elucidated different aspects of the beast. But one of the most informative accounts when it comes to explaining the defining characteristics of the EU polity has been the governance turn, which developed as a response to the integration theories (neo-functionalism and intergovernmentalism) which put the emphasis on the major constitutional moments. Few approaches can be classified under this stream: a) the

multi-level governance of Marks et al. (1996) that better maps the relations among multiple actors who operate at multiple levels, b) the network governance approach that focuses on the daily modes of governance and the policy networks that adopt non-hierarchical ontology (Christiansen and Piattoni 2003), c) direct deliberative poliarchy and experimental governance models (Sable and Zeitlin 2010). The above theories have clarified that the EU is not a mere international regime but rather a system of governance which is predicated upon a complex ordering principle.

The Lisbon Treaty conferred a legal personality to the EU, which has capacity to conclude international agreements and participate in international organizations (Dony 2009). What underpins the EU is a legal order with its own supreme and directly applicable law and a court, the ECJ that has jurisdiction to conduct judicial review and issue preliminary rulings. Hix (1999) has argued that the EU has state like properties when analyzing the complex ordering of the legislative, executive and judicial power. The EU has not made the state obsolete, which still play a major role in the intergovernmental decision-making procedure. Nonetheless, there are other actors who exert tremendous influence in the day-to-day policy making of the union. The Parliament and the Council are the main legislative bodies under the ordinary legislative procedure and the European Commission (EC) can be considered the executive branch responsible for initiating legislation and monitoring, but because of its limited capacity, it relies on the advice of many committees that consist of national experts.

The EU has a wide policy reach, but that breath is faced with different degrees of density that depend on the policy field. The Lisbon Treaty stipulates three types of competences: exclusive where only the EU is entitled to legislate, shared between member states and the Union, and supporting. Besides the traditional community method there is a new governance architecture that enables close coordination among member state in areas that fall outside of the exclusive competence of the EU. Namely, the open method of coordination, OMC, which is a policy instrument introduced first under the European Employment Strategy in 1997 and further developed and extended to other policy areas under the Lisbon Agenda in 2000 (Telò 2002) and the new 2020 strategy that added quantitative targets (COM 2010). Although the OMC epitomizes a non-authoritative norm setting, we should not overlook the potential of this constructivist strategy *par excellence* in producing EU-wide results.

The present predicament is such that at the EU level we have the necessary preconditions, a new polity with regulatory prerogatives and a regional economy, for the emergence of a European civil society, ECS herein. The EU governance framework, although not a state in a traditional sense, has the attributes of a public authority that is backed by a combination of its own EU law, binding rules and other non-binding measures. Likewise, the EU economy is not a mere sum of its member state's economies, but represents a deep integration of these markets backed by a common currency. In purely abstract terms there is an external necessity, for the ECS, however thin, to emerge out of the dialectics between the regional economy and the transnational political architecture. Keane (2003, 27) has rightly observed that "historically speaking, the institutions of civil society were never exclusively 'national' or constituted by their exclusive relationship to the nation-state".

Nobody could have predicted the transformative potential of the EU undertaking and its enormous effects on the nation-state. Despite the great discrepancy between the extensive regulatory functions and the minimal redistributive politics, evident in the relatively insignificant budget of the Union, the EU represents a highly institutionalized system that produces distributive effects. When immense number of legislation originates from the supranational level, it would be a matter of time when societal actors start channeling their demands to the bodies that authoritatively allocate values. When we have a redistribution of power, civil society will respond to that rearrangement accordingly by moving its core activities at the level where the power resides and by targeting its claims towards the newly formed centers.

The ECS should be conceptualized within an environment where there are blurry lines between the public and private spheres. Unlike the domestic civil society which was bounded in the nation-state, ECS elaborates itself within diffusive boundaries. Not only is it affected by the Europeanization of the domestic polity, but also by the global governance arrangement where it is imbricated in the exercise of power. The process of Europeanization has undermined the territoriality of the civil society. In whatever context civil society operates, it is unfolding under the conditioning of both Europeanization and globalization, which although do have a uniform effect they are systematic in their influence. Some authors have even argued that even at the global level we have crystallization of a global civil society that mediates between the new regulatory structure and the global market (Lipshutz 2005). But if that claim cannot be 100% substantiated for the global realm, the same does not apply for the EU.

3. The contours of the European Civil Society

The Lisbon Treaty has gone a step further in the constitutionalization and institutionalization of the relations between civil society and EU institutions. We have witness an incremental increase in the opening of the EU opportunity structure from the time when it was more reminiscent of a corporatist arrangement evident in the Social Dialogue to a period where the article 11 of the Treaty on the EU obliges the institutions to pursue BROAD consultation with the affected stakeholders and be open for dialogue with civil society. In an attempt to amend the deficiency in the input legitimacy the EU has been proactively encouraging a participatory democracy by creating both institutionalized exchanges and informal access

points. Liebert and Trenz (2011) edited volume has identified a new politics of ECS in the transformation of the lobbying regime into a consultation one. We must acknowledge, however insincere, the effort of the EC with the White Paper on Governance (2001) to increase the participatory democracy both in the hard and soft law procedures. While the Commission is expected to consult civil society when drafting proposals under the ordinary legislative procedure, civil society is also able to participate in the OMC, both via domestic channels or via EU links. There is also something to be said about the financial support the EC provides to European NGOs under the PROGRESS financial instrument without exaggerating the evidence which goes up to 1000 million euros per year (Friedrich 2008).

Nonetheless the fact that EU institutions have decided to open their doors does not create the ECS (Hooghe 2008). Instead, the European attribute emerges because civil society: a) operates at the European level, b) targets the EU decision-making process, c) has a European consciousness and d) there are EU wide effects of its activism. Increasing number of umbrella networks have been crystalizing over diverse policy issues. Just to name a few: Civil Forum, EU Civil Society Contact Group, European Anti-Poverty Network, Social Platform, European Coalition for Corporate Justice, European Partners for the Environment, CONCORD, European Public Health Alliance, Green 10, Culture Action Europe, European Lesbian Gay Association, AGE, European Women Lobby, etc. The new transparency register that replaced the older one, which had 4000 registered members, enumerates 2453 groups. From those registered something less than half are lobbyist and the rest NGOs, professional consultancies, think-tanks, academic, religious associations etc. (Transparency Register 2011).

The ECS is not constituted by purely EU actors, but also by individuals and groups who operate at the domestic level but adopt a meaningful orientation towards the EU during which they transcend their role as citizens of a particular member state and participate in the embryonic ECS. In addition to the increased formation of EU wide groups, there is limited evidence that hints at the Europeanization of the social movements which represents a vibrant part of the civil society (Della Porta and Caiani 2009). However, the jury is still out there on this question as more and more quantitative surveys attempt to measure the extent of the transformation in the attitudes of the societal groups.

Some scholars, like Adreson and Rieff (2004), have disputed the existence of civil society beyond the nation-state due to the lack of democratic representation. There are two ways of contra-arguing. One way would be to provide a historical analysis of the emergence of civil society that pre-dates the institutions of representative democracy. And the second way is to show that representative democracy with its occasional ballot box checks represents itself a compromise to the direct democracy ideal. Democracy is a continuous process and we should not exaggerate the potential of a particular historic form it take. Nonetheless, we should stay wary of the fact that civil society is not substitute for demos and try not to repeat the same mistake of global governance scholars who saw liberating potential in every activism. It is more than apparent that the Commission is harnessing civil society for legitimation purposes. Unfortunately the present form of participatory governance, which need not be characterized by a deliberative potential only, does not solve the acute problem of disembedded EU governance. The participatory democracy embodied in the ECS is not a substitute for the painstakingly achieved representative democracy at the nation-state level. However, it is through the reification of the emerging ECS that the pertinent question of legitimacy can be resolved. From a normative point of view the ECS may cure the malaise of the representative democracy only if it is infused with deliberation and emancipation.

The civil part of the ECS is somewhat less controversial. Here it is important to note that the concept of the ECS is not all inclusive category. Similarly to domestic civil society it excludes the uncivil, illicit, violent part of the society without negating them. The very term civil society is value-laden. We impute substantive values to the concept because it helps us not only delineate its activities and actors from the activities of the state and the market, but also from the activities of the noncivil actors in the society, which have different reason d'être. Kaldor (2003, 3) explains how the term civil society "has always been linked to the notion of minimizing violence in social relations". However, it is important to note that civil society is also associated with pluralism which leaves space for conflict. The 'civil' attribute eradicates neither the power hierarchies nor the conflictual relations among the members of GCS. There is ongoing contestation among the members of GCS, like in the domestic civil society.

4. The European Civil Society as a Relational Concept

The construction of the ECS should avoid referencing only its intrinsic properties and instead should focus on the relational attributes, because what defines the ECS is its relations with the political authority and the economy. This section will attempt to grasp the meaning of ECS through its social relations with the EU institution. The existing civil society literature harbors three different conceptualization of the relation between the civil society and the public authorities: one of independence, one of subordination, and one of interdependence.

The proponents of the first approach are Keck and Sikkink (1998) with their boomerang model, Risse, Ropp, and Sikkink (1999) with their spiral model, Kaldor (2003) with her civil society theory, and Sikkink (2005) with her insider-outsider coalition model. What these models have in common is their perception of civil society as a sphere that is separate and independent from both the public authority and the market, where autonomous individuals come together to form associations. Here the relationship between the state and the civil society organizations is presented as one of

independence. While being devoid of material or military resources, NGOs, as the most prominent civil society actors, possess symbolic and moral authority that enables them to exercise power over states. These theories adopted an unconventional understanding of the source of power, as it no longer originates from material capabilities only, but also from the moral and legitimate authority. Nonetheless, their concept of social relation stays narrow and linear because power is perceived as attribute that is exercised over somebody.

The second view which is inspired by a neo-Marxist interpretation claims that civil society is not autonomous as the first view holds, but rather in a subordinate position to the public authorities and the market. Civil society is instrumentalized by those who control the material resources, thus turning it into a mere tool deprived of any real liberating potential. NGOs, the quintessential representatives of civil society, are seen as the partners in the neoliberal restructuring of the welfare state (Bond 2006). The associations that populate civil society are deprived of their agential potential.

Regardless of the fact that the second approach negates the conclusion of the first, they have in common a linear perception of power where it is perceived as attribute that operates in a unidirectional way. On the contrary, the last approach exemplified in the works of Sending and Neumann (2006) adopts a conception of power that operates through constitutive social relations. By drawing on Foucault's idea of governmentality and the constructivist notion of productive power (Barnett and Duvall 2005), these scholars try to demonstrate that the social relation between society and the public authority are neither autonomous nor dependent, but marked by a new type of rationality, that of governmentality. Civil society is neither a sphere devoid of power nor a domain that stands opposite to the state. The public authorities do not exercise a direct power over the civil society, instead there are special mechanisms of power that operate and produce specific identities that are deemed appropriate. Through the *technologies of agency* and the *system of knowledge* civil society is constituted as certain subject composed of self-governing associations i.e. NGOs are objectified as certain subjects (Sending and Neumann, 2006). It is the special form of rationality that empowers NGOs and renders them responsible, the so called responsabilization thesis. The objectification of NGOs as certain subjects is the very mode of governing things through technology of agency. Once we have constructed special subjects that are now endowed with agential potential, they cease to be mere objects of exercise of power, but become subjects through which power operates. It is through the above process of subjectification that power realizes its productive potential.

What are the implications of these ruminations for the ECS and its social relations? In this essay I am inclined to accept that the three types of relations should not be assumed *a priori*, but must be critically interpreted on a case by case basis (Watson 2011 pers. comm.). While we might be tempted to say that the ECS is relatively autonomous in the sense that it is vibrant and has successfully pushed itself on the agenda in certain cases like environmental policy or gender issues, it is also true that there is an asymmetric relation between it and the public authority that hints at a financial dependency given that the EU funds are extensively used by many civil society platforms that operate at the EU level. Without doubt there will be plenty of instances of co-optation of organized civil society that traded its critical voice for participation. After all NGOs, the quintessential civil society groups, are bureaucratic enough to make them prone to certain pathologies.

Finally the concept of governmentality offers a new way of grasping the relations between the civil society and the public authority by avoiding the typical dependence-independence dynamic. Many scholars have drawn on the concept of governmentality to explain the new developments within the global governance agenda. However, I share the concern of Joseph (2010) that one should be careful when applying this concept to the uneven global polity, where we lack the context that is conducive to such a mode of governing. Governmentality is only applicable to cases informed by the rationality of governing from distance, where non-coercive type of power replaces the coercive exercise of influence. Joseph (2010, 233) argues that "there is a big difference between a society having its own conditions for governmentality and a society having governmentality thrust upon it by outside institutions". The EU is the region where one can comfortably use this concept to grasp the proliferation of new governance processes, because as an analytical concept, governmentality is more conducive to process-centered ontology.

It has been widely accepted that the EU is not a unitary entity, but a decentralized network of institutions, decision making procedures, and practices. Under the governance mechanism of the Open Method of Coordination the actors be it the member states, the unions or individuals are transformed from object of power upon which law is imposed, and actually become subject and object of governance, they are self-coordinating, self-monitoring, self-assessing, self-guiding, self-disciplining etc. Under the OMC the benchmarking is a typical example of one technology of power called 'normalization'. By defining a common objective, the European Employment Strategy, the Broad Economic Policy Guidelines, the 2020 strategy and the new European Semester aim to empower the member states and civil society to come to a common best practice, and at this point we have operation of productive power at its purest. The fact that the EU polity has been recalibrated along governmentality lines is evident in the promotion of the new norm of 'flexicurity' and the types of subjects it attempts to objectify - employable, responsible, and entrepreneurial. Rather than creating a polity by a top-down constitutional design, the EU adopts a genuine approach that aims to shape the constitutive rules that form the normative basis of a legitimate polity, by providing a certain model of individual that is the building block of that order.

5. Conclusion

Starting from its inception the EU integration project has proven to have an immense transformative effect on the member states' market, polity, and civil society. By adopting a dialectical reading of reality, the essay has argued that there is an external necessity for the European civil society to emerge. The surmounting evidence of a deeply integrated single market backed by a common currency and a highly institutionalized governance structure instantiated upon a legal order, extensive regulatory framework and limited redistributive functions embodied in the agricultural and regional policies, points towards the emergence of a truly European civil society. The new deterritorialized civil society realm is expected to address some of the externalities occurring from the creation of the single market and the European political system. The paper attempted to provide a brief overview of the contours of the ECS and the possible social relations that define its position within the wider European context.

Endnotes:

¹ New economic geography provides interesting data about the integration of the EU market, specialization, patterns of exchanges, industrial concentration across regions etc. Please, consult Pierre Philippe Combes and Henry G. Overman.

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