

Economic Rationalism, Human Rights and Civil Society

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I live in a developed and modern society that has, over the last fifteen years, undergone a program of vigorous economic restructuring and adjustment. It's still a marvelous country to live in — for most of us! — and that too is what the indicators of quality of life say (we come out at the top on some of them!). And yet I know full well that economic "reform" or "economic rationalism" has not been good for my rights. More precisely I know that corporations have been gaining power, often at my expense. Indeed I cannot fail to see that many of what I took to be my rights of citizenship have been diluted or even cancelled as governments have exposed me to "market forces". In the workplace and so many other domains of life I suddenly find myself redefined as a user who must pay, a consumer, and an economic agent with access only to resources that my purse can secure. But how do I make sense of this tension and conflict between human rights and the economic rationalism cum "reform" that is going on all around me?

What do we mean when we say that someone has a right to this or that? Barbalet gives us a good part of the answer; "The possession of a right is the realisation of a claim made on others and accepted by them".² It's easy to see how this works in a face-to-face relationship. I claim something from you as a right and you may or may not feel obliged, or shamed, to comply with whatever it is that I am asking of you. In that situation we are engaging with each other through spoken language and calling on commonly recognised (though not necessarily accepted) moral *norms*, like fairness or mutual obligation, to negotiate and settle the moral claim that is in dispute between us. But that is only half of the story because other rights, some would say the most important ones, are realised as actual or potential claims on strangers, on formal organisations such as

1 School of Sociology, University of New South Wales. What follows is a revised version of a paper given at the XIII World Congress of Sociology at Bielefeld, Germany, in July 1994 and which later appeared in (1996) 44, *Thesis Eleven*, under the title "Economic Rationalism and the Contest for Civil Society", pp 69-87.

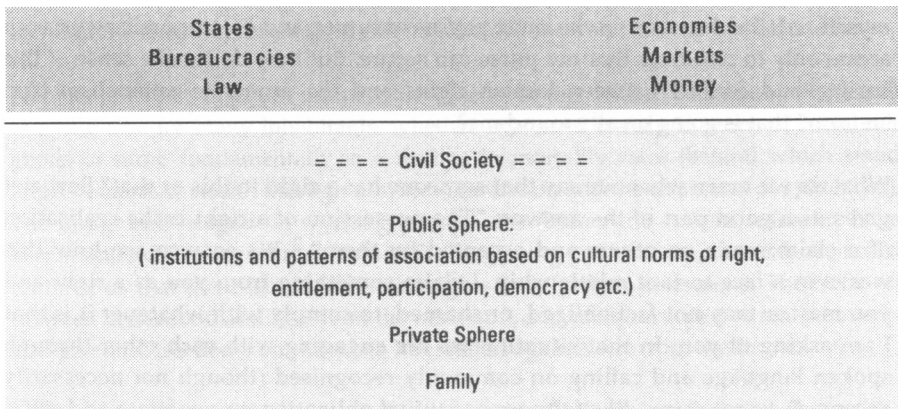
2 Barbalet J M *Emotion, Social Theory, and Social Structure* (Cambridge University Press, Cambridge, 1998) p 127.

government departments or corporations. In this case the moral norms are legally codified and thus contestable and enforceable in law. And so our rights inhere in regulatory norms that are *both* informal and legally codified. They do not come out of the blue like wind and rain but are in every respect “socially constructed” and emerge, whether by explicit design or in informal interaction, from *the institutions of civil society*.

With these remarks I am pointing only to what is always, and even obligatorily, assumed every time we speak of human rights. At least for those of us who live in ‘advanced’ and modern nation societies (and federations like the emerging Europe) any talk of human rights reminds us that rights inhere in the very organisation of these nation societies that have (see figure one), more explicitly, two coordinating structures.

Figure 1

TWO CO-ORDINATING STRUCTURES OF SOCIETY



On one side they have economies, markets and money and on the other states, bureaucracy and the law. It is with these structures that we collectively coordinate our relations with the rest of the world, our work, social interactions and most other areas of our life that we understand as civil society and normatively define, sometimes counter-factually, with notions of citizenship, democracy and human rights. Even with this much we already have a couple of working definitions of “economic rationalism”; firstly, as a doctrine which says that, “economies, markets, and money can always, at least *in principle*, deliver better outcomes than states, bureaucracies, and the law”; and, secondly (take your pick), as the assumption that

"markets and money are the only *reliable* means of setting a value on anything".³

This also helps define how economic programs of "structural reform" work in practice. For the "free market" economists and reformers economic rationalism involves shifting the burden of coordination from states, bureaucracies and the law to economies markets and money. The question to which this paper is addressed can now be phrased in a number of different ways. How does that shift in the burden of coordination appear from the perspective of those social forms that we call "civil society" and human rights? How does economic rationalism attack "civil society"? To put the question more provocatively, how, and in what respects is the process of economic reform inimical to our rights and in this sense "anti-social"? On what criteria could it be so defined? And how are the criteria set into the economic logic and into the shifting constructions and defences of civil society? What are the consequences for civil society when the focus of conflict moves from the relationship between morality and legality to that between morality and efficiency?

Economic rationalism "versus" civil society?

In the 1990s the focus of economic rationalism in Australia has shifted from macro economic policy to micro-economic reform at the industry and enterprise level. For the reformers the opening up of Australia to the new global economy was just a prelude to what they see as the hard work of an institutional transformation that will "make Australia competitive". The task is defined as a shift in the burden of coordination from states, bureaucracies and the law on the one side to economies, markets and money on the other. At the workplace and enterprise level these micro-economic reforms are pressed forward under such rubrics and slogans as "Structural Efficiency", "Award Restructuring", "Enterprise Bargaining", "Increasing Competitiveness", "Total Quality Management", "Gearing up to International Best Practice", "International Benchmarking" etc.

These reforms are presented as neutral technologies for the redesign of concrete organisations. If the reform process meets with too much of what its advocates tellingly call "institutional inertia" then this will mark, probably only temporarily, a social limit to a process that social theory variously defines as expanding "commodification", as the expansion of "production forces", the expansion of "technical reason", the expansion of

3 See "Australia's Economic Emperor has no Clothes", *Sydney Morning Herald*, 17 October, 1991. I was forced to produce these two definitions in the national debate that ensued from Pusey M *Economic Rationalism in Canberra: A Nation-Building State Changes its Mind*, (Cambridge University Press, Cambridge, 1991). To my enormous surprise most of my opponents accepted these definitions of their own positions.

"strategic rationality", or even the "colonisation of the Lifeworld". In every case the reforms attempt to redefine, capture or assimilate civil society and human rights into the economic rationalist framework. And in the Australian case these rationalisation processes are driven by economists,⁴ Treasury and other Canberra central agency economists, the financial journalists, the New Right "think tanks", and the economics and business faculties of our major universities. In what follows I want to relate this process to historical changes in the driving *idealisation*s of economic reason. With the help of the diagram below I want to suggest that these idealisations or, as Foucault calls them "positivities" of economic reason, call up different possibilities for 'the return of the civil society'. In each case there is space only to point to: (a) the constructions of "boundary" between "the economy" and civil society, (b) to their implicit templates for institutional design, and (c) to their constructions of motivations and expectations. Without wishing to press the notion of a "genealogy" too far I suggest that there is a pattern in the successive layers of economic idealisations that have been set down one over the other in successive attempts to "capture" civil society. As one set of idealisations lose "control over the social" another set is placed over them in a reinforcement of ideas that are working synchronically as well. There is no strict causal connection of course, but a generous reader may discern an interesting trend line in the deployment of these economic ideas.⁵

Figure 2

CIVIL SOCIETY "VERSUS" ECONOMIC RATIONALITY

(Contested templates and criteria)

(the "escape and return" of civil society)	(idealisations of homo economicus and economic reason)
1. Quality of life (well-being; life satisfaction)	Standard of living (aggregate utility)
2. Communitarian Self (communities; the situated self)	Contractarian/Libertarian Self (consumer sovereignty, freedom of contract, freedom of choice)
3. Communicatively Secured Self (discourse ethics)	The automated market (performance = social autism?)

4 Including public choice theorists, management consultants, and accountants.

5 I make no claim here for any corresponding "evolution" in our ideas of the social.

Quality of life versus standard of living

At the heart of welfare economics there are two counter-factual ideals: *utility* and *efficiency*.

Economic efficiency is built on a counter-factual notion of price that economists call “shadow price”. This means the change in aggregate economic well-being brought about by a unit increase in the level of any specific activity. Moreover, as Pincus points out:

If all shadow prices are correct and equal to actual prices, the economy achieves perfect efficiency... [But] ... The calculation of one shadow price requires the calculation of all shadow prices, as though the economy in reality was fully computable... Although they can be written down in precise if general mathematical formulations, in economic practice brute force is used to simplify the model to arrive at “reasonable estimates.”⁶

But why does the calculation of one shadow price require the calculation of all shadow prices? Because “efficiency” means the efficiency of a perfect market idealised as a closed system in which any person’s gain shows up, automatically and without “leakage”, in the outcome of exchanges that must be “Pareto optimal” and thus operate “so that no-one’s utility can be raised without reducing the utility of someone else.”⁷ Although economists know that actual markets are not perfect markets it is their appointed task to make them as perfect as possible. To this end they strive for what they call “first best” solutions that approximate most closely to the ideal, and avoid settling for “second best” solutions that accept imperfections in relationships of exchange (transaction costs) between market actors. In what follows my key concern is with intellectual politics or, if you prefer, with the politics of institutional reform, that are involved in drawing the line between what may and may not count as the province of economies, markets, and money.

The second idealisation treats human welfare as the satisfaction of wants expressed *only* as *utilities*. There is nothing fanciful or immaterial about these two idealisations. They provide the counter-factual standards for measuring the purity, integrity, and rigour of

6 Pincus J “Market Failure and Government Failure”, in King S and Lloyd P (eds) *Economic Rationalism: Dead End or Way Forward*, (Allen & Unwin, Sydney, 1993) pp 261-277. I rely on Pincus heavily in this paragraph and have reconstructed his concepts to suit my purpose here.

7 Sen A *On Ethics and Economics* (Basil Blackwell, Oxford, 1987) p 31.

practical reforms that have been applied to just about every sphere of national life. Indeed we are urged to think of them as a kind of DNA code for all economic growth.

Already at this first level (see Figure 1) civil society appears as any relationship between social actors, and any social practice that stands between ideal prices and actual prices. Civil society presents itself as a barrier to assimilation into the market of would-be forms of exchange that still elude its reach. For the reformer, civil society appears as a "stubbornly resisting sludge"⁸ that stands between "first best" and "second best" economic structures.⁹ If we define institutions as "sets of regulatory norms that give rise to patterns of action and to concrete social structures of organisation"¹⁰ we may ask what institutions could survive the hot breath of economic reform. Stock exchanges might survive but probably not real firms, and perhaps not government departments (except for the economic departments), and probably not trade unions, churches, or families. For an institution to be worthy it has to liberate the self from all obligations that inhibit the conversion of intentions, intuitions, purposes, and expectations into calculable utilities.

Utilitarian welfare economics survives still as a basic coordinating logic for nation societies. But it "leaks" for reasons that become apparent as soon as "standard of living" (which welfare economics defines as aggregate utility measured in dollars by the market) is counterposed with well-being or "quality of life". As Sen demonstrates, *valuation does not reduce to utilities* and the same is true of choice and even of desire fulfillment: neither is reducible to utility.¹¹ Well-being and utility are largely independent one from the other.

Indeed, that is the conclusion that constantly emerges from social science surveys of quality of life. In the words of Robert Lane:

The main issues are not invidiousness of choice, not that the market produces the wrong commodities, not that consumers choose them badly, not that there is "producer sovereignty". The issue is that commodities themselves, and the income to purchase them, are only weakly related to the things that make people happy: autonomy, self-esteem,

8 See Pusey, *op cit*.

9 One could even provide a useful operational definition of civil society as anything that appears to the pure economists as frustration!

10 This very helpful definition is the one used by "The Reshaping Australian Institutions: Towards and Beyond 2001" project of the Research School of Social Sciences at the Australian National University, Canberra.

11 Sen A *The Standard of Living*, (Cambridge University Press, Cambridge, 1987).

family felicity, tension-free leisure, friendships. This is the major defect of a want satisfying mechanism.¹²

For example in Australia we find, not surprisingly, that there is almost no *direct* relation at all between money income and the reported life priorities of ordinary Australians. The evidence shows that, "Leisure, family life and friends contributes greatly to life satisfaction", and contrary to fundamental nostrums of utilitarian economics, material concerns are not paramount at all.¹³

Three further observations are relevant here:

First, the primacy of quality of life (over standard of living) presupposes modes of valuation that limit and deny economic assumptions concerning the marginal substitution of goods. The welfare economic paradigm defines the market as a:

... network of transaction... [in which]... each transaction in theory affects every other one — because there is a more or less continuous chain of substitution at the margin of the economical use of each good ... the principle of substitutability is maximised, that is values (tastes, people, goods, services) are easily and frequently substituted for each other, for example, capital for labor, one kind of good for another ...¹⁴

The fundamental problem with this position is that it negates the differentiation of value spheres and of cultural spheres that is constitutive of modern plural liberal democratic societies. Family life, religion, art, gender (and work), are all grounded in forms of association (institutions) that are in various degrees incommensurate both with one another, and with the market. My wife cannot sell me for a painting and I cannot sell my gendered nature for money any more than she can. Both great and small masterpieces are priceless because they are valued against non-economic criteria. Family values are distinguishable as such precisely because they signal a form of association that operates within a separate sphere that is differentiated from both states and markets. The same is true for the duties of care and the social rights that we obey in a variety of organisational, public and in short institutionally regulated situations. For the moment my point is that such differentiations are even

12 Lane R "Markets and the Satisfaction of Human Wants", (1979) 12 *Journal of Economic Issues*, pp 799-827.

13 These are the results of the National Social Science Survey reported by Headey B "The Life Satisfaction and Priorities of Australians", ch 11, in Kelley J and Bean C (eds) *Australian Attitudes*, (Allen & Unwin, Sydney, 1988).

14 Lane R *The Market Experience*, (Cambridge University Press, Cambridge, 1991) p 12.

visible in our common uses of money. We put money "to one side" and we assign money for holidays, a deposit on a home, education, retirement and for medical emergencies.¹⁵ What is more, many of these differentiations are formally regulated as state supervised pension schemes, holiday loadings, first home-buyer subsidies, and national medical insurance. And so even the social uses of money point to limits that we set on the substitution of goods, limits that issue from the primacy that we set on quality of life over standard of living, as this is understood in welfare economics.

Second, inasmuch as wellbeing and quality of life have some primacy over the metric of aggregate utility, *the knowledge claims of welfare economics must be wrong*. The epistemological presumption of the reformer economists is that the welfare of different individuals cannot be compared. In his 1935 enlargement of the claims of economic science Robbins finds the root of our problems in the fact that we "will" things that are incompatible because we do not realise they are incompatible, and that this leads us to what he calls a kind of "split personality" for which economics offers the only possible remedy. To quote Robbins:

To such a situation, Economics brings the solvent of knowledge. It enables us to conceive the far-reaching implications of alternative possibilities of policy. It does not, and it cannot enable us to evade the necessity of choosing between alternatives. But it does make it possible for us to bring our different choices into harmony. It cannot remove the ultimate limitations on human action. But it does make it possible within these limitations to act consistently. It serves for the inhabitant of the modern world with its endless interconnections and relationships as an extension of his perceptive apparatus. It provides a technique of rational action.¹⁶

The epistemological claim is clear. Only "preferences as revealed through actual ... [market]... choices can have full epistemological authority".¹⁷ Prices and markets are privileged as the only permissible common denominator of knowledge — economic science, qua welfare economics, rests on a very artificial form of traditional empiricism!

Third, *work is more than a commodity and it is not a "disutility"*. Labour is not a "thing" that we produce for the market as we do with "real" commodities but rather a form of action, and one that is not independent of the actor. It is for this reason not infinitely

15 Zelizer V *The Social Meaning of Money* (Basic Books, New York, 1994).

16 Robbins L C *An Essay on the Nature and Significance of Economic Science* (Macmillan, London, 1935) pp 155-6.

17 Brennan G and Lomasky L *Democracy and Decision: The Pure Theory of Electoral Choice* (Cambridge University Press, Cambridge, 1993) p 132.

variable, not plastic, not always amenable to easy substitution, and not separable from its owner.¹⁸ Work may or may not be positively valued by many people but it is still, in either case, a separate value sphere. Certainly the empirical evidence suggests that it is:

most often it is in the sphere of work, not consumption, that the greatest subjective well-being lies. It follows that one fundamental proposition of market economics is wrong: work is not a disutility nor a sacrifice for which income is the compensation. And pay, therefore, serves a very different set of purposes in the economy than is assigned to it by market economics.¹⁹

For those of us who may wish to rescue the notion of individuals and groups of bearers of rights in civil society the implications of the above are clear enough. There is already a case for opposing the reformer economists head on by defining civil society as an ensemble of structures that subordinate utility to quality of life. For the economist reformers these are potentially serious challenges that might allow government intervention on a scale that would give the lie to the basic idealisations of the welfare economics paradigm itself. For the economist there is no problem so long as civil society (the "sludge" of social obligations, norms, rights, identities, citizenship, and concrete democracy) that fills the space between shadow prices and actual prices can be defined in terms that require government intervention *purely* as a means of producing greater economic efficiency. The sludge is then still redefined as potential utility and "government success" can only figure in a single dimension as the corrective for market failure. The success of government can be reckoned only in terms of its own contraction and of a corresponding expansion of market mechanisms.

The problem for our reformers is that the welfare economics paradigm "leaks". A majority of Australians seem to agree with principles of redistributive justice premised on the (empirically justified) conviction that markets produce unfair inequalities²⁰ and, worse, that increases in the standard of living (aggregate utilities) come at the expense of the quality of life. Indeed the leak turns into a flood as ordinary people persist in the view that states, bureaucracies and the law have a primary responsibility for redistributing income fairly, and for providing primary goods and services (eg social peace and free health care), that people *require of government per se as the legitimate expectations and entitlements of citizens in a social democracy*. This shows

18 Offe C *Disorganised Capitalism: Contemporary Transformations of Work and Politics* (Polity Press, Cambridge, 1985) pp 56-7.

19 Lane R *The Market Experience*, (Cambridge University Press, Cambridge, 1991) p 6.

20 The more moderate economists have always held this to be true and will, under pressure, say it publicly.

up quite perfectly in the two-tiered 1991 Accord Mark VI between the government and the trade unions in which a first tier of wage increases was indexed to inflation and awarded by the Industrial Relations Commission across-the-board to all wage and salary earners (the "social justice" component): only the "second tier" of supplementary increases was pegged to productivity agreements that had to be negotiated with employers (the market component).²¹

The communitarian self "versus" the contractarian/libertarian self

At a second level (see Figure 2) the economic paradigm provides a "default logic" that promises once again to reassign and to reduce civil society to the calculus of economies, markets and money. Here the struggle for the control over the terms of economic reform has moved to a second level with a different normative foundation. Two points are important.

There is now an explicit contest between rival constructions of the self and, secondly, the freedom of the self to choose for itself becomes the ultimate ground for a libertarian cum contractarian political economy. With this shift neo-classical economics has in effect moved forwards from the consequentialist ethics of outcomes and fair distribution to a new line of forward defence relying on a deontological, neo-Kantian, ethics of a "new right" liberalism stressing autonomy, rights, and freedom of choice.

Libertarian and neo-liberal versions of contract are deployed to redefine the normative field between actual prices and shadow prices. Everyone agrees that "public choice" and "social choice" theory reaches its limits at the point where the preference ordering of utilities runs up against *pre-contractual* norms.²² Our space, civil society, is full of "sludges" that appear to the reformers, for the most part correctly, as pre-contractual norms. And it is full of practices, forms of association and institutions (community organisation, trade unions, public broadcasting, political participation, practical cooperation) that go on producing a perpetual surplus of still more normative solidarities and identities that resist translation into priced utilities. The solution comes with what public choice theory sees as its remedial "amendment" to welfare economics.²³ With the authority of a Nobel Prize

21 OECD Economic Surveys, *Australia 1989-1990*, (OECD, Paris) ch 3.

22 Elster J (ed) *Rational Choice*, (New York University Press, New York, 1986), introduction.

23 The public choice "amendment" to welfare economics is explained clearly, by two long-time associates of J Buchanan, namely Brennan and Lomasky, in their excellent *Democracy & Decision: The Pure Theory of Electoral Preference*, (Cambridge University Press, Cambridge, 1993).

the remedy is offered, among others, by James Buchanan's proclamation of a "normative individualism" deployed in the service of a new "contractarian political economy" that will supplant confusing terms such as "social objectives" and "national interest" with true "individual values and interests". I follow Buchanan's language very carefully to avoid slippage.²⁴ The remedy is offered without reticence and with the certainty that, "Economists, almost alone, understand the notion of choice itself ... and ... economists who believe in *homo economicus* ... must not be duped or lulled into the neglect of elementary principles ... nor ... fail to recognise that incentives remain relevant in all choice situations". And he insists on a "near unanimity" among economists that ... [in their view] ... attempts to impose "particularised constraints on voluntary exchange [government intervention, tariffs, price floors and ceilings, or prohibitions on entry and exit to the market] destroy generic value".²⁵ In the words of one of Buchanan's predecessors, "All motivations are economic motivations."²⁶

Here the *homo economicus* of welfare economics finds a new forward defence. The contractarian amendment projects into the space between shadow/ideal and actual prices an assumption of complete *motivational neutrality of individual choice* that is held to apply in every domain of life without restriction (there can be no valid differentiations of other autonomous domains and value spheres that might obey other intrinsic, endogenous motivations). Pre-contractual norms are invalid *a priori*. The boundary between economy and civil society disappears and institutional design becomes a technical problem of developing "invisible hand" mechanisms to optimise the choice of a maximising *homo economicus* motivated by rational self-interest alone.

How, at this second level, does this contractarian idealisation of *homo economicus* operate, specifically, to re-claim for the economic paradigm what has escaped at the first level?

First, the norm of consent is claimed for economic exchanges in a way that attributes to other forms of association a presumption of coercion. Milton Friedman makes the point thus:

24 Buchanan J "Contractarian Political Economy and Constitutional Interpretation", (1988) 78, *American Economic Review Papers and Proceedings*.

25 Buchanan J "Economics in the Post-Socialist Century" (1991) 101 *Economic Journal*, pp 15-21.

26 von Mises L *Epistemological Problems*, p 61 quoted by Lane R *The Market Experience*, (Cambridge University Press, Cambridge, 1991), p 6.

The possibility of coordination through voluntary cooperation rests on the elementary — yet frequently denied — proposition that both parties to an economic transaction benefit from it, *provided the transaction is bilaterally voluntary and informed*.²⁷

The presumption here is that other forms of cooperation, and norms of mutual obligation that build up spontaneously through ordinary social interaction in civil society are restrictive or coercive limitations on voluntary exchanges: they cannot be bilaterally voluntary or informed, by definition. Market exchange becomes the standard for social exchange and all voluntary market exchanges are deemed to be *private and individual exchanges*.

Second, *the moral basis for property rights is appropriated into the economic paradigm*. The priority on individual autonomy is used to expand the scope that is given to private property rights and freedom of contract in a way that vitiates basic social goods and rights. There is no mystery as to how the economic imperialism of the reformers works in practice. "Optimal resource allocation and utilisation requires that divergences between private costs and social costs be minimised and that divergences between private benefits and social benefits also be minimised". Property rights are re-defined in ways that supposedly internalise the costs and benefits of utilisation as exhaustively as possible (in keeping with the first level of economic idealisation above) and then a priority is set, from the economic perspective, on "facilitating the transferability of these property rights to ensure that they end up in the highest-valued ... [economic] ... uses".²⁸ The reform of the law of contracts is made to obey this overriding priority by strengthening the exclusivity of property rights. Exchangeability becomes a norm in itself and for itself in a way that redefines collective social goods (social peace, mutual self-recognition, reciprocal expectations and entitlements to care and support, identity, belonging, etc) as *a priori invalid* limitations on the freedom of contract.

Third, *expanded norms of contract and property are used to force the boundary of the market mechanism beyond the limits set by social inhibitions on the substitution of goods*. Where utilities will not match up with prices then the solution is to use contracts to capture the otherwise escaping social remainder. This is exactly what the reformers do. The large consulting houses (Coopers Lybrand, Price Waterhouse, etc) all employ teams of accountants, many with double degrees in positivist economics and positivist law, to achieve this conversion of civil society into yet-to-be achieved economic product. As civil society is brought within the boundary of the corporation its normative contents

27 Friedman M *Capitalism and Freedom*, (University of Chicago Press, Chicago, 1962) p 13.

28 This relies on some paraphrasing of arguments made by Trebilcock M *The Limits of the Freedom of Contract*, (Harvard University Press, Cambridge, 1993) p 10.

are "uncoupled" from the public sphere and questions of public legitimacy and consent are transposed into contractual obligations to corporations. The contract "allows" (ie forces) the isolated individual to set notional money values (shadow prices) on all otherwise economically intangible goods such as happy work-relations with colleagues, child care, flexibility of time/work, and, in short, the quality of life. Freedom of contract joins with freedom of choice in a clear connection with the neo-classical doctrine of consumer sovereignty.

Fourth, civil society is redefined as "externalities" of the market. What this means in practice is that "damage to the social fabric" caused by expansions of the market into formerly settled forms of association (for example the mutual support of extended family and local community neighborhood) will be redefined, within the economic paradigm, as the transaction and other costs of market exchanges. This hides another facet of the economic takeover of civil society because it tends to assume that "more of the same", in this case a more efficient allocation of resources and a still purer translation of shadow prices into actual prices, will remove the problem. So it is with the Australian Federal Government's Industry Commission inquiry into the efficiency of the Catholic and Uniting Churches. The Churches provide charity for people who have become the victims of "structural adjustment"; but charity tends to be inefficient precisely because it is an unconditional, and not a cost-efficient, allocation of resources. So the remedy to the problem lies in obviating the demand for charity by putting in place a structure of incentives that will reintegrate the hapless individual into the market economy: probably by reducing or removing her guaranteed, unconditional, benefit and by replacing it with one that creates still more dependence on the market, for example by forcing her into a contract that makes a short-term benefit conditional on the acceptance of a longer term job at lower than welfare benefit rates (probably involving relocation in a social situation that provides still less social support). In exposing the notion that social welfare should be defined either as a limitation on the autonomy of would-be market actors and/or as an externalisation of transaction costs, one might turn to the conclusions of Dahlman's landmark essay on "Externality". The conclusion is, as he says, "rather startling":

... transaction costs per se have nothing to do with externalities. What is involved is a value judgment: if you believe that markets internalise everything, you will believe that externalities do not exist; on the other hand, if you believe that markets do not internalise side-effects, you will believe in the persistence of externalities as deviations from an attainable optimum. This is not science; it is metaphysics: value judgements and political goals will enter into the determination of whether externalities occur in our world.²⁹

29 Dahlman C J "The Problem of 'Externality'" (1962) 37 *Economica*, quoted by Trebilcock, *op cit*, p 60.

From a standpoint in civil society this is Catch 22 and double jeopardy. In either case the notion of externality serves a warrant for some form of remedial *economic* restructuring that converts norms of association in civil society into yet-to-be-achieved increases in economic efficiency.

This forward defence of welfare economics with public choice has been a highly successful ideological strategy. And still, it leaks! Just as quality of life reappears as the signifier for civil society's escape from its totalisation as aggregate utility (standard of living), so "community" re-appears, at this second level, as the signifier for civil society and its escape from the fatal embrace with the public choice contract of *homo economicus*. "Community" here is quite likely to mean ascriptive, or tribal, community (*Gemeinschaft*) but it is nonetheless powerful in calling up images of repressed *social* experience and forms of association.

Four points or consequences follow:

1. The pressure for economic growth and increased efficiency produces a "surplus of contingencies" that forces the self into an increasingly *active construction of its social identity as a socially situated and embedded self with a narrative life story and a social destiny*. [As Michael Sandel notes:]

... the self, being unbounded in advance, is awash with possible purposes and ends, all impinging indiscriminately on its identity, threatening always to engulf it. The challenge to the agent is to sort out the limits or boundaries of the self, to distinguish the subject from its situation, and so to forge its identity.³⁰

2. The pressure for economic growth and increased efficiency forces a recognition that labour is produced not as a thing for sale, not as a commodity, but rather by agencies of socialisation and, first among them, *by the family*. And as Offe puts it, "the criterion of marketability stands directly opposed to the variety of cultural bonds in which persons socialised within the family stand".³¹
3. As these same pressures of economic growth and increased efficiency create a defensive need for "*communities of memory*"³² in which social resistances to

30 Michael Sandel as quoted by Honneth A "The Limits of Liberalism: On the Political-Ethical Discussion on Communitarianism" (1991) 28 *Thesis Eleven*, pp 19-34; see also Sandel M (ed), *Liberalism and its Critics*, (New York University Press, New York, 1984).

31 Offe, *op cit* p 56.

32 Bellah R et al *Habits of the Heart: Individualism and Commitment in American Life*, (Harper & Row, California, 1985).

commodification congeal in revived memories and imaginary constructions of shared experience, for example of life in the local community, and sometimes of a "golden age" of pleasurable pastimes not yet displaced and consumed by market forces.

4. Pressures of economic growth and increased efficiency create an explicit recognition of *civil society and social environment as a finite collective good* — and as the first condition for effective economic and legal structures. This is evident in the American communitarian movement's Communitarian Platform:

... our foremost purpose is to affirm the moral commitments of parents, young persons, neighbors, and citizens, to affirm the importance of communities within which such commitments take shape and are transmitted from one generation to the next... If communities are to function well, most members most of the time must discharge their responsibilities because they are committed to do so, not because they fear lawsuits, penalties, or jails ... The state and its agencies must take care not to harm the structures of civil society on which all depend. Social environments, like natural environments, cannot be taken for granted.³³

The communicatively secured self "versus" the automated market

At the third level in the schema (see Figure 2) there is no leakage save for that which comes from the social movements that are society's only new defence against the economic efficiency of contractarian public choice. Social movements create new norms, identities, and solidarities that transcend the spatial and temporal structures of particular communities. In so doing they depend on the remains of the public sphere: on civil disobedience, on publicity, and on what is left of public broadcasting and of an independent "quality press". It is through these remains that social needs achieve mutual recognition of a kind which can translate into legitimate claims on government for legislation to guarantee civil, political, and social rights and the entitlements of citizenship.

The rhetoric of the economists and reformers seems to presage another shift to a third forward defence against "leakage" that is already well articulated in contemporary social theory. The problem with both the utilitarian and the contractarian economic reductions is that both posit a choosing self, and therefore a social actor, which still "prowls like a ghost" in the new "iron cage" of the neo-classical market. At the

33. Etzioni A *The Spirit of Community: Rights, Responsibilities, and the Communitarian Agenda*, (Crown, New York, 1993) p 266.

second level in our schema the choosing self returns in Rawls' influential prescription as a self that is "prior to its ends".³⁴ For just this reason it escapes full incorporation into the market.

For the economists it is the logic of *systems* that will, at last, promise success and close off the "return of the social". When the market is idealised as a system the space between ideal and actual prices (ie civil society) will also be idealised in terms of *performances* that are functionally specified by the requirements of an increasingly *self-referential* system. This is exactly what Lyotard means by "performativity". The personality, character, integrity, etc., of the social actor has shrunk to yes/no responses made to "choices" that are redefined as programmed responses to a cybernetically engineered price system through which we gain access only through a "reformed economics" understood, in the terms first of Hayek and more recently of Buchanan's, as "catallaxy", or the "science of spontaneous exchange processes". The system is based — Buchanan's words — on "perhaps the only real "principle" of economic theory as such; namely the principle of spontaneous order, or spontaneous coordination. Empirical relations are described and designed from this new normative perspective of:

... an idealised setting of perfect competition ... in which there is no power of one person over another at all. In the world where each and every buyer of each and every commodity and service confronts many sellers, among whom he may shift costlessly, and where each and every seller of each and every commodity or service confronts many buyers, among whom he may shift costlessly, there is no power of one person over another.³⁵

One resist the temptation to laugh in the face of this sublime positivism and ask how it works as a "text". How does the incorporation of systems logic into the core of the economic paradigm serve as a new forward defence that can capture the escaping social remainder more completely? Three observations:

First, rights cease as they are subordinated to economic system functions. The intrinsic rights and basic liberties of the citizen vanish in the face of the single overriding requirement of economic system performance. Reform now consists in making "individuals want what the system needs in order to perform well".³⁶ The

34 Rawls J *A Theory of Justice* (The Belknap Press of Harvard University, Cambridge, 1971).

35 Buchanan J *Liberty, Market and State: Political Economy in the 1980s* (Harvester Press, Sussex, 1986) p 20-1.

36 J F Lyotard *The Postmodern Condition: A Report on Knowledge*, (Manchester University Press, Manchester, 1984) p 62.

normative justification of the contractarian position is exactly reversed as the functional requirements of the economy brings with it a "duty of individuality" that is to "be placed at the service of the system."³⁷ The choosing self is dissolved in the requirement set on the individual, as a consumer and a producer, to "adapt your aspirations to our ends — or else". With this shift no space is left either for social democratic constructions of social needs, equity, and redistributive justice, or for the contractarian Rawlsian principles of justice as fairness. "Performativity" is the overriding criterion in a system where:

Rights do not flow from hardship, but from the fact that the alleviation of hardship improves the system's performance. The needs of the underprivileged should not be used as a system regulator as a matter of principle: since the means of satisfying them is already known, their actual satisfaction will not improve the system's performance, but only increase its expenditures. The only counterindication is that not satisfying them can destabilize the whole. It is against the nature of force to be ruled by weakness. But it is in its nature to induce new requests meant to lead to a redefinition of the norms of 'life'. In this sense, the system seems to be a vanguard machine dragging humanity after it, dehumanising it in order to rehumanise it at a different level of normative capacity. The technocrats [econocrats] declare that they cannot trust what society designates as its needs since they are not variables independent of the new technologies. Such is the arrogance of the decision makers — and their blindness.³⁸

Or, if one prefers Luhmann to Lyotard, "The rationalisation of economic decision-making rests upon a perversion of ordinary moral attitudes" that can occur because "economic decisions can be neutralised morally and politically and therefore take on a certain institutional stability"³⁹

Second, individual choice reduces to yes/no responses to a cybernetically engineered price system. At the level of the individual economic performance and more concretely productivity, initiative, flexibility, and enterprise are measured against behavioural responses to external price messages (stimuli). As the economic systems paradigm defines all choices as exogenous choices measured only against the standard of adaptation to an external market the actor and his or her dispositions, motives, wishes, intentions, and life plans are all ruled null and void. And it is for

37 McDonald K "Globalisation, Multiculturalism and Rethinking the Social" (1994) 30 *The Australian and New Zealand Journal of Sociology*, pp 239-247.

38 Lyotard, *op cit* p 62.

39 Luhmann N *The Differentiation of Society*, (Columbia University Press, New York, 1992)p 221.

much the same reason that economic rationalists value characterlessness as the *sine qua non* for "leadership" (the residues of a value-rational and choosing self imposed dysfunctional conditions on the senior executive's capacity to respond "rationally" and strategically to price signals). The same principles guide the institutional design of civil society with appropriately engineered incentives. What happens when the non-strategic and value-rational motivations of citizens-as-social-actors reappear? Economic motives of the neutral, context-free kind break down and this impairs the substitutability of goods and limits the reach and autonomy of the pricing system. This is what happens when domain specific motivations such as those operating, for example, in family relations, religious observance, public duty, in intellectual life and artistic expression, begin to gel into new solidarities and institutional barriers against full "incentivation". The economic reformers must then reinsert incentive structures and "invisible hand mechanisms". Their aim must be to destroy the inner coherence of these motivations and to stop them from settling into resisting norms. How is this to be done? One strategy is obvious: "The temporary contract is in practice supplanting permanent institutions in the professional, emotional, sexual, cultural, family, and international domains as well as in political affairs."⁴⁰ The engineering of performance is the most aggressive kind of economic attack on civil society because its aim is to destroy processes of association at source through an ethical neutralisation and sterilisation of the context in which intrinsic motivations arise. Incentives are no longer designed to give voice and effect to prior motivations as in more socially friendly economic idealisations. Instead the relation is inverted and incentives have priority over motives and are, furthermore, designed explicitly to produce only functional motivations of a context-free system forming kind.

Third, the globalisation of the economic system gives the market immunity from the social. The obvious point here is that the "balance" between the two coordinating structures (state, bureaucracy and the law on the one side, and economy, markets and money on the other) breaks down as the economy is more completely differentiated from the nation and the social order. Economic sovereignty is eroded and the national economy turns into a relay station for imperatives that come now from an over-towering global economic system. This brings its own answer to the economically frustrating problem of meaning, solidarity, and the mutual self-recognition of selves in civil society. "Meaning causes problems not only for the identification of goal states but for the identification of the boundaries of systems as well".⁴¹ The economic system takes on a new appearance as a force that is now "out

⁴⁰ Lyotard, *op cit* p 66.

⁴¹ McCarthy T *Ideals and Illusions: On Reconstruction and Deconstruction in Contemporary Critical Theory* (MIT Press, Cambridge, 1993) p 157.

there", and symbolically represented (for Australians) by the rim of an island continent. One can no longer argue with "It". This in turn satisfies:

the precondition for ... [this] ... sort of economic planning ... [namely] ... a constantly high degree of differentiation of the economy from the rest of society. Only in this way can an unerring and secure transmission of decisions be guaranteed.⁴²

Dependency is re-expressed as helpless obedience to functional imperatives of a wholly external system that no longer obeys limits set by the older fusion of structure and meaning (culture) in the nation society.

Total dependence on the market reappears in its economic translation as conformity with unanimity of consent and complete freedom. Here we have a social autism that makes the neo-classical economic model perfect: all choices are exogenous choices and all choices appear only as "revealed preferences" and demonstrations of the economic efficiency of the market itself as a mechanism for the substitution and encoding of all values as prices. Systemically coordinated behaviour replaces "communicatively" coordinated action to, "relieve interpretation ... and action from having to take up, formulate, and communicatively explicate meaning relations".⁴³ Responses can be "spatially and temporally interconnected in increasingly complex webs, without it being necessary for anyone to survey or stand accountable for these communicative networks".⁴⁴ In short, systemically co-ordinated behaviour replaces communicatively coordinated action in every possible value sphere.⁴⁵ For civil society to return, the conditions for its own operation, together with notions of right and association, must now be reinvented through a "discourse ethics".

Conclusions

So, where does this leave us? With mostly bad news and some good news. The foregoing discussion is driven by its own normative assumptions and its own judgment on economic reform in the principal OECD nations, especially the English-speaking ones. My first underlying assumption is that the raw material for economic development in these nations now has little to do with brute physical resources. The raw material is really civil society itself and economic reform has become a

42 Luhmann, *op cit* p 221.

43 Luhmann, as quoted here by Habermas *J Theory of Communicative Action*, Vol 2 (Beacon Press, Boston, 1987) p 63.

44 Luhmann as quoted by Habermas, *op cit*, p 263.

45 See Pusey, *op cit*, chapters 5 & 6.

technology for converting civil society into a resource for economic growth measured on the conventional economic indicators. Economic reform seems to be consuming what is left of civil society as a fuel for growth. If we press these arguments to their limits there is only bad news for civil society and human rights.

The bad news

In speaking of civil society in the context of these late-modern nations there can be no nostalgic equation of civil society with long-lost forms of backwoods, pre-industrial, or traditional society. But concern for civil society does point quite centrally to patterns of association that are central for any meaningful understanding of rights, citizenship, institutions, participation and democracy. I have sought among other things to show how association thus conceived reappears, for the economic reformers, as a "resisting sludge" that stands between shadow or ideal prices (would-be prices in a perfectly efficient economy), and real/actual prices. In retrospect we can see that economic rationalism, which is nothing more nor less than the logic of economic reform, does not stand still. Indeed, we see that it moves stepwise from one forward defence to the next in an attempt to assimilate civil society into the economic paradigm. In this contest for civil society economic rationalism may be seen as an attempt to capture patterns of association with an economic logic of *dissociation* that advances in a pattern that is now easily recognisable. At each step (Figure 2) we see an expanding dependence of the individual on the market and, conversely, a loss of mutual self-recognition and association manifest as follows in:

- (a) a deepening prohibition on interpersonal comparisons of value (which forces us to use money as the common denominator);
- (b) an increasing fragmentation of the boundaries between different cultural and value spheres (which forces us to treat all "intrinsic", domain-specific and use-values as exchange values that can be substituted one for another through prices);
- (c) an increasing disembedding and abstraction of ordinary processes of reflection (which forces reliance on deontological systems, abstract codes, and monies of different kinds).

These concerns for civil society point to my second normative assumption that these nation-societies are to be constructed as social democracies with two coordinating structures (states and markets) that are both "answerable" to norms and institutions rooted in civil society. In following this model I would argue that the old Soviet empire collapsed because one coordinating structure, (state and bureaucracy),

swallowed the other (economy and market) and inflicted such enormous damage on civil society that the whole system could no longer reproduce itself. It collapsed. Conversely, there is, at least a strong argument to be made for the view that economic rationalism signals the same kind of danger for the US and Great Britain and probably for Australia as well. In these nations under the guise of deregulation, privatisation, corporatisation, and increased competition, the shift in the burden of coordination from states to markets is consuming what is left of civil society at an enormous rate. Of course, one cannot treat civil society as a fixed quantity of non replaceable "essentials". We go on creating new norms, institutions, and solidarities all the time, even in the most horrific circumstances. The point of the argument is to challenge the dogma of neo-classical economists everywhere, namely the presumption that civil society consists of nothing more than a plurality of individuals who are, by nature, infinitely resourceful and infinitely adaptive (high performance magic plastic!) This is an assault on civil society and those who inhabit it and should be recognised as such.

The good news

And yet, notwithstanding these gloomy arguments there may be a silver lining as well. There are some important positive trends that I shall try to capture in three points ...

In the first place one cannot fail to notice that even as "economic rationalism" intensifies a pace, both at the national and the international level, the idea of civil society is also fairing very well. There are several reasons for this. In the first place civil society has the hallmark of a truly successful political ideal inasmuch as it is taken up as a common idea by peoples and institutions with very different cultures, needs and aims: in this case by the advocates for the former Eastern European nations (who see civil society as "normal" society undeformed by state socialism); by the modernising successors of New Left who see it as an appropriate vehicle for the affirmation of *social* needs; and by international institutions (who accept civil society as the unavoidable normative basis for the determination of rights). These observations give grounds for hope that the idea of civil society will continue to gather strength as it is elaborated and deepened through the conflicts and struggles of actors with disparate and even opposing interests — perhaps even to the point where the conflicts strengthen the very rules through which they are contested.

And, secondly, it is very much an open question whether processes of globalisation will, on balance, diminish or augment the effectiveness of human rights that are, per force, disputed and claimed locally, in the shadow of governments, and in relation to organisations that are normally subject to the laws of a sovereign state. On the one

side it is true that "economic rationalism" advances everywhere as governments conspire to give up their responsibilities for providing public goods and services to the citizens who elect them — by signing away their powers to the markets through international treaties like NAFTA, MAI, and WTO. On the other side of the same coin one notes that international agreements are becoming an almost routine mode of supra-national regulation in such domains as the management of the oceans, of Antarctica, of whaling, and of carbon emissions and the like. As a consequence the way is cleared for legitimate and binding *social* obligations to be set, through the same means, on both governments and corporations.

Thirdly, economic rationalism seems to advance at the expense of those concrete and familiar moral claims that we tend to associate with communities and communitarianism. But this may be a sign that the institutionalisation of a morally principled order has moved on to another more advanced stage? We are reminded that only a couple of generations ago human rights were normally advanced by religious, ethnic, or political groups in a particularistic and even exclusive way and that now human rights are more commonly backed with a claim to universal validity. It could be argued that what has been lost in concreteness has been more than offset by the widened scope of the claims that citizens may now make for the basic social goods (justice, freedom, autonomy, access to resources, participation, etc) that they need to flourish. And here it is Malcolm Waters who sums up his own argument with exemplary clarity:

Human rights have the particular advantage that in order to succeed no person can be excluded. The moral implication of a social constructivist theory of human rights is that it recognises the universal contribution of humanity to its construction, reconstruction, and endorsement. If all of humanity can agree on a single set of principles that will govern its social arrangements then the morality of those principles cannot be in doubt.⁴⁶ ●

46 Waters M "Globalisation and the Social Construction of Human Rights" Address to the Australian Sociological Association, Deakin University, Geelong, Victoria, December 1994.