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# The Political and the Concept of the Public

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A distinguished political theorist recently reminded his readers that the political relationship is not the natural and normal condition of mankind, as modern Western citizens tend to assume, but an exceptional and precarious one. The natural and normal condition is in fact despotism, which 'flows so naturally from the military conquest in which most societies originate that creating a civil or political order must be recognized as a remarkable achievement.'[1]

The essence of this achievement, more precisely, is the construction and maintenance of a public world. The Greek term *despotes*, the same writer recalled, was used (along with the Roman word *dominus*) to describe a diametrically opposed kind of relationship, in which no public world exists – the relation, that is, of a master to his slaves, in which the master enjoys unrestricted personal power.

The aim of the present paper is to consider the question of how the public relationship within which the political is located is to be conceived. This, it may be noted, is the original problem of political theory with which Aristotle wrestled in the opening pages of the *Politics*. Exactly what was the new kind of public relationship, he asked, that had been created by the transition from the family to the combination of families in villages, and then to the combination of villages in a *polis*? His answer was ambiguous. On the one hand, he defined the public concern in terms of a common purpose, which was the pursuit of a shared conception of the good life by men who accepted that they could only realize it collectively. This first view, in which the emphasis is on identifying the public in substantive terms, may be described as a programmatic concept of the public. On the other hand, Aristotle sometimes played down the idea of a shared purpose and instead defined what was public in terms of mutual participation in a constitution or system of offices. This alternative view, in which the emphasis is on defining the public in formal terms, may be described as a civil concept of the public. The detail of Aristotle's attempts to define the concept of the public are not relevant at present: what matters is the inescapable ambivalence he revealed at the heart of the concept.

Anticipating what is to be said, it will be argued that it is the second, civil concept of the public that is most appropriate to modern mass industrial democracies, but that the civil concept must be supplemented by elements drawn from the programmatic perspective if it is to yield an adequate account of the political. It is necessary to begin, however, by considering in a little more detail the implications of the two different concepts of the public distinguished by Aristotle. As was just indicated, the aim is not to explore Aristotle's own position in detail. It is, rather, to use his initial distinction as a jumping board for the construction of two contrasting models of the concept of the public which have dominated the history of Western political thought.

*The programmatic model of the public*

Historically, the programmatic interpretation of the public has taken a variety of very different forms, ranging from Aristotle's original vision of the good life, through medieval religious visions of salvation, to modern ideological projects that aim at the final abolition of evil from the social order. So far as contemporary liberal democratic societies are concerned, the most common form is meliorist visions of welfare or social justice. Regardless of the specific character of the common purpose invoked, however, the programmatic commitment has tended to be associated with a body of political theory that displays six characteristics.

In the first place, it is assumed that the principal justification for the idea of a common purpose is the existence of an objective human nature or essence. This common nature, from the programmatic perspective, is ultimately the only possible basis for a concept of the public. Needless to say, a major problem presented by the programmatic standpoint is the difficulty of establishing what this nature is. Various metaphysical, theological and epistemological answers have been advanced but, in the nature of things, no decisive answer has emerged. As Hannah Arendt observed, this is scarcely surprising, since the quest for an objective human nature assumes that human beings can be treated as objects. In reality, Arendt points out, they are subjects whose identity is inseparable from their own self-interpretation as subjects. Only a god, she comments, could hope to assign them a nature, since only he occupies the external vantage point necessary in order to speak of them as objects.

In the second place, the programmatic perspective entails the assumption that issues of gender, of nationality, of religion, and of social and economic stratification are, in principle at least, no obstacles to the achievement of consensus by rational and right-minded individuals. This

may be termed the organic assumption, and it is vital to the programmatic conception of the public in so far as it enables the need for coercion in the face of radical dissent to be evaded, or at any rate minimized. It minimizes the need for any resort to coercion simply by treating dissent as an aberrant and temporary phenomenon which will disappear once the ideal social order has been constructed.

Where significant dissent exists, the organic assumption permits it to be explained away by a series of familiar strategies that invoke a distinction between *episteme* and *doxa* (Plato), or between true and false consciousness (Marx), or between a real and actual will (Rousseau), or between distorted and undistorted communication (Habermas). These strategies, it should be stressed, do not deny the actual existence of disagreement on fundamental issues, but merely assume that it can be eliminated by what defenders of the programmatic point of view sometimes describe as the raising of consciousness. What matters at present is that all such strategies for the programmatic structuring of the concept of the public exclude any place for compromise and toleration, except for tactical or strategic purposes.

The third characteristic of the programmatic perspective is the demotion of law of every kind to an administrative instrument that has no intrinsic value, but is to be judged entirely in terms of its success or failure in promoting the common purpose. So long as it promotes that purpose, its existence is accepted, but as soon as it appears to be ineffective, the programmatic perspective makes it perfectly logical to turn to alternative instruments, such as decrees. In other words, the programmatic model offers no secure protection against arbitrary power.

The fourth characteristic of the programmatic model concerns such vital but contingent features of political units as territoriality. Because the programmatic model identifies the concept of the public with a common purpose, it attaches only incidental significance to the existence of historic political frontiers. This means, for example, that if the common purpose being pursued is thought of as the universal emancipation of the proletariat, or the universal triumph of some particular concept of justice, the existence of international frontiers is regarded in an entirely negative light, in so far as they impede the execution of the purpose. The programmatic model, in other words, tends to blur the distinction between peace and war, precisely because, as was just noticed, it provides at best only a peripheral place for compromise with contingent features of the existing order.

The fifth characteristic of the programmatic model is that it may involve an ideal of direct participation in the promotion of the common

purpose, as it did for Rousseau, for instance, but does not necessarily do so. Within the programmatic concept of the public, the demand for direct participation may instead be replaced by a theory of representation as the key to access to the public realm. What matters at present is that the programmatic theory of representation is always incompatible with that found in the modern liberal democratic theory of representation. It is necessary to consider precisely why that should be so.

The answer is that the programmatic theory of representation is always conceived of in what may be called existential terms, whereas the liberal democratic theory of representation is always worked out in constitutional and juridical ones.[2] In programmatic theory, that is to say, the representative is not merely an artificial representative of his constituents, possessing representative status only by virtue of the procedure which conferred the office he holds; rather, he is thought of as representating his constituents only in so far as he actualizes in his own being the nature which impels them towards the common purpose.

The best known example of an existential theory of representation in the sense relevant to the programmatic model originally came not directly from politics but from theology. Specificially, it took the form of the Christian theory of the universal significance of Christ's crucifixion. In dying on the cross, the theory holds, Christ died for all mankind, not merely in the sense that he was motivated by universal concern, but in the deeper sense that his nature as God incarnated in human form enabled him to embody the human essence at large.

In radical versions of the programmatic model, a politicized analogue of the theological version of existential representation was deployed, for example, by Marx, in order to explain the sense in which the proletarian class may be said not to be a specific class with a purely sectional identity, but rather to be the representative of all humanity. This is the passage in which he invokes the existential theory of representation in order to describe the universal emancipatory status of the proletarian mission:

> Where is there, then, a real possibility of emancipation in Germany?
>
> *This is our reply.* A class must be formed which has *radical chains.* A class in civil society which is not a class of civil society, a class which is the dissolution of all classes, a sphere of society which has a uiniversal character because its sufferings are universal, and which does not claim a *particular redress* because the wrong which is done to it is not a *particular wrong* but *wrong in general.* There must be formed a sphere of society which claims no *traditional* status but only a human status, a sphere which is not opposed to particular consequences but is totally opposed to the assumptions of the German political system: a sphere, finally, which cannot emancipate itself without emancipating itself from all the other spheres of society, without, therefore, emancipating all these other spheres, which

is, in short, a *total loss of* humanity and which can only redeem itself by a *total redemption of humanity.* This dissolution of society, as a particular class, is the *proletariat.*[3]

One further example of the existential theory of representation within the framework of the programmatic concept of the public is instructive. Following upon its deployment by Marx, the theory of existential representation was used, in a revised form, by fascism. In this case, it took the form of the leader principle. According to this theory, the leader is not merely the juridical representative of his followers but is, rather, the historic embodiment of their common destiny. It follows that, although the leader may submit to the forms of election familiar in liberal democratic states, his authority does not come from that process. It also follows, of course, that failure to win the vote does not in any way affect the validity of his claim to authority: all it means is that the people were deluded, for whatever reason, and in their delusion failed to recognize their leader, to whom they actually owe their identity and coherence as an historic community.

The sixth characteristic of the programmatic model merely draws together and makes explicit an implication of the previous characteristics mentioned. This is that there is no place within the programmatic model for a distinction in principle between state and society, or between the public and the private. No such distinction can be maintained, since what matters is the common purpose, and to this all else is subordinate. In practice, large areas of life may be ignored by the public authorities, on the ground that they do not in fact interfere with the common purpose, but that is a purely discretionary matter on their part.

The sixth characteristic is so important that it will be useful to restate it in slightly different terms. Since what matters in the programmatic model of the public is the common purpose, the crucial distinction is not between the public and the private, but rather between what contributes directly to the common purpose and what does not. In other words, the political community is polarized between insiders, who are the defenders of the common purpose, and outsiders, who are its opponents. The outsiders, if they are lucky, may be allowed to live in peace, provided they are not felt to be unduly obstructive. If they are allowed to do so, however, they do so only on sufferance. If they are unfortunate, the outsiders may be demonized, in which case they will be persecuted, or expelled, or even subject to genocide. The relevant point at present, however, is not so much the fact that the programmatic perspective nurtures such extremist attitudes, but that it offers no secure foundation for a limited style of politics, for which a principled distinction between public and private is

fundamental.

This, then, in bare outline, is how the concept of the public has been (and continues to be) conceived of in what has been termed here the programmatic tradition of Western political thought. The philosophical problems inherent in this tradition range, as has been seen, from the justification of an objective view of human nature, through the organic assumption, to the metaphysical claims made by the existential theory of representation. In the present context, however, all those problems will be passed over in order to focus attention on the most serious and insuperable difficulty encountered by the programmatic concept of the public. This is that the identification of the public with the existence of a common purpose requiring consensus on substantive values means that the model has only a very limited ability to accommodate diversity. This is dramatically evident in, for example, Rousseau's portrayal of the common purpose in terms of a General Will that excludes the existence within it of other identities or relationships on the ground that they create smaller, rival general wills. Rousseau's problem in coping with diversity, however, is relevant in the present context only because it exemplifies a difficulty that is faced, in one form or another, by all defenders of a programmatic concept of the public.

Now, the contemporary relevance of what has so far been said will become obvious as soon as it is remembered that the collapse of the Soviet Empire in 1989 marked the culmination of a mood of growing disillusion throughout the Western world with the programmatic concept of the public. Coming as it did at the end of a period of declining faith in the power of planning to implement visions of a common purpose, the Soviet *debacle* rendered acute a need which had already been rendered urgent by the independent development of such movements as feminism, multiculturalism and postmodernism: the need, that is, to find a viable alternative to the programmatic concept of the public.

What all these developments demanded was the acknowledgement of an unprecedented variety of forms of diversity. There thus emerged the central problem of contemporary Western political thought, which is to find an alternative, non-programmatic concept of the public capable of accommodating this diversity.

### *The civil concept of the public*

It might be thought at first that the solution to this problem is not far to seek. Surely, it will be said, liberalism provides the answer? The answer, however, is not that simple, mainly because liberalism itself has for the

past century adopted an increasingly programmatic concept of the public. This tendency was already pronounced in the thought of John Stuart Mill, for whom the common purpose which the state should serve was the progress of humanity towards truth, virtue, and representative government. More recently, liberalism has adopted various ideals of social justice as the common purpose which holds the key to the concept of the public. But what happens, in such cases, to those who disagree with the common purpose in general, or with the specific policies by which it is to be implemented? If they do, is there any justification for insisting that they have an obligation to comply with the law? On this crucial issue, programmatic liberalism is silent.

This does not mean, however, that the quest for a liberal solution to the problem of diversity must be abandoned. What is necessary is to turn instead to a non-programmatic strand of thought in the complex Western liberal heritage that has been relatively neglected in recent years. This is the model of civil association which, as was suggested at the start, offers the most coherent alternative to the programmatic concept of the public.

The central concern of the civil model is with the conditions for legitimacy in a situation in which no consensus exists on fundamental values. Whereas the progammatic model attempts to deal with this situation by identifying a common purpose that will restore substantive unity, the civil model explicitly seeks to accept and build upon diversity in two related ways. In the first place, it redefines the concept of the public in formal or procedural terms, in the manner foreshadowed in Aristotle's identification of the *polis* in terms of a shared constitution. And secondly, it drives a wedge between the authority of government, on the one hand, and approval of the policies the government pursues, on the other – the result of this wedge being that the acknowledgement of obligation to the law no longer depends directly upon consent to the law, or approval of those who make it. The end result of these two features of the civil model, we shall see, is a more secure basis for the limited state than the programmatic concept of the public provides.

The first great statement of the civil ideal in the early modern period is to be found in the writings of Hobbes. In the period since the French Revolution, subsequent restatements and modifications are to be found in the writings of Constant, de Tocqueville, and more recently, Friedrich Hayek and Michael Oakeshott. For present purposes, however, the general nature of the model can be adequately conveyed by concentrating attention on the earliest statement, which is that of Hobbes, and the most rigorous of recent formulations, which is that of Oakeshott.

So far as Hobbes is concerned, his continuing relevance has been aptly summarized by one of the leading contemporary theorists of civil association. 'It is', John Gray writes,

> in the works of Hobbes, who wrote for an age of religious wars and barbarous movements much like ours, that we glimpse the outlines of a form of government suited to our circumstances. It is a form of government devoted to securing the peace, and that first of all, securing the largest space of liberty of thought and action. It is a unitary form of government, without complicated devices for devolution, in which all or most of the activities not essential to the primary peacekeeping task of the state are left to private initiative. It is in this notion of a form of government having such strictly limited functions that we may, possibly, find a clue to our present dilemma. What it suggests is the salience to our condition of a state which is strong but small, in which the little that is not privatised is centralised, and in which the practitioners of diverse traditions are left at liberty, so long as they do not disturb the common peace, to refine and develop their forms of life. This is a form of government devoted not to truth, or to abstract rights, and still less to any conception of progress or general welfare, but instead one which by securing a non-instrumental peace creates the possibility of civil association.[4]

There are, however, at least four unresolved theoretical problems in Hobbes' version of the civil model. One is a failure to distinguish with sufficient precision between the vocabulary of power, on the one hand, and that of authority, on the other. In his description of the the nature of sovereignty in particular, Hobbes appears at times to speak as if the two vocabularies are interchangeable. A second problem is Hobbes' use of the concept of covenant to explain the nature of obligation to the state. The authority possessed by a non-voluntary association, however, cannot be explained in voluntarist terms. The third problem is Hobbes' inevitable failure to explain how the model of civil society must be modified in order to deal with the problems of a mass industrial society. The fourth problem is his equally inevitable inability to foresee the charges of patriarchal exclusionism recently levelled at the civil model by feminist thinkers. In order to see how the civil model copes not only with these problems, but also with many others that are familiar in contemporary debate, it is necessary to leave Hobbes behind and turn, in the first instance at least, to the most impressive contemporary restatement of the civil model, which is that provided by Michael Oakeshott in *On Human Conduct* (1975).

For purposes of brevity, and at the expense of disregarding the subtlety of Oakeshott's thought, the main features of the civil concept of the public may be summarized in seven propositions. It will be noted that they do not involve any reference at all to a human essence, or to an organic assumption, or to anything resembling the existential theory of representation. Together, they constitute what is now sometimes called

a non-foundational theory of limited politics in conditions of great social diverstiy, and that indeed is the importance of the model. The seven propositions are as follows.

1. Civil association consists entirely of rules, in the form of laws, together with the conditions necessary for making those rules, adjudicating them, and securing compliance with them.

2. These rules are non-instrumental: that is, they are not intended to serve any extraneous purpose, interest or ideology. What they do is constitute or define civil association. In this respect, they are a bit like the rules of grammar, which do not require one to speak about any particular topic, but define what is involved in speaking at all.

3. These non-instrumental rules are acknowledged as obligatory simply because they are accepted as authoritative. What makes them authoritative is that they are acknowledged as the outcome of an acknowledged procedure. The importance of this may be brought out by stating the same point in the form of three negations:

* the rules are *not* accepted because they have independently valid rational grounds (Rawls),

**or* because they can be derived from some ultimate ethical norm (Kelsen),

* *or* because they have a utilitarian value of some kind.

4. Recognition of the authority of the rules of civil association does not entail personal approval of them by citizens, or approval by them of those who exercise the authority by which they are made. Since there will, however, inevitably be a desire to change both the rules and the legislators who make them when these are not approved of, it is part of the nature of the civil model to provide procedures for permitting discussion of these subjects, as well as procedures for giving effect to the outcome of such debate.

5. The rules which constitute civil association entail, by their very nature, a distinction between 'public' and 'private' life, not in the sense of there being intrinsically different kinds of acts (as Mill thought), or intrinsically different spheres in which acts occur (as Arendt believed), but in the sense that there are two dimensions to every act, viz. a public dimension, in so far as every act can be seen from the standpoint of compliance or non-compliance with the rules, and a private dimension, in so far as every act is the successful or unsuccessful pursuit of some substantive purpose on the part of a particular agent.

6. The rules of civil association do not, in principle, exclude the simultaneous enjoyment of relationships other than the civil one itself. The only relationships they exclude are those which are incompatible

with them; they do not, that is, exclude relationships which are only different from them.

7. Finally, it is impossible to give a full account of civil association in terms of merely making and implementing a system of formal rules. For this reason, Oakeshott explicitly makes two vitally important qualifications to the model of civil association as a system of rule making and following.

*The first qualification is his recognition that civil association *must include provision for an activity that goes beyond the activities of legislating and adjudicating. This is the activity of ruling*, which is the executive activity of providing specific directives to particular groups or individuals to do particular acts in the interest of maintaining the civil order as a whole.[5]

*The second qualification is Oakeshott's recognition that there will inevitably be situations in which government acquires a purposive or 'managerial' character. When a civil association is threatened with dissolution or destruction, as in time of war, he writes, 'or when (in a lesser emergency) *cives* [citizens] are deprived of the shelter or amenity of a civil order, in such circumstances that judicial remedy is unable to restore the situation, the common concern may become a common purpose and rulers may become managers of its pursuit.' Oakeshott immediately adds, however, that 'For rulers to become managers even of an undertaking such as this, and for subjects to become partners or role-performers in a compulsory enterprise association such as this, is itself a suspension of the civil condition.'[6]

In addition to the two qualifications just mentioned, Oakeshott adds an important clarification which seeks to remove a common source of confusion about the nature of government in civil association. Every government, he acknowledges, must acquire and maintain the material resources necessary to exercise the functions assigned to it in civil association. In the course of doing so, however, it will almost inevitably display some of the characteristics of purposive enterprise activity. It will, for example, become an employer of labour, in the form of clerks and prison officers, for example. This does not, however, mean that government has itself become an economic enterprise. As Oakeshott himself puts it,

> No doubt, in the case of a ruler, an echo of his public office may be heard in his private 'interest' as a manager, an employer, a customer, or an owner, and he may even flourish his *majestas* in the market-place, claiming special exemptions such as non-liability for certain torts in relation to his employees. But, if in virtue of his being a ruler such exemptions were conceded in *lex*, the private relationship would not have itself become public, it would merely be [a private relationship] ruled by public considerations alleged to be appropriate to rulers. If, on the other hand, a ruler's 'lordship' were allowed to

invade, to usurp, or even to colour his rulership, if a transactional relationship were substituted for that of ruler and subject, ... then rulers and subjects and civil association itself would have disappeared from the scene.[7]

At the risk of overemphasis, the full implication of this passage may be brought out by restating it in the following way. The civil model does *not* maintain that government cannot take upon itself managerial functions, in the interest of such purposes as military defence or welfare provision. What it maintains is that, in so far as managerial functions are assumed by the government, the relationship of subjects to rulers is no longer a civil one. This does not necessarily mean that the civil relationship is destroyed; indeed, it may ultimately be strengthened. What it does mean, however, is that there is inevitably a tension, and a potential conflict, between the civil and the managerial relationships, and that those who (as free citizens) regard the civil relationship as the key to human dignity are well advised to be aware of the dangers inherent in the situation, rather than gloss over them with the wishful idea that they have found a 'middle way' that offers the best of all worlds. The belief that post-war Europe had in fact discovered just such as middle way was perhaps the most dangerous illusion cherished by Western social democracies in the quarter century after 1945.

It has been suggested, then, that the model of civil association provides the most viable alternative to the programmatic conception of the public that was, it may be hoped, finally discredited in 1989. As has already been noted in passing, however, a variety of powerful theoretical objections to the civil model have recently been raised, of which some have not yet been mentioned, and some that have been mentioned (like the charge of patriarchal exclusionism) have not been dealt with. In order to clarify still further the way the concept of the public is understood in the civil model, an attempt will now be made to dispel a variety of major objections to the civil model by identifying some deep-seated confusions that are now endemic in Western political thought.

The first step in this process of clarification is to note the confusion about the classical model of civil assocaition that has arisen as a result of the very different version of the civil model that has been inspired by events in eastern Europe in recent years. The nature of the eastern European ideal may be illustrated by considering the very different political writings of Vaclav Havel, and Vaclav Klaus.

Havel is generally regarded as one of the leading eastern European defenders of civil association, and the grandeur of Havel's vision is unquestionable. The important thing about his political thought, however, is its fundamentally programmatic character. His concern, to be precise,

is to promote a common purpose, which is spiritual renewal in an age of dehumanization. From the standpoint of spiritual renewal, Havel says, it is 'beside the point' to discuss things like socialism and capitalism: the real question is

> whether we shall, by whatever means, succeed in reconstituting the natural world as the true terrain of politics, rehabilitating the personal experience of human beings as the initial measure of things, placing morality above politics and responsibility above our desires, in making human community meaningful, in reconstituting, as the focus of all social doing, the autonomous, integral and dignified human I, responsible for himself because he is bound to something higher.[8]

As Havel recognizes, his ultimate purpose is in fact nothing less than salvation – 'the salvation of us all, of myself and my interlocutor equally.'[9] The salvation he seeks concerns above all man's relation to nature, and Havel can only find the key to this relation by completely turning away from the modern world of science and impersonal power to the piety of the prescientific medieval world. In that lost world, men

> have not yet grown alienated from the world of their actual personal experience, the world ... where concepts like 'at home' and 'in foreign parts', good and evil, beauty and ugliness, near and far, duty and work, still mean something living and definite. They are still rooted in a world which knows the dividing line between all that is intimately familiar and appropriately a subject for our concern, and that which lies beyond its horizon, that before which we should bow down humbly because it partakes of a mystery. Our 'I' primordially attests to that world and personally certifies it; that is the world of our experience, a world not yet indifferent, since we are personally bound to it in our love, hatred, respect, contempt, tradition, in our interests and in that pre-reflective meaningfulness from which culture is born. That is the realm of our induplicable, inalienable and non-transferable joy and pain, a world in which, through which and for which we are somehow answerable, a world of personal responsibility.'[10]

It must be emphasized that there is no intention of disparaging Havel's vision in any way, but only of noting that a programmatic vision of this kind involves a completely different conception of civil association to the non-programmtic one explored in the present essay. Manifestly, Havel tends to speak as a seer, and in this respect resembles, for example, Solzhenitsyn, whom he admires. Specifically, he describes his position as one of 'antipolitical politics'. An anti-political vision, however, remains a programmatic one, and cannot, as such, provide a conception of civil society that offers a secure place for limited politics.

Remaining a moment longer in eastern Europe, and turning from Havel to Klaus, it may be noted that the short document adopted as its programme by the Czech Civil Forum on the evening of 26 November 1989, was much closer to the classical civil model outlined here than that

upheld by Havel. The document, which was read out by Vaclav Klaus, proposed

> a new Czechoslovakia with the rule of law guaranteed by an independent judiciary, free elections at all levels, a market economy, social justice, respect for the environment and independent academic and cultural life. A normal country in the centre of Europe.[11]

It must be added that although this is quite a good statement of what the classical ideal of civil association entails, in practice it has subsequently been interpreted by Klaus in a Thatcherite way that has given priority to the free market aspect. The result has been to confuse the case for civil association, which is based on its non-programmatic character, with a programmatic commitment to economic growth. More specifically, Klaus' record illustrates the extent to which the case for civil association has become caught up, in eastern Europe in particular, with neo-conservative advocacy of capitalism. The main point, however, is that both Havel and Klaus offer a programmatic model of civil association which, from the standpoint of the classical version of civil association, is of course a contradiction in terms.

The first step towards dispelling confusion about the civil concept of the public, then, is to distinguish clearly between the eastern European model and the classical model inherited by Western European model from Hobbes. To summarize: the classical model, unlike the eastern European one, is not opposed to the state, but is itself a particular conception of the state – a non-programmatic conception, that is, in which the legitimacy of the state does not entail acceptance and approval of a state-imposed common purpose, regardless of whether that purpose is spiritual (as in Havel's version) or economic (as in Klaus's).

The second and final step towards clarifying the civil conception of the public consists of a rather rapid review of a batch of misunderstandings which help to account for the relative neglect of the civil model in recent years. Nevertheless, what is said may perhaps serve to rescue the civil ideal from the relative neglect from which it has suffered, in its classical form at least, as a mode of accommodating the diversity of the contemporary world.

### *The principal misunderstandings of the civil concept of the public*

The first confusion consists of the identification of the civil with the minimal state. This is the identification made, for example, by Nozick. But civil association is not committed to upholding the minimal state; its

concern is to eliminate the *arbitrary* state. It is concerned, in other words, not with the *quantity* of government intervention, but the *mode* of intervention. Provided the mode of intervention does not conflict with the civil model, extensive government intervention is in principle not excluded by it. Precisely how much, however, and precisely which areas it occurs in, are matters for *ad hoc* judgement. They are not, that is, matters that can be determined by reflection on the civil ideal in the abstract.

The second confusion consists of identifying the civil model with capitalism. This confusion, which has already been touched upon in connection with Vaclav Klaus, became widespread during the 1980s, when it was fostered in particular by such eminent neo-liberal thinkers as Milton Friedman and Friedrich Hayek. The confusion is of course easy to understand, since civil association seems in practice to thrive best under free market conditions. The difference, however, is clear: whereas the market is about economic growth, civil association is about restraints on arbitrary power. Failure to preserve that distinction has been a great misfortune for the newly liberated states of eastern Europe. The assumption entertained by those countries was that a rapid adoption of liberal democratic institutions, accompanied by a programme of de-regulation, would automatically promote economic growth. When this growth failed to materialize as quickly as had been hoped, the civil model with which it had been identified was also discredited. The lesson is that the choice of freedom does not guarantee prosperity, and may indeed conflict with it in many situations.

The third confusion consists of identifying the civil model with democracy. This confusion, once again, is easy to understand, for the societies which provide the most impressive examples of civil association during the past two centuries are also societies in which democratic sympathy is firmly entrenched. Notable amongst them are Britain and the United States. A tradition of civil association, however, existed in Britain in the eighteenth century, before the advent of democracy. And, as de Tocqueville demonstrated long ago, when democracy emerged in the USA and western Europe during the following century, there was no intrinsic connection between democracy and civil association. This is because the dominant concern of democracy is with equality, which is perfectly compatible with the constant growth of a paternalistic state that relies on the benign use of arbitrary power to implement its welfarist and egalitarian ideals. The fact that this state might be benign, de Tocqueville stressed, should not be allowed to obscure the fact that it is in reality a new, historically unprecedented form of despotism for which, he said,

the European political vocabulary provides no adequate descriptive term.

The fourth confusion consists of identifying civil association with liberalism. As John Gray in particular has been at pains to show, however, the civil ideal has no specific connection with liberal doctrine in the form, at least, in which that doctrine has developed since the time of John Stuart Mill. Above all, it stands removed from the rationalist and universalist ideas about the self, progress, and representative institutions that have been connected with liberalism during the past century.[12]

The fifth confusion consists in identifying the core of civil association with the arbitrary separation of a 'public' from a 'private' space or realm. Understood in this way, the distinction is plausibly attacked by feminist theory on the ground that it is merely a device for excluding women from the public realm. Behind it, feminists maintain, rests the indefensible assumption that their nature fits women only for private life. Chantal Mouffe, however, has rightly drawn attention to the point already made, which is that the private/public distinction made in the classical model of civil association does not, when properly understood, attempt to make a distinction between two discrete, separate spheres, after the fashion of liberal thinkers like Mill. It acknowledges, rather, that *every* situation is an encounter between "private" and "public" because every enterprise is private, though never immune from the public conditions prescribed by the principles of citizenship.'[13] In other words, every action *inevitably* has two *aspects* or *dimensions*, although no action can properly be classified according to a quasi-spatial separation between two spheres.

The sixth confusion consists of assuming that the civil model entails an impossible ideal of neutrality or impartiality. This problem, however, arises only when the civil ideal is developed by liberal theorists who invoke reason, in one of its many forms, as a foundation for legitimacy. As Hobbes made clear long ago, however, in the first great formulation of the civil model, the basis of civil association is authority, and that authority needs no further ground beyond the fact that it is actually acknowledged. More recently, Michael Oakeshott has reiterated this non-foundational character of civil association.[14]

The seventh confusion arises when it is maintained that the formal or procedural character of the civil ideal means that it is indifferent to, and even destructive of, community. Civil association, however, is itself a form of community – it is the community of free men and women, in so far as they share a commitment to maintaining the civil conditions necessary for their own freedom and that of others. But it is not, of course, a community in the sense of that term which requires fellow members to

share a common purpose, within a voluntary organization. The merit of civil association, so far as freedom is concerned, is precisely that it presupposes neither substantative agreement nor voluntary membership. It may be added that the members of a civil association may also think of themselves as members of a community like, for example, the nation. The only restriction which the civil ideal imposes on them in this respect is that the communal identity must not conflict with the civil one. Members of the Weimar Republic who thought of their primary identity in terms of commitment to Nazism, for example, could not reconcile this communal identity with their civil identity because the essence of the Nazi concept of community was that it entailed the destruction of the rule of law. This was regarded as artificial and divisive, and was to be replaced by the principle of personal subordination to the Führer, which was regarded as the only natural and cohesive basis for a racially pure society.

The final confusion to be considered here consists of dismissing the civil model as fundamentally gendered, and hence exclusionist. The most impressive formulation of this position is to be found in the feminist contention that the civil model rests on an intrinsically patriarchal conception of the political. It may be granted immediately that feminist scholars like Carole Pateman are correct when they maintain that the classical social contract theory of civil association is thoroughly imbued with patriarchal assumptions.[15] It does not follow from this, however, that the civil ideal is therefore intrinsically, rather than circumstantially gendered.

This, indeed, seems to be accepted by more recent feminist philosophy. Thinkers like Chantal Mouffe, for example, have acknowledged that the civil ideal only appears to be intrinsically exclusionist to those who adopt an essentialist version of feminism. Amongst the best known of these is the version advocated by Pateman, whose principal target is the classical liberal separation of a public from a private realm. This separation is untenable, she holds, because it relies on a sexually undifferentiated concept of the individual – an individual who turns out, in practice, to be very male. The public/private distinction, which takes for granted this male individual, is the building block on which patriarchal thought is constructed, since 'the separation of private and public is the separation of the world of natural subjection, i.e. women, from the world of conventional relations, i.e. men. The feminine, private world of nature, particularly, differentiation, inequality, emotion, love and ties of blood is set apart from the public, universal – and masculine – realm of convention, civil equality and freedom, reason, consent and contract.'[16]

The aim of feminist politics, on this view, must be to replace the apparently a-sexual patriarchal concept of individuality by a sexually differentiated, 'bi-gendered' concept that will provide the basis for a new theory of citizenship.

Since this kind of feminist opposition to the civil model is rooted in essentialism, the foundation upon which it rests disappears as soon as essentialism is abandoned. This has been clearly recognized by Chantal Mouffe. 'Feminist politics', Mouffe maintains, 'should be understood not as a separate form of politics designed to pursue the interests of women as women, but rather as the pursuit of feminist goals and aims within the context of [the] wider articulation of demands.'[17] The distinctive feature of civil association, she observes, is its ability to accommodate this 'wider articulation of demands', since it involves neither making the political just one sphere amongst others (as in liberal theory), nor a sphere which overrides all other (as in civic republicanism). Instead, she writes, civil association 'is an articulating principle that affects the different subject positions of the social agent while allowing for a plurality of specific allegiances and for respect for individual liberty.'[18]

Even within feminist philosophy, then, it is occasionally recognized that dismissal of the civil concept of the public realm as *intrinsically* patriarchal and exclusionist is based on false premises.

*The future of the civil concept of the public*

It is of course one thing to construct a theoretical model, and quite another to put it into practice. On this matter – the transition, that is, from theory to practice – it must suffice to conclude by making two simple points.

The first point is merely a reminder that the theory of civil association is not just an invention spun out of the academic imagination. It is, rather, an attempt to clarify aspects of the modern Western political tradition which actually exist, and have indeed existed in some countries (such as Britain and America) for several centuries. More specifically, the model, is intended to highlight the assumptions implicit in Western political practice that have contributed to the maintenance of limited politics, to the rejection of arbitrary power, and the reconciliation of order with individual liberty and well-being. To understand the conditions of civil association is therefore more than an intellectual exercise: potentially at least, it is to illuminate our practice and to grasp the implications for it of the choices we make.

Following on from the first point, the second consists of an attempt to

identify the main threats to the civil model at the present day. Ignoring for this purpose the more or less dangerous misunderstandings of the nature of the civil model that have already been considered, the threats in question may all be regarded as manifestations of a single phenomenon. This, the most dangerous of all the enemies of civil association, can be captured in one word: it is complacency. It is necessary, however, to make the nature of this complacency more concrete by identifying more precisely the ways in which it is displayed.

Complacency is manifest, above all, in the assumption that the principal threat to civil association come almost entirely from *external* foes: foes, that is, who are external in the sense that they reject liberal democracy and are consciously bent on subverting the civil institutions that are its core. These foes are usually identified either with the kind of consciously subversive movement represented by Nazism or Bolshevism, or else with more recent terrorist organizations of one kind or another.

In fact, the most important enemies of civil association today are far more subtle in character. What they have in common is a tendency to present themselves as friends or allies of 'true democracy', and in that way conceal their incompatibility with the limited style of politics that is enshrined in the civil model of the public.

The first of these enemies disguises itself as a sincere and robust friend of all that is warm, intimate, and caring in human relations. More precisely, what characterizes this enemy of the civil concept of the public is an uncompromising hostility to all impersonal forms and procedures. It is illuminating, in this connection, to recall a passage in which de Tocqueville described the nature of democratic culture. 'Men living in democratic countries', he observed,

> do not really understand the utility of forms; they feel an instinctive contempt for them ... Forms arouse their disdain and often their hatred: As they usually aspire to none but facile and immediate enjoyments, they rush impetuously toward the object of each of their desires, and the least delays exasperate them. This temperament, which they transport into political life, disposes them against the forms which daily hold them up or prevent them in one or another of their designs.
>
> Yet it is this inconvenience, which men of democracies find in forms, that makes them so useful to liberty, their principal merit being to serve as a barrier between the strong and the weak, the government and the governed. *Thus democratic peoples naturally have more need than other peoples for forms, and naturally respect them less.*[19]

This then is perhaps the hardest aspect of the public world, as it is conceived in the civil model, for the modern citizen to grasp – the fact, that is, that in a complex and diverse social order, the whole concept of a liberal public order can only exist by virtue of the existence of

impersonal forms.

The second contemporary enemy of civil association again claims to be a friend of liberty and democracy. This enemy, which is closely related to the first, begins by professing an ideal of liberation that goes far beyond what can be secured by the purely formal achievement of legal rights, or even by the redistribution of material benefits. True liberation, the enemy maintains, is about recognition and respect. This second enemy, in a word, assumes the guise of what is generally termed 'identity politics'.

The essence of identity politics is the claim that true recognition cannot be achieved until it is appreciated that the personal is the political. Because the personal is the political, the principal aim of identity politics must be to destroy the public/private distinction, in any form at all. In its place, identity politics seeks to place two things. One, obviously enough, is a totally politicized view of every aspect of life. The other is a demand for total personal transparency as the only possible foundation for morality and politics in the postmodern world.

In order to avoid serious misunderstanding, it is necessary to make a qualification at this point. This is that there is no intention of disparaging pragmatically rooted attempts to assist oppressed ethnic minorities, or any other kind of oppressed minority. What is questioned, however, is the endeavour to defend such attempts by underpinning them with a body of theory that systematically insists that the personal is the political and that liberation is only possible when any attempt to distinguish between private and public is rejected.

The reasons for questioning the ideal of liberation upheld by identity politics, and especially for maintaining that this kind of politics is incompatible with civil association, are not novel. Those reasons, indeed, emerged long ago, in the first great modern portrait of the practical implications of identity politics. This was provided by Rousseau.

What Rousseau demonstrated was that the final result of equating the personal with the political (as he had sought to do in *The Social Contract*, for example) was most unlikely to be the enriched sense of recognition and personal identity for which he had initially hoped. In practice, the outcome was much more likely to be, not a morality of mutual trust and sociality, but a morality of mutual reproach and suspicion, in which everyone eyed everyone else with a view to identifying forms of selfishness and insensitivity that prevented solidarity from being achieved. This, of course, was the pitiable condition into which Rousseau himself finally lapsed towards the end of his life, as portrayed in the sense of isolation so graphically communicated by the opening sentences of *The Reveries of*

*the Solitary Walker.* 'So now I am alone in the world', he wrote,

> with no brother, neighbour or friend, nor any company left me but my own. The most sociable and loving of men has with one accord been cast out by all the rest ... I must surely have slipped unwittingly from waking into sleep, or rather from life into death. Wrenched somehow out of the natural order, I can make nothing out, and the more I think about my present situation, the less I can understand what has become of me.

At the political level, Rousseau demonstrated that the sense of isolation and despair fostered by the politics of identity were likely to be matched by a type of government in which an endless variety of techniques are mobilized in order to generate a purely artificial sense of solidarity. Rousseau himself emphasized two devices or techniques in particular as especially important for politicizing the sense of personal identity. One, he said, was so simple as to be almost embarrassing: this was the efficacy of child like games and rituals in generating the emotional commitment which group identification requires, and which reason cannot hope to provide. The other was the need for a civil religion with which to underpin a sense of national and cultural identity, and prevent any tendency for a cleavage to emerge between a sense of private and public identity. What Rousseau established, in a word, was that identity politics almost inevitably meant total politics.

To help oppressed groups, then, is one thing, and is in principle quite compatible with civil association, even if civil societies fail dismally in this respect at times. To seek a remedy in the theory of identity politics, however, is at best to jump from the frying pan into the fire, and at worst to move into the politicized world of unfreedom which Rousseau portrayed so graphically.

The third, and paradoxically the potentially most destructive, enemy of the civil concept of the public order is even more obviously the product of complacency. In this case, complacency is displayed in a rationalistic form of moral idealism that has established a profound influence over Western liberal doctrine during the past three decades. The essence of this idealism is the conviction that nothing which actually exists is entitled to command moral and political respect until it has been judged in the light of independently devised criteria that owe absolutely nothing to experience, and pay no regard to felt wants or felt satisfactions.

Moralistic philosophy, inspired by rationalistic idealism, is philosophy that systematically refuses to provide a central place in politics to the virtue of prudence; that refuses to provide for the unintended outcomes of actions that make up the greater part of human existence; that refuses to attach ethical significance to the inescapable contingencies of human

existence, whether they relate to the individual or to society; and that makes no allowance for the fact that familiarity, not reason, is frequently the only thing that softens distinctions amongst men and gives them such acceptability as they possess. Above all, moralistic philosophy refuses to entertain the possibility that the ideals it upholds – the ideals of liberty, equality and justice – may always be used to destroy, but can never be used to determine unequivocally what is to be put in the place of what has been destroyed. The precise danger created by contemporary moralistic philosophy may be summarized as follows: it seeks justice, but is actually more likely to foster *resentment.*

Perhaps it will be said that the three dangers to the civil concept of the public that I have sought to identify are exaggerated. If that is so, then of course little or no harm has been done. Indeed, some good might even have emerged as a result of merely pondering (after the fashion of de Tocqueville and, in a different way, Nietzsche) the possibility that the worst enemies of *respublica* may, in the contemporary world, be things we pride ourselves on, rather than villains we can hope to spot from afar.

NOTES

1. K. Minogue, *Politics: a very short introduction* (London: Oxford University Press, 1995), p. 4.
2. The terms are my own. On the general nature of the two kinds of theory, see, for example, Ernest Barker, *Reflections on Government* (London: O.U.P., 1942), esp. chapters III and XIII. For the classical statement of the juridical or artificial theory, see Hobbes' *Leviathan,* ch. 16.
3. Karl Marx, *Early Writings,* ed. T.B. Bottomley (New York: McGraw-Hill, 1964), p. 58. All italics are in the original.
4. *The Salisbury Review,* vol. 7, no. 1, September 1988, p. 44.
5. *On Human Conduct* (Cambridge, C.U.P., 1975), p. 144.
6. *On Human Conduct* (Cambridge, C.U.P., 1975), pp. 146-7.
7. *On Human Conduct* (Cambridge, C.U.P., 1975).
8. 'Politics and Conscience,' in R. Scruton (ed.), *Conservative Thoughts* (London: Claridge Press, 1988), p. 194.
9. Ibid., p. 194.
10. Ibid., p. 182.
11. Timothy Garton Ash, *We the People* (Harmondsworth: Granta, 1990), p. 104.
12. *Post-liberalism* (London: Routledge, 1993).
13. *The Return of the Political,* p. 84, Italics added.
14. *On Human Conduct* (Cambridge: C.U.P., 1975), pp. 152-4.
15. *The Sexual Contract* (Stanford 1988); *The Disorder of Women* (Cambridge, 1989).
16. Quoted by Chantal Mouffe from an unpublished paper by Pateman, *The Return of the Political,* p. 10.

17. Mouffe, p. 87.

18. Mouffe, p. 84.

19. A.de Tocqueville, *Democracy in America*, quoted by Harvey Mansfield, Jr., in 'The forms and formalities and liberty', *The Public Interest*, No. 70, 1983, p. 120. I have added the italics.