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Civil Society and Government

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Introduction

Robert C. Post and Nancy L. Rosenblum

CIVIL SOCIETY is so often invoked in so many contexts that it has acquired a strikingly plastic moral and political valence. The recent renaissance of the term began with anticommunist dissent in Eastern Europe, which gave civil society its association with opposition movements and a “parallel polis” to the state. But the term has been endlessly invoked since that time. In the United States, where “civil society” has become a staple of both academic and political discourse, its ideological orientation runs the entire partisan spectrum; we can identify social democrats, grass-rooters, neo-Tocquevilleans, centrists, conservatives of many stripes, libertarians, multiculturalists, and civic republicans.

There are also vastly disparate understandings of the relationship between civil society and government. Civil society is alternately viewed as a source of legitimacy and stability for government and as a source of resistance against arbitrary, oppressive, and overweening government. Civil society is sometimes conceived as a spontaneous growth, prior to and independent of government, and sometimes as dependent on government for legal structure, robust recognition, or outright fiscal support. Civil society is described both as developing in partnership with government and as substituting for the failings of government. Prescriptions for privatization, devolution, and “subsidiarity” can arise from faith in communalism or in voluntarism, or from a loss of faith in the justice or efficacy of government.

This volume portrays the relation between civil society and government as seen from a variety of perspectives in political theory. Our compass is not exhaustive, but it is unusually inclusive. These essays discuss civil society and government from the point of view of classical liberalism, egalitarian liberalism, critical theory, feminism, natural law theory, Judaism, Catholicism and Protestantism, Islam and Confucianism. Our goal is comparative; we wish to provide the materials for assessing how theorists from diverse political and religious traditions understand the relationship between civil society and government.

The concept of civil society is historically bounded, and it is not an organizing concept in every tradition. Where the concept is alien, we

have instead inquired into the functional equivalents, if any, to oppositions like those between state and society, citizenship and membership. The essays have been organized topically, according to six basic inquiries:

BOUNDARIES: In terms of function and consequences, does it matter where the line is drawn between civil society and the state?

NEEDS: Do civil society and the state need each other? If so, what does civil society need from the state? What does the state need from civil society? What are the particular values they impart to one another?

LIABILITIES: Do civil society and the state pose liabilities for each other? If so, what liabilities does civil society pose for the state? What liabilities does the state pose for civil society? How are these liabilities to be contained?

GROUPS AND INDIVIDUALS: In what contexts and/or under what conditions, should government interact with individuals (*a*) directly? (*b*) indirectly through communal associations? In general, what factors should determine the appropriate arrangements?

CITIZENSHIP: In moral rather than strictly legal terms, what are the prerogatives of citizenship? What are its duties? What, if anything, is the role of civil society in forming good citizens?

CONFLICT: How are conflicting demands of citizenship and membership in the non-governmental associations of civil society to be handled?

By organizing each essay topically, we have tried to make comparisons among cultures and traditions accessible. Mindful that theoretical perspectives are not internally uniform, we have included critical responses to each account.

In this introduction we propose to focus primarily on the first topic, on the boundary between civil society and government. We will not address the descriptive question of how state entities may be empirically distinguished from their private counterparts. We will instead discuss the normative question of how this boundary should be conceived and why it matters.

To say that the boundary between civil society and government is located differently in diverse political regimes and that its purposes are justified differently by various political, moral, and religious theories is just the beginning. Within any given state, the boundary is shifting in practice; it responds to the ongoing contingencies of political experience. The history of political thought shows that it is ceaselessly contested. We have only to think of the varying kinds and degrees of separation of church and state, or of the range of feminist challenges to articulations of a public/private divide, to get a sense of this.

Nonetheless, contemporary political theories distinguish between government and civil society, and they identify a boundary between them, even if it is not fixed. What resources do we have for understanding the constant postulation of some boundary between civil society and government, on the one hand, and the variability of its location, purpose, and justification, on the other?

We propose a general theoretical proposition about the boundary between civil society and government. To employ the usual spatial metaphor, civil society is the realm of social life which, when viewed from the perspective of government, is characterized by plural and particularist identities. Government, by contrast, is an inclusive sphere, which, when viewed from the perspective of civil society, is characterized by overarching public norms made and enforced by official institutions. Civil society is a zone of freedom for individuals to associate with others and for groups to shape their norms, articulate their purposes, and determine for themselves the internal structure of group authority and identity. Government is a domain of common purpose and identity.

In the remainder of this introduction, we shall explore the many implications that follow from this seemingly simple theoretical proposition, and we shall indicate how they may be used to frame the questions discussed in the essays collected in this volume.

CIVIL SOCIETY

The elements of civil society range from groups based on religion and ethnicity to more fluid voluntary associations organized around ideology, professionalism, social activities or the pursuit of money, status, interest, or power. They range from circles of friends, which Humboldt described as the condition for cultivating “beautiful individuality,” to single-purpose political advocacy groups. Civil society also includes communities, like formally organized religious settlements, with their implication of primary socialization, strong attachment, and common history and expectations. Civil society harbors cultural institutions of all kinds, from the deep, constitutive practices of a cultural group with a common language and history, to the wildly eclectic popular culture of self-help groups in the United States. From many perspectives, the family counts as an element of civil society; it is the premier mediating, moralizing institution. These essays demonstrate that the purposes of association and their personal meanings for members are as various as human needs and imagination. The value of association is as encompassing as the value of liberty.

In saying that civil society is the realm of pluralism, we are endorsing Isaiah Berlin’s observation of the historicity of human nature, his notion

that human identities cannot be other than local and particular, and his belief that this diversity is not transitory. Civil society is not a residue on the way to a unified state in which citizenship eclipses other aspects of belonging, or on the way to a cosmopolitan order in which universality is our essence. Pluralism has a normative as well as a descriptive dimension.

The substantive content of group purposes and the internal organization of associational life are as various and malleable as human creativity. From any given perspective, the groups that are singled out as shaping the nature of civil society will depend on theoretical commitments. There is sharp dispute, for example, on the question of whether market institutions should be included in the concept of civil society. From our perspective, however, this dispute can be framed as turning on the degree to which market institutions are seen as contributing to the formation of the identities of their participants or, by contrast, as primarily engaged in instrumental or strategic action that objectifies or alienates these participants.¹

With respect to those aspects of associational life that are pertinent to identity formation, we would stress that a key variable is the degree and manner in which the diverse groups that make up civil society are open and permeable. The structure of pluralism is of great significance. We can in fact range pluralist societies along a spectrum from fluid to rigidly segmented.

From a number of perspectives, the “ideal type” of civil society is identified with voluntary association, meaning that membership is consensual and exit possible without loss of status or public rights and benefits. Escape from hereditary and ascriptive attachments (or their willing affirmation) and the ceaseless formation of new associations for every conceivable purpose mark this type of civil society. There are few obstacles to the proliferation of groups through creation or schism.

A defining characteristic of civil society in this view is the capacity of individuals to move freely among groups and to shift involvement among them. So long as this capacity realistically obtains, even traditionalist or “functionally traditionalist” associations serve to underscore individualism, voluntarism, self-construction, and self-expression.

Another crucial aspect of a fluid civil society is that men and women typically join more than one group; membership is plural. Group identifications overlap and conflict. Beyond having a pluralist structure, then, a fluid civil society affords individuals *the experience* of pluralism.

The significance of civil society is not exhausted by its meaning for individuals. Self-expression and self-development are not the only justifications for groups. Even in fluid civil societies, some associations are not voluntary or chosen. As a matter of moral psychology, belonging is often a matter of assent rather than consent. This is sometimes true,

although not always, with religion; it is truer for race, or indeed for any ascriptive trait that a given society singles out as especially valued or despised. One of the principal purposes of association is pursuit of “recognition” by minority groups. The aim is to get symbolic and distributive signs of the group’s status, exhibitions of public respect for the group’s unique differences.²

Many perspectives challenge individualist, voluntarist accounts of civil society that give priority to personal autonomy. They substitute accounts of civil society in which the openness of groups and shifting involvements among them is less important than the capacity of groups to endow persons with stable and enduring identities. In such circumstances, civil society is not fluid, but segmented. It is comprised of deeply embedded spheres or orders, classes, or cultural groups, or corporations that are closed and that restrict membership—whether by ascriptive traits or status. Membership is not a matter of contribution, merit, or active joining, but of a person’s general characteristics. Groups may claim individuals as their own and attribute obligations to them regardless of subjective identification or participation in a cultural “way of life.” From these perspectives, identification with a group is not psychological—and not (or not only) a matter of subjective affiliation expressed through affirmative membership—but objective. Indeed, presumptive identity trumps personal identification, and presumptive identity is oriented to the collective identity of presumably integral groups and communities.

In segmented societies, groups are more inclined to see membership as mutually exclusive and to be hostile to the idea of plural identities and multiple, overlapping memberships. Groups and communities inevitably experience internal divisions over authority and over the interpretation of norms and purposes, but those who value a segmented vision of civil society believe that conflicts should be resolved internally, insulated from government intervention and from the influence of other powerful and intrusive socially dominant groups.

Some civil societies verge toward the segmented because of the power and authority of tradition and because of the relative weakness of social forces encouraging to social mobility and voluntary association. But the character of legal regulation is also important for the fluidity of civil society. The law can range from ascribing to people group identity to actively suppressing all forms of group rights, with a myriad of intermediate positions. Those who wish to use the law to maintain social segmentation employ a “politics of recognition” whose goal goes beyond public respect, and beyond the degree of self-government afforded voluntary associations in relatively liberal societies. Rather, the goal is to secure a group’s legal and political authority over members and over the distribution of public goods. The associations of civil society claim

authority over personal status law and even criminal law as it pertains to group members.

Within civil society, then, there are inequalities of rights and responsibilities and resources. These differentials subsist between groups and within groups. In segmented civil societies with codified membership and authority that controls the distribution of important rights and benefits, these inequalities are entrenched. We have only to think of the status and opportunities of women in hierarchic religious communities governed by religious laws and courts. Where civil society is segmented and association ascriptive or closed, the critical questions are whether government codifies communal identities and deals directly with group authorities and corporate communities rather than directly with individuals on the basis of universal norms, and for what purposes.

Political theory has continuously shifted between envisioning civil society as fluid and as segmented. It oscillates between imagining persons within civil society as possessing identities circumscribed by singular cultures, religions, and autonomous communities, and imagining persons as autonomous individuals who are members of diverse arrays of primarily voluntary associations.

In practice, however, fluid and segmented civil societies exist on a continuum. Voluntary and ascriptive associations, open and closed groups, coexist in any given civil society in different proportions. The identities constituted by and affirmed in groups develop out of history and available norms and social forms; we all come from somewhere, and we begin making decisions within the options we know. But identity is not exhausted by history; individuals are not “radically situated.” If our points of origin provide us personally and collectively with an initial source of meaning, they are not the sum or stopping place for meaningfulness in our lives. Ascriptive identity is not the whole of identity, either phenomenologically or morally, if for no other reason than that recognized contributions to associations, not objective belonging, are an essential part of self-respect.

Within civil society, individual well-being is tied to, and understood to be tied to, the well-being and independence of groups. But this means that it is also connected to the self-government of associations, with struggles for control over the group’s authority, membership, internal rules, and purposes. Thus if associations are constitutive, they are not wholly constitutive. Every component of civil society, even hermetic separatist communities, are permeable to the influence of other groups, to overarching public culture, to influences from abroad, and to the ceaseless invention of novel values and social forms.

This suggests that segmentation within civil society must have limits. The freedom that produces pluralist associations must be prized and

enforced. Some allowance for multiplicity of memberships and some possibility of shifting participation by individuals among at least some social and political groups is always a defining characteristic of civil society. When that sphere of freedom is too constricted, the capacity to shape and sustain associations that provide the structure of personal and collective life is choked off. It is one thing to give precedence to affirmation of the group over members' freedom to join and leave; it is another thing to erect very costly obstacles to exit that make membership effectively inalienable. Where freedom of association is truncated, civil society fragments into an aggregate of unalterable ascriptive attachments defined by heredity, tribal identity, race, ethnicity, or caste. A pluralist society that affords autonomy only to particularist groups and not to individuals loses its normative standing as a civil society.

Civil society is not merely plural; it is also particularist. Within civil society identity is always specific. Identity springs from contingencies of socialization and from choice; it is not the product of a single and unified design. It comes from participation in particular groups and associations, and is not imposed uniformly upon all by the state.

Every form of civil society recognizes that groups and associations are not coterminous with the state. Groups and associations need not be sovereign to flourish. They are *jurisgenerative*, and their members are subject to authoritative norms and practices. But their goods and services—from burial societies to education—are distributed only to members. They are “partial publics” that acknowledge the distinction between member and citizen. Within civil society, therefore, membership is diverse *and* particular.

It is not necessary, however, that each such group or association understand itself as particularist. Sometimes groups and associations within civil society conceive themselves as the bearers of universal truths, which all ought to acknowledge. Groups and associations may seek to use the state to impose their truths. If they were to succeed, however, and if the conformity required by their vision were extensive enough, the viability of civil society would be mortally threatened. The grip of the state can impose a uniformity fatal to pluralism.

The persistence of civil society, therefore, depends upon a complex equilibrium among diverse groups and associations. The power to deploy the state in the service of group identity must be reasonably diffused among competing associations. Or groups and associations must implicitly agree, however grudgingly, to compete for adherents through persuasion rather than through legal compulsion. Or there must be implicit understandings about the limits of the state's ability to impose uniformity. However this equilibrium is maintained, the upshot will be that civil society will remain, from the perspective of the state, a domain of

partial and particular identities. Particularism marks the boundary that separates civil society from the state.

GOVERNMENT

Associations proliferate and assume their structures in part in response to law, to the various provisions of corporate, tax, tort, or constitutional law that create the framework within which associations define their purposes and carry out their activities. Groups and the experiences groups make possible are partially shaped by these forms.

The legal framework is the means by which government performs its civilizing role of transforming arrant pluralism into civil society. The “civil” in civil society is not exhausted by civility. Most fundamentally, society is civil when it is not subject to militarism, violence, and the will to domination on the part of particularist groups. Government is the agency responsible for controlling private armies and private oppression. It sets limits to the authority of associations over their members and outsiders, and protects against at least the worst oppression by private authorities. It enforces rules for settling disputes and looks for ways of diminishing hostility and enabling coordination and alliances among groups. Without government, the result is anarchy, private oppression, or the private engrossment of collective resources.³ Neither individual rights nor the rights of collectivities are meaningful without the enforcement of law. This implies that limited government must be distinguished from weak government.

It is the responsibility of government to provide groups and associations with sufficient public goods and entitlements to commit them to publicly imposed order and cooperation.⁴ At a minimum these benefits must include civil peace and the distribution of certain rights. At a maximum they might include public funding for parochial education and cultural reproduction, support for services to group members, and public recognition of group identity.

Government must also establish an appropriate legal framework for formalizing and securing associations.⁵ Often this is done through the concept of legal personhood. Government assigns individuals and corporations *enforceable* civil and political rights; legal status as a person signifies the capacity to enter contracts, form agreements, own property, and to form associations for these and other purposes. Civil society is inconceivable absent a reasonably stable structure of civil law, which is a vehicle for particularism.

Government, finally, is a collective agent whose identity and purpose transcends the instrumental. In contrast to the pluralism and particularism of civil society, government may be defined as standing for inclusive

public norms and common identity. Through an overarching public political culture embodied in institutions and perpetuated through many forms of public education, direct and indirect, government articulates and sustains shared ground. It claims authoritatively to represent common interests. The substance of common political identity is variable, as is its capacity to attract the commitment of groups and the identification of citizens. It may consist of democratic norms of individual autonomy and equal and universal civil and political rights, or of public norms identified with a national culture (“American” or “French”), or of established religion and the secular norms that complement it. But in every case, government claims to embody the fundamental nature of a polity.

Common political identity is made manifest not only in formal institutions, but also in public rituals and monuments.⁶ It is cultivated through public education and proselytizing of various kinds. It is made effective by strategies of inclusion. All governments claiming to represent common interests must serve, if not every interest, then every group and association capable of challenging its stability and legitimacy, every element of civil society whose cooperation is needed. Common identity requires that these benefits be palpable and appreciated, that cooperation be general. And this demands a minimal degree of fairness—of public justification for the distribution of rights and benefits and costs. In this sense, Michael Walzer contends, every state is to some degree a welfare state.

The claim of government to represent the common good and the common identity is of course entirely putative. It is the everyday stuff of politics to expose this kind of claim as merely masking the particular interests of specific groups or associations. Under the conditions of diversity characteristic of civil societies, it is most improbable that there is any single common identity, and of course any vision of the common good is always *somebody's* vision.

What is at issue with respect to this kind of claim, therefore, is the right to speak in the name of a common good and identity. The right is authorized by whatever structures of legitimacy sustain the state. But it is from the perspective of the particularism of civil society that this right acquires meaning, for the common good is that which purports to transcend particularism. This contrast between the common good and the particular is expressed in the distinction between citizen and member.

If membership expresses particular commitments of discrete groups and associations, citizenship reflects the overarching norms of a government. For the pluralism of civil society to persist, these norms must be limited. They must not radically preempt or displace the possibilities of membership. It follows that the scope of citizenship must have intrinsic limitations.⁷

In fact citizenship in a modern state, even in a liberal democracy with its positive norms of public respect and avenues of effective participation, is often circumscribed. In the absence of external threats, citizenship is typically invoked only with respect to a restricted number of political occasions, instrumental and ritualistic, open to citizens regardless of merit, like voting, jury duty, or military service. Often participation in these occasions is not mandatory. Citizens are presumptively equal, and for this reason birthright citizenship has nothing to do with individual merit or ability. While in many contexts citizenship can be a source of pride and identity, citizenship does not ordinarily serve within quotidian domestic politics as a principal source of self-respect.

Exclusion from citizenship is demeaning, of course, an injurious mark of public disrespect, but inclusion per se does not have the opposite, positive significance. Although citizenship can call up the disposition to participate through one's own acts and energy, industry and skill, in the same ways that membership in private associations can summon these dispositions, it normally does not. Most frequently these dispositions are instead cultivated, exhibited, and appreciated through the associations of civil society, where contributions are suitably fitted to individuals' capacities and wants.

The development of a full and rich personality thus ordinarily draws upon participation in civil society. The philosopher Hegel, for whom "the creation of civil society [is] the achievement of the modern world," explained this best. *The Philosophy of Right* teaches that civil society must be seen against the historical background of alienation and a falling off from original social unity. But at the same time as civil society disconnects individuals from traditionalist moorings, it is the "tremendous power" that draws individuals into itself, provides them with a "second family," and reorients them. "The sanctity of marriage and the dignity of Corporation membership are the two fixed points round which the unorganized atoms of civil society revolve." What Hegel called the corporation—meaning economic organizations, religious bodies, learned societies, and so on—is the principal "ethical entity" that provides members rank and dignity, and "work of a public character over and above their private business . . . which the modern state does not always provide."⁸

CONCEPTUALIZING THE BOUNDARY BETWEEN GOVERNMENT AND CIVIL SOCIETY

Against this background, how, then, are we to conceive the boundary between government and civil society? The boundary functions to set civil society and government in productive tension. It defines the plural-

ism and particularism of civil society in opposition to the inclusive and overarching norms of government. Push the boundary too far in the direction of government, and civil society can wither away. Push the boundary too far in the direction of civil society, and government can collapse into anarchic disorder. Yet civil society requires government to survive, and government, at least democratic government, draws deeply from the strengths of civil society. The location of the boundary is a matter of judgment, which means that it is subject to perennial dispute and contestation. It has no single correct or fixed position, but moves with contingencies of history, tradition, culture, and politics.

Wherever the distinction between civil society and government is marked, however, there must always exist a boundary between them, because each is defined in opposition to the other. Government fails if it embodies merely particularist values. A police officer betrays his office if he does not treat citizens equally, but gives favor to members of his own group. Government must have reasonably independent police and courts, as well as an impartial administrative apparatus. If religious authorities establish theocratic rule; if ethnic or religious groups hold sway and deny civil and political rights to members of other groups; if government is captured by (or is itself) a dominant economic interest; if the common good is conflated with, and understood to be conflated with, particularist goods, government ceases to sustain civil society.

Without independence from civil society, government cannot protect basic rights or well-being. The associations of civil society mirror, reinforce, and actively create social inequalities of all kinds, with the accompanying enmity and rivalry. Government must be able to intervene to set bounds, to enforce basic requirements of peace, order, civil equality, and so forth. Government cannot perform even these minimal tasks if we assume that government “independence” is, like “impartial government,” a ruse or an impossibility. Government’s claim that it is not simply the mirror and agent of the most powerful forces in society must be credible.⁹

Conversely, civil society must be independent of government. The divide between civil society and government sets off civil society as *non-governmental*: that is, as distinct from the official, coercive, political apparatus. In this limited sense the distinction between civil society and government corresponds to the split between private and public, where the term “public” is understood to signify “official” government entities. Associations in civil society must speak in their own name; they do not have the authority “officially” to speak in the name of the common good.

In contrast to government, civil society must remain particular and plural. Whether or not membership in the associations of civil society is wholly voluntarist and best conceived as unfettered individual choice

rather than inherited or ascriptive, it is not, with the important exception of the family, mandated by public law. To the extent that groups and associations are authorized by government to exercise coercive legal authority over their own members or outsiders, the domain of civil society begins to lose its character. The internal laws of groups may be powerful, command obedience, and regulate members' lives in minute ways, but members must be able to exit from associations. There are frequently material and psychological costs to disassociation, of course, but the promise is that membership status does not determine civil standing or vital civil and political rights. A background of general civil laws of contract, property, marriage, and so on, allows people, particularly women, to disassociate from the authority and restrictive personal laws of specific religious and ethnic groups.¹⁰

The analytic distinction between civil society and government has functional implications. As we have stressed, civil society cannot persist if government does not actively intervene to maintain civil order and personal legal rights. But civil society also requires government to abstain from interventions that undermine pluralism. The very origin of civil society is inseparable from the theory and practice of limited government. Totalitarianism is its antithesis; so is authoritarian repression of self-organized groups and any form of paternalistic regime that does not provide space for autonomous associational life.

Members of groups within civil society must experience themselves as normally free from official repression and from regulation that conscripts their identities, membership, and self-government. Civil society is unintelligible without defined limits both to the means government can legitimately use to regulate groups and to the justifications that count in such regulation. Associations must be free from intervention that undermines their singular purposes and activities, inhibits self-definition, chills expression, or threatens viability. To the extent these limits are transgressed, civil society is endangered.

ACCOMMODATING CIVIL SOCIETY AND GOVERNMENT: FROM CONGRUENCE TO *MODUS VIVENDI*

There is an obvious tension, however, between a government that aspires to speak in the accents of a common good and identity and a civil society that encourages pluralism and particularism. Unless citizens actually have common values and beliefs, how can government possibly function? This question has led theorists from a variety of perspectives to argue that the internal lives of groups should be closely regulated to conform to public values and common principles of justice. They advocate what Rosenblum has called the "logic of congruence."

Advocates of congruence fear that the multiplication of intermediate institutions does not mediate but balkanizes public life. They are apprehensive that plural associations and groups amplify self-interest, encourage arrant interest-group politics, exaggerate cultural egocentrism, and defy government. What is needed, in their view, is a strong assertion of public values and policies designed to loosen the hold of particular affiliations, so that members will be empowered to look beyond their groups and to identify themselves as members of the larger political community. The “logic of congruence” envisions civil society as reflecting common values and practices “all the way down.”

Congruence is often advocated with regard to the egalitarian norms of liberal democracy. The claim is that the internal lives of associations should mirror public norms of equality, nondiscrimination, due process, and so on. In the United States, for example, norms of equality and due process have been imposed on vast areas of social life, even on small, informal associations. Antidiscrimination law, for instance, requires most groups to admit unwanted members. By this means the government compels association.

Until recently, the principal rationale for such law was equality of opportunity. Regulation of groups was deemed necessary to redress past discrimination and to underwrite necessary economic advancement. But such regulation is now also defended on the grounds of moral education. Antidiscrimination law is seen by some as a means by which a tutelary government teaches egalitarian values. Such instruction is necessary because groups that discriminate in “private” will cultivate dispositions in their members that are antagonistic to public egalitarian commitments. If government depends upon the dispositions formed through membership in groups, then “a crucial task of educational statecraft is to foster a healthy structure of group life.”¹¹

Taken too far, however, this logic of moral education potentially trespasses across the boundary that separates civil society from government. It invites state institutions to colonize social life in the name of progressive public ideals. It follows the same logic as contemporary proposals to democratize the family by enacting statutes requiring partners to share domestic chores and income, or to democratize religion by requiring churches to ordain women or gay priests as a condition of receiving the tax status of a charitable organization.

Advocates of congruence properly note that the boundary between government and civil society should not be overdrawn or mechanically interpreted. Every government uses law to define and educate its citizens. When a state creates rights to sue for defamation or invasion of privacy, for example, it uses law to protect common values and to safeguard a certain common ideal of personality.¹² The riotous plurality of demo-

cratic civil society subsists upon a substrate of common values and identity that is legally fostered and enforced.

The question of congruence is therefore one of degree. To the extent that the common values established by law are too thick, to the extent that the common identity protected by law is too pervasive, civil society will suffer. The degree of appropriate uniformity will depend upon many factors, including the antecedent cultural homogeneity within a society and the particular domain of civil society that is subject to regulation. The aspiration for thick and pervasive congruence will be more damaging to a truly heterogeneous society than to a culturally homogeneous one; and we are far more tolerant of intrusive moral regulation of the marketplace than of religious institutions.

The question of congruence is also one of kind. Government has many means by which to create congruence. It can do so by direct legal regulation, by asserting its rights as a coercive sovereign. But it can also exercise its capacities as educator, patron, sponsor, employer, and owner. There are important differences between legally mandating churches to ordain women and refusing to extend tax benefits to churches that acknowledge only male priests. The latter alters the “terms, conditions, and public status” of groups, thus enabling groups to choose the terms of their accommodation to public values.¹³ On the other hand, the powerful inducements of governmental largesse can be exceedingly seductive; it can exemplify aggressive state “capture” of independent groups and create a climate of passive clientelism.¹⁴ The impact of government action on the particularism and plurality of civil society must always be kept in mind.

Congruence represents only one possible form of the accommodation between civil society and government. Advocates of civil society may care more for the conditions of independent associational life than they do for the conditions that reinforce overarching norms and that incline groups to contribute to governmental efforts to maintain political stability. They may be content if vigorous independent associations exhibit only a minimal commitment to public order. Recognizing that common norms impose costs on the purposes and internal culture of many groups, they may lobby for exceptions to general laws and special accommodations for group autonomy.

If advocates of congruence desire that common norms be inculcated all the way down, those partial to civil society argue that public life can be sustained by a *modus vivendi* among competitive groups, or by an “overlapping consensus” in which elements of civil society bring their own distinct principled reasons for cooperation to bear in justifying government. The hope is that individuals qua group members can wear their citizenship lightly and avoid testing whether their primary loyalty is to

their particular group or to a common public life. This does not necessarily indicate that government is weak; within limits, it may prove a justifiable compromise between civil society and strong government.

In evaluating how government and civil society may be accommodated, therefore, we can place congruence and *modus vivendi* along a spectrum. To the extent that civil society flourishes and evidences general agreement about significant public values, greater degrees of congruence can be tolerated. But to the extent that civil society is less open and more segmented, with deep social divisions based on class or status, *modus vivendi* may as a practical matter be all that is attainable. If a genuinely inclusive public identity is fragile and government resources limited, *modus vivendi* is a real achievement and a reasonable accommodation to civil society.

CIVIL SOCIETY AND DEMOCRACY

Democratic values are relevant to the goal of securing a proper accommodation between civil society and government. This is because democracy turns on the value of self-government, of a people ruling themselves. Implicit in this value is the distinction between a people and the state that represents them. This distinction is lost if a state merely programs persons in its own image, as, for example, in Aldous Huxley's *Brave New World*. Implicit in democracy, therefore, is a boundary between state and persons that is analogous to the boundary between state and civil society.

Although all states, including democratic states, contribute in multiple ways to the identity of their citizens, the independence of persons within democracies is typically marked sociologically and politically by the independent institutions and associations of civil society. This implies that the logic of congruence is bounded by democratic values, as well as by those of civil society. Even the most stalwart advocates of strong democracy would acknowledge that values and identity derive significantly from sources that reach beyond public norms like democracy or social justice. Most persons care intensely about matters that are the exclusive business of groups in civil society. Our interests, convictions, cultural, religious and sexual identities, status, salvation, exhibition of competence, exhilarating rivalries may have nothing to do with citizenship or the state. Democratic accountability is importantly measured by a state's responsiveness to these independent concerns.

Consider, for example, Hannah Arendt's analysis of the Nazi and the Stalinist regimes. The origins of totalitarianism, Arendt argued, lay in the weakening of secondary groups and associations. The defining characteristic of totalitarianism is the combination of "atomistic individualism" with techniques of terror. The absence of social buffers between

individuals and the state makes persons vulnerable to ferocious mobilization and extinction. Totalitarianism can be understood as the end point of unremitting congruence.

For close to half a century this view of civil society has been exploited by political theorists who describe what they perceive as conditions of growing atomism and privatism and raise the specter (not always apt) of totalitarianism. Theorists like François Furet pronounce the continuity between the Jacobin heritage of the Revolution and French “statism,” and warn of the “matrix of totalitarianism.”¹⁵ American theorists portray the “megastructures” of American government as hostile to healthy pluralism. They claim that government erodes the independent life of groups and associations directly by official regulation, subsidy, and control, and indirectly by monopolizing social functions and displacing secondary institutions. It is said that overbearing government has transformed the United States into a “mass society” and that the revival of civil society is necessary to transfer “meaning and value to the megastructures of public order.”¹⁶ Recapturing the density of association life has been deemed a necessary protection against atomism and its invitation to an antidemocratic totalitarianism.

Whatever the accuracy of these various diagnoses, they have in common the assumption that democracy depends on the activities of particularist, self-determining associations of civil society, where independent commitments, interests, and voices are developed. They express the insight that civil society is the precondition for democratic decision making, whether democracy is conceived as deliberation or as interest group pluralism, and that this is true even if the goal of democracy is to transcend particularism and arrive at uncoerced agreement or a common will. They stress that democratic values will be imperiled if congruence is pursued too comprehensively or too vigorously.

Political theory since World War II has also stressed the complementary insight, however, that democracy presupposes citizens who come genuinely to identify with the state as “their” representative. This perspective has important implications for pursuing *modus vivendi* as an acceptable model of the relationship between civil society and government within democracies. To the extent that democracy presupposes the forging of a genuine common will, a mere *modus vivendi* must be ruled out as an option for accommodating civil society and government.

This perspective is implicit in the work of many theorists who stress that civil society is vital to the efforts of a democratic government to achieve consensus by building structures of “interpenetration” between government and interest groups for making and implementing public policy. Associations are crucial to governance, particularly to the delivery of public services, even where they have no formal role and are best

described as social or civic rather than political groups. In the United States, churches and neighborhood groups, ethnic associations and civic charities, as well as for-profit organizations, share responsibility for addressing social needs with local, state, and federal governments in everything from housing to crime control.

This should not be conceived as pure voluntarism; groups may be neither an alternative to public provision nor unsupported by the state. Catholic Charities, the Boys and Girls Clubs, tenants' advocates, literacy centers, immigrant support services, after-school youth centers, family planning clinics, and innumerable others have been publicly subsidized. Lester Salamon calls this partnership between government and civil society "third party government."¹⁷ At its essence, such interpenetration forges genuinely common commitments that underwrite a democratic allegiance and legitimacy far removed from a *modus vivendi*.

This analysis suggests that democratic states must pursue a logic that avoids the extremes of congruence and *modus vivendi*. A legitimate democratic state neither mechanically reproduces its citizens nor rules merely by default. Whatever compromise between these extremes is ultimately reached, political theory since World War II has stressed that the independent groups and associations of civil society will perform at least three functions that have special importance for democracies.

The first is to serve as a center of collective political resistance against capricious and oppressive government. This aspect of civil society received particular emphasis in the struggle against Soviet imperialism. "Civil society" entered the political lexicon of Central and Eastern Europe as an oppositional idea. Because it was imperative to break free from party dictatorship and because overt political opposition was ineffective, even suicidal, the principal resistance to centralized authority became associated with intellectual and cultural circles. Civil society signaled the ability to eke out some portion of negative liberty: "Let me be, leave me alone, don't try to tell me how to live."¹⁸ Civil society referred initially to an underground "parallel polis" of groups attending to ostensibly nonpolitical affairs.

Poland's Solidarity came to epitomize civil society as a seedbed of more active human rights claims and dissident movements.¹⁹ As communist regimes collapsed, trade unions, professional organizations, churches, and political parties were prized as "a living society in which public life and activities originating 'from below' are possible." "The social self-organization of society" became an ideal.²⁰ In the enthusiasm of the moment, however, it was forgotten that civil society and government are complementary and that they require each other, so that some actually proposed civil society as a substitute for government. For our purposes, however, it is sufficient to stress the ways in which civil

society functioned to counterbalance oppressive and antidemocratic state actions.

A second function civil society performs for democracy is to organize people for democratic participation. There is nothing mysterious or organicist about this. Experience tells us quite a bit about the unpredictable origin and course of political participation. Groups that engage in political advocacy and agenda setting are not always formed initially for political purposes; their politicization is contingent and unpredictable. Group life is transformative. Thus when American jeremiahs interpret low voter turnout as a crisis of democracy, they see association as a resource for revivifying participation. They search for substitutes for groups like trade unions that were once strong, often looking to “new social movements” to counterbalance entrenched interests and alter political agendas. Government initiatives are propelled by the mobilization of feminists and environmentalists, taxpayers and consumers, student groups and the politically organized elderly. Political parties are of course a key association, but all kinds of groups expose political arbitrariness and corruption and hold officials accountable by agitating outside of formal political arenas.

It would be a mistake, however, to imagine that civil society is a guarantee for successful democratic mobilization. Freedom of association may be a necessary condition for responsive and accountable democratic institutions, but it is not a sufficient condition. Not all “interests” find their way into “interest groups” and effective political representation. Groups may be too dispersed and trivial to set agendas and effectively energize democratic politics.²¹ Individuals and groups may lack the resources for organization. The very pluralism of civil society can be politically intimidating. Jürgen Habermas observes that instead of creating strong new public identities, pluralization can produce a sense of “impotence in the face of an impenetrable systemic complexity.”²² Others caution that if politicized groups are too many and too strong, a “hyperpluralist” crush can create crises of ungovernability.²³

A third function civil society performs for democracy concerns socialization into the political values necessary for self-government. Many political theorists conceive civil society as the “seedbed of virtue.” The governing assumption is that associations inculcate civic virtues and constructive dispositions like sociability and trust. They understand this socialization to spill over into public life. The phrase “mediating institutions” is meant to capture this idea. The thought is that the sense of cooperation and shared responsibility generated by associations produce “social networks” and “virtuous cycles” of trust on an ever-expanding scale. Civil society is said to provide participatory, egalitarian experiences that foster the disposition to care for others. The moral dispositions and “social capital” generated within groups are deemed invaluable for the conduct of democracy.

This point, however, can easily be overstated. Not all associations provide exemplary education. Certain groups cater to dark emotional needs and amplify selfish interests. They may even inculcate in members anti-social dispositions like snobbery or ethnic hatred, dispositions that Madison’s “mischiefs of faction” do not begin to encompass. In the face of such patently uncivil associations, theorists either define civil society in terms of benign formative associations, omitting vicious and incongruent groups from the start, or they assign government a stern tutorial and regulative role, invoking the logic of congruence.

We can conclude from this analysis that civil society is no guarantee of democracy, but it is necessary for democracy and can serve important democratic functions. A flourishing pluralistic civil society and strong democratic government are reciprocally supportive.

PERSPECTIVES ON CIVIL SOCIETY

The conception of civil society that we have sought to develop in this introduction is unmistakably a product of Western culture and institutions. It not only presupposes characteristically occidental social and governmental structures, but it draws upon a long intellectual history of attempting to comprehend the normative implications of these structures.

This history is most vividly displayed in the essays in this volume discussing natural law and Christianity. Both natural law perspectives and Christianity have over the millenniums sought to endow evolving occidental social structures with normative political significance. Within the natural law tradition, as Fred D. Miller demonstrates, this significance can vary from imagining society as “an organism with government as its head” to envisioning individuals as endowed with inalienable rights. All natural law theories are committed to explicating the social implications of human nature, and this commitment creates a certain strain when confronted by the particularism of modern civil society. Indeed, as William M. Sullivan observes, influential Stoic contributions to natural law stressed the universalism of transcendent values “available through ‘right reason,’” which they contrasted to the particularism, the *ius gentium*, of specific states.

This attribution of universal value to extragovernmental sources heavily influenced early Christian thinking. John A. Coleman’s essay traces the efforts of modern Catholic thought to reconcile the transcendent truth of the church to the particularism of contemporary civil society. The principle of subsidiarity does yeoman’s service in this context. Unresolved tensions about how Christianity can accommodate the pluralism and particularism of civil society are at the root of Max L. Stackhouse’s advocacy of “the ‘federal-covenantal’ view, most fully articulated

by the Reform tradition,” as distinct from “the ‘hierarchical-subsidiarity’ view, most fully articulated by the Roman Catholic tradition.”

From the vantage of these historical traditions, the various contemporary perspectives on the relationship of government to civil society that are represented in this volume—classical liberalism, liberal egalitarianism, critical theory, and feminism—all seem remarkably similar. All accept the basic notion that the state speaks for the common good, while participants in civil society engage in enterprises that are plural and particular. All accept the interdependence of civil society and the state, while at the same time recognizing the potential danger that each holds for the other. These contemporary perspectives differ from each other largely in matters of emphasis and focus.

It is “almost definitive” of classical liberalism, as Steven Scalet and David Schmidtz characterize it, to be simultaneously driven by a fear of the potential abuse of state power and a complementary passion for voluntarism. These very practical apprehensions profoundly influence the ways in which classical liberalism conceives the appropriate relationship between government and civil society, as the comments of Tom G. Palmer illustrate.

Liberal egalitarianism, by contrast, seems to be guided as much by a profound commitment to certain ideals, like justice and equality, as by practical concerns. Will Kymlicka’s essay exemplifies how liberal egalitarians reason backward from the attainment of these ideals to conclusions about how the state ought to relate to civil society. Kymlicka concludes that equality requires the state to reach deeply into the socialization processes of civil society. William A. Galston, however, cautions that such intervention may come only at the price of undermining the independent and equally important value of liberty.

Critical theory, as explained by Kenneth Baynes, is less concerned with the achievement of specific values than with the complex dialectical processes by which values can be clarified and legitimized in modern society. Critical theory explores the preconditions for such legitimation. It especially focuses on the question of how the particularities of civil society can be transmuted into the common values necessary to sustain state action, and how state action can in turn sustain civil society’s capacity to create undistorted and legitimate values. Stephen K. White’s comment emphasizes that historically critical theory was not always satisfied with such abstract structural analysis, but focused also on the “lived experience of suffering on the part of the disadvantaged segments of the population.”

Feminism is quite attentive to such experience. More than any of the other contemporary perspectives, feminism purports to speak for a substantive political perspective—its paramount concern is gender equality.

As Rosenblum notes, feminists may differ on a myriad of strategic and tactical questions, but they all embrace the task of “patrolling the civil society/government boundary” so as to nourish and support the lives of women. Susan Okin’s commentary confirms the deep ways in which this substantive orientation informs and illuminates feminism’s understanding of the relationship between government and civil society. Like other essays in this section, Rosenblum’s looks ahead to perspectives marked by more profound disjunctures between equal citizenship and the laws of groups, between bounded government and civil society.

The differences between classical liberalism, liberal egalitarianism, critical theory, and feminism, which loom so large in the contemporary theoretical landscape, dwindle almost to insignificance when these perspectives are compared to the Confucian tradition explored by Peter Nosco. If modern conceptions of civil society presuppose that persons move between distinct and inconsistent roles, the Confucian imagination pictures society as an “organic” whole. This unitary order rules out any vision of the social world as resting agonistically on an endless opposition between the particularism of a civil society and the universalism of the state. Henry Rosemont thus concludes that “the question of drawing boundaries between civil society and the state is not a meaningful one for classical Confucians.”

A similar point can be made about Jewish perspectives on civil society, as developed by Noam J. Zohar. Questions of particularity and pluralism simply have no internal traction within the biblical and medieval Jewish tradition, where Torah is supreme law and the state is an alien threat to the covenantal community. Zohar describes the minority Jewish community in larger states as analogous to elements of civil society. This history of semiautonomous communities in exile, recognized as minorities but not as full citizens, has had a formative effect on the modern state of Israel, Zohar argues, where there is an uneasy equipoise between the public system of justice for all citizens and private law, which requires individuals to be legal subjects of a particular religious group and assigns rights and duties on the basis of membership. But the question, as David Biale points out, is whether such categories can “work” in the context of a contemporary state with a fully modernized economy.

As John Kelsay explains, the analogue to civil society/government in classical and modern Islam is the idea of “complementarity” between religious and government authorities, the *‘ulama/khilafat* relation. From Islamic perspectives, the tie between Muslim status and citizenship is pervasive. The elements of civil society recognized as legitimate and autonomous are more constrained than in any Lockean or Hegelian account. Although religious authority is loosely structured so that there is a plurality of Muslim “groups,” professional and business classes do not

yet have secure liberties, and there is, for example, little freedom for voluntary association in Iran. The boundaries between government and social groups are defended principally in terms set by the ‘ulama as guardians of Islamic law and by governors worried about the sectarian potential of religion. While arguing for the importance of the distinction between society and state, Farhad Kazemi underscores ongoing contention over the applicability of “civil society” to Islamic societies. He sets it in the context of questions of state authority and exclusionary norms with regard to religious minorities and women—part of a larger debate about the congruence of Islam, civil society, and democracy.

The conceptual dissonance underlined by these essays is of obvious political importance. As globalization spreads Western institutions throughout the world, the question of how these institutions will be received assumes increased significance. The essays in this volume on classical liberalism, liberal egalitarianism, critical theory, feminism, natural law, and Christianity illustrate the family of meanings that civil society has received in the West. But the essays addressing Confucianism, Judaism, and Islam query whether and how these meanings can be transposed to radically different traditions. David Biale, for example, points to the anomaly of ultrareligious groups in Israel seeking to participate in a modern state using a conceptual framework derived from a biblical and medieval past. John Kelsay observes that moves to impose gender equality by government from above are depicted as anti-Islam and as a threat to the traditional role of religious leaders. He predicts that changes will come mainly from within religious institutions. Globalization can only magnify the extent and reach of such anomalies. The essays in this volume are intended to provide a framework within which the diffusion, adoption, or imposition of Western concepts and social structures can be analyzed and understood.

The volume concludes with a comprehensive overview by Richard B. Miller. Miller explores how distinct perspectives on civil society and government conceive the question of human flourishing. He asks “whether the attitudes and practices that materialize in civil society are civil and civilizing, and how we are to distinguish civilizing attitudes and practices from those that are not.” He usefully summarizes how different perspectives understand the proper role of the state in promoting human flourishing.

CONCLUSION

Our own view of these questions, which we have tried to defend in this introduction, is that freedom of association is an independent good, whose value can be realized only within a flourishing civil society. Per-

haps that is why the concept of “civil society” is almost always used with positive import. Civil society is the “chicken soup” of the social sciences.²⁴ The valence is invariably positive, despite the enduring array of manifestly uncivil societies, hateful associations, and private despotisms. It is not too much to say that “civil society” is the locus of what there is of utopianism in contemporary political thought.

In the flush of this utopianism, it is sometimes assumed that civil society can substitute for government. But, as we have tried to make clear, civil society and government are complementary constructions. Civil society cannot exist without government, and democratic governments cannot exist without civil society. The difficulty, however, is that government and civil society represent discrete values that are conceptually exclusive. There is thus enormous tension over the boundary between civil society and government. The resolution of this tension—the determination of *which* elements of civil society are salient for political resistance, democratic participation, or effective governance, or exactly *how* government may secure and promote civil society—is of course contingent and contestable.

That is why nothing is more important than comparative political theory and a keen historical sensibility in getting right the dangers and the opportunities. The diverse normative and historical perspectives offered in this volume are meant to be an informative and useful means of sharpening our judgment in these matters.

NOTES

1. This is not the way that the participants in this dispute would characterize the question, but compare the moral understanding of the market in Adam Smith. See too Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1977).

2. We note, however, that ascriptive belonging to an inchoate ethnic or racial group—better described as an objectively identifiable population—does not entail membership in an organized association, and undifferentiated populations are not properly speaking components of civil society except insofar as they are organized into actual groups. This is the theme of Nancy L. Rosenblum, “Repairing the Empty Politics of Recognition,” in *Membership and Morals: The Personal Uses of Pluralism in America* (Princeton: Princeton University Press, 1998).

3. See Stephen Holmes, *Passions and Constraint* (Chicago: University of Chicago Press, 1995).

4. See Stephen Holmes and Cass R. Sunstein, *The Cost of Rights* (New York: W. W. Norton Co., 1999).

5. On the relationship between civil society and law, see Martin Krygier, “Virtuous Circles: Antipodean Reflections on Power, Institutions, and Civil Society,” *East European Politics and Societies* 11, no. 1 (Winter 1997): 36–88.

6. See Sanford Levinson, *Written in Stone: Public Monuments in Changing Societies* (Durham, N.C.: Duke University Press, 1998).

7. See Robert Post, "Between Democracy and Community: The Legal Constitution of Social Form," *NOMOS* 35 ("Democratic Community") (1993): 175–77.

8. G. W. F. Hegel, *Philosophy of Right* (Oxford: Oxford University Press, 1952), p. 266 addition to ¶182; p. 148 ¶238; p. 276 ¶238; p. 452; p. 133 ¶207; p. 278 ¶255.

9. See for example Iris Marion Young, "Impartiality and the Civic Public," in *Feminism as Critique: On the Politics of Gender*, ed. Seyla Benhabib and Drucilla Cornell (Minneapolis: University of Minnesota Press, 1987). This parallels the argument in moral philosophy that moral reasoning cannot transcend particularist perspectives. Cf. Seyla Benhabib's revision of Jürgen Habermas in "The Generalized and the Concrete Other," in Benhabib, *Situating the Self* (New York: Routledge, 1992), 148–77.

10. The importance of this fact is brought out by comparative studies of legal systems and the civil standing of women. See essays by Martha Nussbaum and Carol Weisbrod in Nancy L. Rosenblum, ed., *Obligations of Citizenship and Demands of Faith: Religious Accommodation in Pluralist Democracies* (Princeton: Princeton University Press, 2000).

11. Steven Macedo "Community, Diversity, and Civic Education: Toward a Liberal Political Science of Group Life," *Social Philosophy and Policy Foundation* 13, no. 1 (1996): 264, 250.

12. See, e.g., Robert Post, *Constitutional Domains: Democracy, Community, Management* (Cambridge: Harvard University Press, 1995).

13. Joshua Cohen and Joel Rogers, "Secondary Associations and Democratic Governance," *Politics and Society* 20 (1992): 393–472.

14. John Gray, "Totalitarianism, Reform and Civil Society," in *Post Liberalism: Studies in Political Thought* (New York: Routledge, 1993), 157.

15. Francois Furet, *Interpreting the French Revolution*, trans. E. Forster (Cambridge: Cambridge University Press, 1981), 180.

16. Peter Berger and Richard Neuhaus, *To Empower People: The Role of Mediating Structures in Public Policy* (Washington, D.C.: American Enterprise Institute, 1977), 6, 3, 41.

17. Lester Salamon, *Partners in Public Service: Government Nonprofit Relations in the Modern Welfare State* (Baltimore: Johns Hopkins University Press, 1995). There is ample confirmation that in the United States the growth of government has been a spur to the growth of the voluntary sector.

18. Cited in John Keane, ed., *Civil Society and the State: New European Perspectives* (London: Verso, 1988), 5.

19. For theorists of Latin American politics, too, civil society is commonly said to harbor pockets of resistance to party and military dictatorship.

20. Jan Simsa in H. Gordon Skilling, "Parallel Polis, or an Independent Society in Central and Eastern Europe: An Inquiry," *Social Research* 55, no. 1–2 (1988): 245; Vaclav Benda, cited in *ibid.*, 218.

21. Michael Walzer, "Constitutional Rights and the Shape of Civil Society," in *The Constitution of the People*, ed. Robert E. Calvert (Lawrence: University Press of Kansas, 1991), 123–25.

22. Jürgen Habermas, “Further Reflections on the Public Sphere,” in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge: MIT Press, 1992), 453–56.

23. Claude Lefort, to take a recent example, argues that the recent French sympathy for fluid groups will overwhelm the capacity of government and administrative experts to respond in an orderly fashion as arbiter of the social contract in *Ecrire: A l'épreuve du politique* (Paris: Calmann Levy, 1992), 71, cited in Cheryl Welch, “Tocqueville and the New Europe” (manuscript).

24. As Eric Uslaner says of trust, it is the “chicken soup” of the social sciences. See *The Moral Foundations of Trust* (Cambridge: Cambridge University Press, 2002), 1. The exception is Marxist thought and early critical theorists; see White’s response to Baynes, below.