



European Master's Degree in Human Rights and Democratisation

2010 – 2011

University College Dublin

**Bad Civil Society and the State:
A Complicated Relationship**

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Thanks to:

Dr. Graham Finlay,
for an open-minded supervision and plenty of ideas to write not one, but at least another two theses.

Sandra E. Mellor and Roger W. Bamforth,
for patient proof-reading of my paper.

My Mum, Marie Susedkova,
for her support, belief in me and all the curious questions.

My Grandparents,
without them, all this would not have been possible.

Ondřej – for everything.

Abstract

Civil society and the state form an inseparable couple – mutually reinforcing, controlling and cooperating with each other. This thesis will concentrate on the relationship of the state with a particular part of civil society – bad civil society. Bad civil society can occur in many forms and its activities are based, inter alia, on intolerance and hate. Whether, how and to what extent the state can tackle activities of bad civil society are going to be main questions this thesis will attempt to answer. Both an analysis of contemporary empirical examples and suggestions based on the research will be presented in this paper.

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1 INTRODUCTION

*'The birth or rebirth of civil society is always riddled with dangers, for it gives freedom to despots and democrats alike.'*¹

Civil society has been lying within the area of focus of philosophers and political theorists since discussions about the conceptions of the world, human beings and essence of living appeared. Nevertheless, new topics are coming up together with new challenges societies have to face whether they are modern or post-modern, developed or developing, northern or southern. The (post-)modern (post-)‘Westphalian’ state,² the other part of the relationship I am going to explore, developed later, but since both ‘actors’ I am interested in started to coexist, they have been in interaction and many forms of mutual relationships have developed. The research in the area of civil society is very attractive because of the variety of actors which can be found within its framework. Forms, goals as well as values of civil society vary widely – from local community groups to internationally established non-governmental organisations (thereinafter NGOs).

Similarly, the interaction between the state and civil society can gain many forms. I believe that it is very important to realise the importance of the relationship between the state and civil society, because their mutual interaction influences many areas of our lives. It is very interesting to study how states address civil society in different situations and how dreadful acts of the state can sometimes be. Jim Crow’s laws are an example showing how bad a democratic state could be towards certain groups of its citizens.³ Contemporarily, taking a look at peaceful demonstrations in Spain, where

¹ Keane, 1998, p. 45.

² The whole discussion about the features of contemporary states cannot be fully developed here. I would like to acknowledge that I understand ‘the state’ within the traditional (realistic) conception but I am aware of the changes which states have gone through and which I believe have had a great influence on them. Some would call contemporary states post-modern, some argue that this label is premature. An interesting discussion about the differences between the (current) states as well as their characteristic features can be found in Sørensen, 1998.

³ Falck, ‘Jim Crow Legislation Overview’.

unarmed and non-violent protesters were beaten by the state police⁴ also makes one ask many questions. Another level of this muse will take us to the questions not only about what the states in fact do, but also whether they should do it and what are the other options. Let's take an example of Guerrilla Gardening movement.⁵ People all around the world arrange meetings with the aim to plant flowers in the public places which are abandoned. They, in fact, act illegally because they operate without official permission on the public space and thus have no rights do so. Nevertheless, the results of their 'interference' are beneficial and pleasant. What should the state do in such a situation? Should any measures be taken to prevent civil society to take illegal action which causes no harm and creates public good? On the other hand, and that is what interests me, there are groups or movements whose action is perfectly legal, but the impact of their behaviour negatively affects the whole society, interferes with rights and freedoms of fellow citizens and generates intolerance and hate within society. To answer the question what the state can and should do about such civil society would be the main aim of my thesis. I am going to have a look at relations between the state and a particular part of civil society – bad civil society.⁶

The relationships between the state and 'general' civil society have been explored widely and suggestions have been made what kind of ties should be established and how they should be maintained, so that the cooperation and interaction between the state and civil society is beneficial for both. I would like to contribute to this discussion by analysing the particular relationship between the state and bad civil society specifically looking at the possibilities of the state to regulate bad civil society so that such regulations do not interfere with the rights to which bad civil society (groups or individuals which constitute it) is entitled. I will explain that it is important that we maintain a critical view of both actors and their actions, because in pursuing their goals for both the state and civil society ends justify means – Jim Crow's laws were presented as being aimed at improving the situation of African Americans in the United States. In

⁴ Tremlett, 'Spanish Police Clash with Protesters over Clean-Up'.

⁵ Guerrilla Gardening, at <http://www.guerrillagardening.org/index.html> (consulted on 20. 5. 2011).

⁶ The term comes from the essay of Simone Chambers and Jeffrey Kopfstein (2001).

fact, they were limiting freedom of movement on the grounds of a protection of their well-being.⁷ On the other hand, bad civil society groups often veil their hate into phrases about protection of nation, traditions and community. Should I summarise my topic into a research question, it would be the following one: How can the state regulate bad civil society?

I see a contribution of this thesis in the analysis of the issue which is rather unexplored in the area of the 'western world'. My attempt is to draw attention to this topic and possibly initiate a discussion about it. I will only concentrate on a particular part of this problem and therefore many other aspects of bad civil society itself (or in the relationship to other actors) should further get more attention of researchers. Asking for reasons of development of bad civil society and for its dialectic are great and yet to be fully discovered areas, which I will have a chance to reflect only to a limited extent. I do not attempt to unearth a perfect solution, I will rather develop a critical reflection of what is happening on the ground, based on the theoretical concepts, and try to offer a spectrum of possibly relevant and suitable measures which will address the situation.

I have to acknowledge certain limitations I have established for my work and also explain specific approaches I have opted for. Firstly, there are many cultural differences in both apprehension and realisation of civil society outside the western world. Secondly, similarly, many forms of the state could be found around the world with diverse systems of governing. Because my aim is to provide a deeper analysis of the issue I cannot reflect the sheer range of diverse approaches and concepts and therefore I will concentrate on civil society formations within the modern western liberal democratic states, specifically in Europe.⁸

Finally, I have to acknowledge, that, similarly to the whole civil society, there are many forms of bad civil society. I am aware that they can form small loosely organised groups as well as larger very well structured bodies or political parties. Bad civil society is present on all levels. Although I realise that it is important to pay attention to all of

⁷ Palmer, 2002, p. 68.

⁸ The countries from which I will draw the examples are all members of the European Union as well as the Council of Europe. Couple of examples from the United States are going to be the only exceptions.

them, because of the way I have conducted my research, with an aim to show examples from several countries, I was not able to deal with small subjects operating on the local level as much as it might be desired. Therefore the practical part will offer an analysis of more commonly known cases. Additionally, as a result of concentration on two specific areas where bad civil society operates, mainly the examples of political parties have been selected for the illustration. I would like to emphasise that I am aware of the fact that political parties are not the only formations from bad civil society environment. In fact, it is not political parties we are looking at, but two forms of bad civil society embodied in political parties. At the same time, the cases very well illustrate limited possibilities the states have in addressing bad civil society. Thus I argue, that it might seem that I have limited my analysis on the political parties, but in fact the approach the states apply towards them, can be used in tackling bad civil society generally.

Before starting with a methodological part I have to emphasise that the aim of this work is not to doubt the value of beneficial activities civil society does in many areas – whether it is associational life, activism or provision of the services. I would like to develop a critical position in this work which would raise awareness about worrisome features of bad civil society which is, from my point of view, neglected topic.

1.1 Methodology

The problem I face can be identified as a ‘puzzle’. Puzzles are usually research questions which try to identify problem which should have been answered by existing theories, but has not been yet. Puzzles should ‘allow for and often lead to a new understanding of the world.’⁹ I do not expect to change the flow of the discourse as the definition might suggest. I will more humbly aim at an attempt to solve my puzzle by using application of theories drawn from the research, which will be based on the analysis of literature mainly in the areas of theory of civil society and theory of state, specifically governance theories. Further, I will apply perspective of human rights discourse and will make use of legal perspective as well. The arguments in the practical part of the thesis as well as the conclusions will build on legal frameworks both of the

⁹ Hancké, 2010, p. 234.

states and the international instruments – specifically of The Convention for Protection of Human Rights and Fundamental Freedoms (thereinafter ECHR) and the case law of the European Court of Human Rights (thereinafter ECtHR).

Regarding the sources I have used, those were obviously academic books and journals, web pages of international institutions and other trustworthy sources. Additionally, because of the nature of the issue, the practical part of the thesis gathered information from the newspapers and magazines, as some of the issue are very recent and have not been reflected by the academic discourse yet.

The literature generally does not deal with bad civil society as with a separate topic. Simone Chambers and Jeffrey Kopstein serve as a main source of inspiration with their article ‘Bad Civil Society’. Otherwise, if there are any reflections of this issue they usually amount to couple of comments. Thus I have opted for two books from Michael Edwards as main sources of my approach,¹⁰ because not only is he renown author in the area of civil society but he is one of the few authors acknowledging the existence of bad civil society fully. He offers a suitable overview of civil society theories as well as critical stances which were helpful for my analysis. In overall, because of the lack of attention paid to the issue, it was necessary to ‘mix and match’ useful parts of theoretical approaches to create the theoretical background. In the empirical part I will use limited number of examples (small N) and thus my conclusions cannot obviously be taken for granted under all circumstances. I believe that setting the limitations for the scope of my research suggests the ‘area of validity’ but still, as it is common in the social sciences, a theoretical approach and conclusions suggested for one set of cases do not necessarily hold water for another.¹¹

As regards the content, the chapters can be divided into four larger sections – civil society, the state, human rights perspective and practice. Chapter two, three and four are dedicated to the analysis and conceptualisation of civil society and the issues which are wound around. I attempt to assess the approaches to civil society critically, explain the

¹⁰ Edwards, Michael, *Civil Society*. Cambridge: Polity Press, 2004; Edwards, Michael, *Civil Society*. Cambridge: Polity Press, 2010, 2nd revised edition.

¹¹ Haubrich, 2003, p. 4.

controversies which surround involvement of civil society in the cooperation with the state and eventually describe and define bad civil society itself. Chapters five and six deal with the point of view of the state. I select modes of governance relevant for tackling bad civil society issues and develop several possible approaches towards it. Chapter seven introduces the human rights perspective of my topic – measures of protection for human rights are mentioned, effects of misuse of human rights are tackled and an example of the issue of derogation from protection of certain rights is presented. Chapters eight and nine constitute a key part of my work as an empirical analysis of bad civil society is offered here together with solutions I have come up with. Chapter eight contains an overview of practical examples of bad civil society activities and the states' reactions and the chapter nine summarises all important conclusions and recommendations. Final chapter ten will shortly summarise the whole thesis. Ending of the first chapter brings us to the first part of the analysis – the civil society issue.

2 CIVIL SOCIETY – GENERAL ISSUES

*'Because illiberal forces cannot destabilize the state does not mean that they cannot contribute to an insidious erosion of values that leaves liberalism vulnerable to all sorts of threats.'*¹²

To deal with civil society is a huge task. As it was mentioned above it has already created and will definitely continue to create vast number of studies adopting several positions and concentrating on different and specific aspects. What I aim to involve in my analysis of civil society is an operationalisation of this term as well as an introduction of current influential streams of thinking, which address issues connected to civil society and also its diverse roles. Regarding the scope of this study there has been a selective approach applied and thus an exhaustive overview should not be expected. First of all some relevant possibilities how to look at civil society as a whole will be introduced and reference will be made to some of their flaws and my own conception will be drawn from them. Next, an attempt will be made to explain the consensus surrounding current civil society together with further discussion about its possible consequences. And finally, bad civil society will be introduced as a key variable of this paper.

2.1 Civil society – approaches and conceptualisation

Before we can proceed to elucidate about the issues arising around the civil society some alternatives as to how it is possible to view civil society and what it is actually considered to be will be introduced to provide theoretical background for my own conception.

First of all it is necessary to mention that civil society bears many meanings and thus the presented conceptions, as well as my approach, will form only a part of the whole scale of opinions in this area. To present the current streams of thinking I have decided to rely mainly on Michael Edwards's books¹³ for the reasons explained in the introduction. Before advancing to the three main approaches which Edwards identifies,

¹² Chamber, Kopfstein, 2001, p. 843.

¹³ Edwards, Michael, 2004; 2010

there are some general features to be shown. Initially, our analysis will draw on ‘the sector model’ where the state forms the first sector, family forms the second and civil society establishes the third sector – the civic one, also called non-profit. I am going to use these terms in this paper as equivalents.¹⁴ And who belongs to civil society? As it will be shown there are all types and kinds of groups involved, but family and business will be excluded. Although I recognise the importance of family as a main link in the process of socialisation of an individual as well as an indispensable value bearer,¹⁵ the level of the analysis in this work concentrates on other issues and therefore only minor attention will be paid to this issue.¹⁶ Similarly, regarding business, although economic relations play an important role in identity formation and social interaction, I will not deal with them in depth in this paper.¹⁷ I also cannot omit a role which can be played by unions as they are on the verge between sectors. As we have seen from history, Polish Solidarity can serve as the best example, and as they nowadays advocate social welfare of citizens, and can definitely be considered being a part of civil society. However, regarding the issue this work attempts to address, I believe I can ‘leave them out’ unless special cases of their ‘bad civil’ activity are identified. I am aware that these definitional criteria might seem rather arbitrary, but considering the volume of this work some limitations should necessary be set forth to attempt to provide a meaningful insight into the main research topic. Eventually, before we proceed to three selected views of civil society¹⁸ it is important to add that every classification, as well as my own, are artificial as in reality each conception influences and merges into the other.¹⁹

¹⁴ Edwards, 2010, p. 4. This approach is also applied by Anheier and Siebel, 1990, thus I believe that although there could be some objections about using these terms alternatively, there is a support of the experts in the field.

¹⁵ Chambers, 2002, pp. 90, 91.

¹⁶ Additionally to this issue – one has to judge the form of the economic entity to evaluate whether its involvement in civil society would be relevant, because there are societies, such as Cuban, where small private businesses form a rare space of relative freedom from the oppressive regime and thus can definitely be considered a part of civil society. On the other hand, gigantic transnational corporations do not fit into this definition. (Edwards, 2004, p. 28)

¹⁷ Chambers, 2002, pp. 90, 91

¹⁸ Another, though limited, approach how to grasp a vast number of conceptions of civil society is suggested by Foley and Edwards who operate with terms ‘Civil Society I’ and ‘Civil Society II’. The first one corresponds with the ‘Tocquevillean’ approach emphasising its ability to associate and its capacity to maintain and develop civility, the latter stresses its capability of action independent of state and its role as

2.1.1 Civil society as an associational sphere

Tradition of this stream of thinking dates back to Alexis de Tocqueville and his admiration of associational life in the United States in 19th century. It is currently the most common approach which considers civil society a part of society as a whole. Famously described as ‘space of uncoerced human association’,²⁰ it is understood as formed by all forms of associations – from formally registered non-governmental organisations (NGOs) to political parties and self-help groups.²¹ Thinkers pursuing this notion, represented best by both the admired and denounced Robert Putnam, believe that associations positively influence their members by improving their cooperative skills as well as enhancing their solidarity and public spirit. Further on, the network of associations empowers people to articulate and aggregate their interests and contributes to effective functioning and stability of democratic government.²²

Quite unsurprisingly, as it is quite common, a dispute has developed within this line of thinking about which groups should really be included in civil society – its core winds around ‘political society’ formed by political parties and movements. Putnam is reluctant to admit into civil society any groups that have gone ‘too far’ in pursuing their goals and approximated the political arena.²³ Foley and Edwards believe that political groups cannot and shall not be excluded from civil society, as *inter alia* Gramsci suggested, because as one of the roles of civil society towards the state is its control. How can it be possibly exercised without political engagement?²⁴ Edwards finds a reasonable way out of this argument saying that such groups are no longer members of civil society when they become a part of state structures – e.g. members of legislative or executive organs.²⁵ It is important to mention that this model does not really allow

a counterweight of state. Although their work addresses the issue of bad civil society, which will be developed later, they pursued a different level of analysis. (Foley, Edwards, 1996)

¹⁹ Edwards, 2010, p. IX.

²⁰ Walzer, 2007, p. 115.

²¹ Edwards, 2010, pp. 18 – 20.

²² Putnam, 1993, pp. 89, 90.

²³ Foley, Edwards, 1996, p. 46.

²⁴ *ibidem*, pp. 38, 39.

²⁵ Edwards, 2010, pp. 25 – 28.

excluding of any non-state or non-market groups²⁶ which, although it might sound as a negative feature, is actually, as it will be shown, beneficial for the aim of this work. It allows me to use political parties as practical examples of bad civil society.

Closing note on this conception will look at need of balance. Neo-Tocquevilleans, as they are often called, commonly concentrate on associations as the most important part, allegedly, of civil society. For associational sphere to function properly, forms of associations as well as relations inside and in-between should be well-balanced. Drawing on the social capital theory, ‘bonding’ and ‘bridging’ can be distinguished. ‘Bonding’ generates reciprocity and solidarity and plays an important role in creating a network within close groups helping its members in difficult situations. ‘Bridging’ on the other hand reaches across traditional cleavages and creates ‘bridges’ between communities. Edwards adds to these two forms of social capital ‘linking’, which should help to improve connections across the whole society between state, market and civil society.²⁷ As it is probably apparent already from their nature, ‘bonding’ social capital occurs more often and is created much more easily than the ‘bridging’ or ‘linking’ capital. This is also mirrored in the academic literature in the discussion about social capital which generally revolves around the issue of ‘bonding’.

Drawing on this basic but pertinent description we can already identify deficiencies which this approach holds regarding the topic of this work. Because neo-Tocquevilleans perceive associations without much criticism, they rely on their ‘abilities’ to produce positive values by their mere existence. Putnam realises that ‘bridging social capital can generate broader identities and reciprocity, whereas...Bonding social capital, by creating strong in-group loyalty, may also create strong out-group antagonism.’²⁸ But neither he nor most of his colleagues are willing to see possible problems which arise. Similarly, the following perception of civil society which is closely connected to the associational view does not reflect some of the possible threats which may lie within civil society.

²⁶ Edwards, 2010, p. 29.

²⁷ *ibidem*, p. 30.

²⁸ Putnam, 2000, p. 23.

2.1.2 Civil society as an ideal sphere

This approach refers to civil society as to an ideal – how most of us would probably wish it to look and act. It has its roots in Greek thinking about civil society and can be found not only in the western philosophy but also in religious – Islamic or Jewish – doctrines. This ideal served as an inspiration for people oppressed under communist regimes or in ‘after-Franco’ Spain and is now an aspiration for global justice movement and all thinkers who believe that ‘another world is possible’.²⁹ Tolerance, non-discrimination, trust and non-violence accompanied by democracy and freedom constitute underlying values of this stream. Shortly, it can be said that the aim of pursuance of these values is, that we all live in the society that is civil – and not only on the level of separate nations but also from the global perspective. If we want to explore how specifically thinkers pursuing these ideas picture their realisation, we get back the idealised role of associations. Because of the return of civil society into the ‘spotlights’ they are often referred to as ‘revivalists’ – Robert Putnam, this time supported by Nancy Rosenblum can be called the flag-bearers. They claim that communities are because of their closeness capable of generating cooperative behaviour, reinforce their own rules via awareness of members knowing that well-being of the group depends on individual behaviour and thus adjusting themselves.³⁰

A critique addressed to ‘revivalists’ actually also comes back again to associations as they see them as a main impetus of change. Simple claim that association membership produces positive values such as fairness or civility by itself is more than doubtful. Firstly, associations themselves cannot be the only drive of the whole society on its way to be good and civil. There is an exigency to apply a holistic look at this issue. If we want our whole society to be civil we need all its sectors cooperating together. We cannot disregard either the influence of family – which is sometimes referred to as the first ‘civil society’ and which endows individuals with basic values – or state which

²⁹ This phrase is ‘borrowed’ from World Social Forum which uses it as its motto. World Social Forum is also a representative struggling for better, fairer world, at http://www.forumsocialmundial.org.br/index.php?cd_language=2&id_menu= (consulted on 10.5. 2011)

³⁰ Edwards, 2010, pp. 45 – 51.

supplies framework for functioning of civil society. Additionally, economy operating within this framework is needed as indispensable part of modern society but also in need of other parts of civil society to prosper. Secondly, particular interests of associations have to be also considered as these make them sometimes rather competitive and thus do not lead to a constructive environment.³¹

I believe that this concept should serve as a normative ideal to help us realise what the aims of our civil society activism should be. But we must remain realistic as well and consider the fact that the values and goals differ with each of the associations and that we have to attempt to evaluate their behaviour to be able to figure out the most adequate approach.³²

2.1.3 Civil society as a public sphere

To apply relevant approaches to relevant problems the third conception of civil society, this time grasped as an arena for arguments and deliberation, should serve as ‘an instrument’. In this view, civil society plays a role of

‘non-legislative, extra-judicial, public space in which societal differences, social problems, public policy, government action and matters of community and cultural identity are developed and debated.’³³

Ideas about the public sphere date back to Aristotle, though, as it is now well known, ‘public’ of that time was not really public. Since then the practical examples of realisation of this idea can be found in ‘coffee-houses of eighteenth-century London and Edinburgh, the fabled town-hall meetings of revolutionary New England, and the debates that animated the public squares of all historic cities.’³⁴ Public newspapers and radios, book clubs or internet forums represent contemporary examples. Every society possesses a public sphere in a different form. The best and most elaborated concept of a public sphere, so far, was developed by Jürgen Habermas.

³¹ Edwards, 2010, pp. 56 – 62.

³² Although this is my own idea its formulation has been definitely influenced by critical views of other scholars including Chambers, 2002, Chambers and Kopfstein, 2001, Foley and Edwards, 1996 and Edwards, 2010.

³³ McClain and Fleming, 2000 according to Edwards, 2010, p. 64.

³⁴ Edwards, 2010, p. 66.

It should be a space where discussions take place and where ‘the best’ and not ‘the loudest’ voice ‘wins’. All of the voices should be heard and none of them ignored. There are also exact rules and limits established for these spheres of deliberation and both diffusion of state power as well as free flow of information are required. The aim is to moderate radical views, as through the discussion, while people listen to each other, their opinions might change if other arguments appear better. Another aim of this concept is to make people decide rationally themselves what is best for their communities, to take the politics from the hands of professionals, where it now solely lies, and enable people to make a reasonable engagement. And even if they cannot agree on the goals or on the ways to reach them, it is crucial to make them try to understand each other and learn how tolerate and possibly even embrace differences between themselves. It is also the best way to innovate – a Czech proverb reads ‘more heads know more’ – as deliberation can help to discover new answers for old questions.³⁵

Altogether it does sound very thoughtful and well constructed, but there are flaws to be found even in this conception and they are not dissimilar to those of revivalists’. Firstly, Habermas is criticised for ethnocentrism and too strict rationalism. Secondly, this conception describes deliberative public again very optimistically – as caring about common good and deliberating about it democratically. There is a belief that scrutiny of civic-minded public can eliminate injustices present in society and high hopes are put into new social movements. They are pictured as encouraging grass-roots participation and empowering citizens with new forms and possibilities of engagement.³⁶

Drawing on this, I believe that the whole idea of public, although itself very valuable, cannot adequately reflect the ‘real life’ conditions. While there definitely is an attempt to implement effective and proper public discussion there are many obstacles which make it merely impossible. We also have to consider particular interests the actors might attempt to pursue – thus activity in the public sphere has to be perceived from a critical stance as the outcomes might not be those anticipated.

³⁵Habermas, 2006; Edwards, 2010, pp. 66 – 72.

³⁶Chambers, 2002, pp. 97, 98; Edwards, 2010, pp. 63 – 73.

Further on, although we now have great possibilities of spreading our ideas, having discussions or even initiating protests via internet, commercialisation and ‘corporate’ ownership of the media or such interpretation of property rights, which prefers business yields rather than open resourcing of knowledge, form the another group of obstacles. Additionally, there is not a real process of enabling people to take part in deliberation, because some people can be prevented from realisation of their engagement due to need to work long hours because of their economic situation or lacking assistance with childcare. And as a result ‘a quick browse’ through news and blogs on-line is more probable that a real in-depth discussion about urgent current social issues. People need to get an opportunity to play their part and also to meet people from different environments as the understanding and respect for each other are not going to come up on its own, some incentives should be offered.³⁷

2.2 Conception – eclectic and critical

As it was shown there are many possible ways how to look at civil society. After a throughout consideration I have decided to pursue an associational approach because it is the most suitable one for the intended analysis. But, because of the rather idealising approach ‘neo-Tocquevilleans’ pursue, the critical standpoint will be applied thoroughly. Drawing on Foley and Edwards, I hold an opinion that groups which belong to so called political society help to advance reasonable issues to the levels where there is possible to achieve relevant changes. Nevertheless, it is necessary to acknowledge, that the threat of cooptation and loss of independence of the associations, which get engaged with politics, is present.³⁸ Generally, all types of groups have to be admitted as if only ‘the good ones’ count, then the reflection of any troublesome issues within civil society is not going to be possible. Similarly, if we do not pay attention to grassroots organisations and only deal with bigger and more developed structures our view is limited again.³⁹ As we will see later, some of the thinkers also try to eliminate

³⁷ Edwards, 2010, pp. 74 – 81.

³⁸ There is probably a difference between actors getting engaged with local community affairs and associations operating on the larger scale (national level). The first can possibly avoid being excessively politically influenced while pursuing their goal, but it is probably not so in case of latter.

³⁹ Foley, Edwards, 1996, p. 43.

‘unwanted’ groups from civil society for different kind of reasons – this arbitrariness might suit their purpose, but as we are to identify problems surrounding rather ‘bad groups’, we want to adhere to this feature firmly. Further, civil society is going to be presented within possible relations to the state,⁴⁰ which are going to be further developed later.

To close this part, I would like to acknowledge that both models of civil society as an ideal sphere and civil society as a sphere of deliberation and discussion will serve as normative guidelines for my research. Because the aim is to identify the best possible way how to deal with bad civil society from the position of the state, the values which are common to these two attitudes will implicitly be present while looking for an ideal solution.

⁴⁰ Inspired, inter alia, by Chambers’s relational concept, Chambers, 2002, p. 90.

3 CONSENSUS, SIMPLIFICATION, OMNIPOTENCE

'The only way by which anyone divests himself of his natural liberty and puts on the bonds of civil society is by agreeing with other men to join and unite into a community.'

*John Locke*⁴¹

Eventually, building on 'the definition' as it is going to be used throughout this paper, we can now advance in our discussion and I can introduce some points which I consider relevant for research. Civil society used to be a controversial issue about which lively debates in academic circles were carried on. But as time developed, academics as well as more and more actors in public space started to perceive civil society in simplified terms of associations, specifically NGOs, and acted as it was a magical panacea for all diseases which modern societies suffer from. We should see what has contributed to such development, what are the issues resulting from it and why it is even relevant to this study.

One of the reasons for such admiration could be a victory over authoritarian regimes which is credited to civil society. Success of non-violent revolutions within Central and Eastern Europe has revived enthusiasm about civil society and has reinforced its image of player demanding rights and freedoms for all equally and justly. The intensity of this notion made some scholars to claim the end of history and ideology had come. On the other hand, in the western countries, the tiredness of growing ineffectiveness and bureaucratisation of political parties and other bodies which are supposed to represent public opinion together with indifference of state bureaucracy, had a similar effect. Additionally, the hope for more involvement of civil society in the global affairs in the post-Washington consensus era certainly raised more expectations in the connection with civil society than ever before.⁴² Together with Chandhoke,⁴³ I believe that on the practical level this has led to 'flattening' of the concept of civil society. Because international organisations as well as the states shrank the term civil society within the discourse they use into simplified and comfortable category of non-governmental

⁴¹ Quoted according to Robson, 2000, p. 42.

⁴² Chandhoke, 2007, pp. 608, 611, 612.

⁴³ Chandhoke, 2007.

organisations.⁴⁴ And as it was shown above this conception might be helpful for purpose of this research but its usage without contextualisation definitely impoverishes the variety of features and roles civil society can offer.

But why should we worry about the consensus and contentment with the development of the third sector expressed by both international organisations and states, which are in centre of our attention? It has apparently led to the tendency to delegate tasks onto the shoulders of this sphere. Examples can be found not only in development where NGOs are granted full liberty and support to pursue their activities in areas which used to be (and according to my view should remain) in the domain of state.⁴⁵ As this work is going to deal with geographically closer areas the issues of privatisation of prisons and detention or custody facilities present a sufficient example.⁴⁶ In the academic sphere this opinion is very well represented by doctrine called associative democracy. Associationalism originated in the early 19th century as a original ‘third way’ approach, after being pushed away it came back in late 20th century asking for social reform and democratic renewal. Associationalism attempts to expand democratic governance within civil society and wants to see ‘as many social activities as possible...devolved to self-governing voluntary associations... (which should) give the affected interests voice and thus promote government by consent throughout society and not merely formally in the state.’⁴⁷ This idea is not completely wrong and can result into ‘win-win’ scenario where NGOs have better capacities and are willing to help relieve state of its overload of responsibilities and provide desired services for public benefit.⁴⁸ But, as I will attempt

⁴⁴ Official documents of World Bank talk about civil society and its features meaning merely NGOs – civil society organisations (CSOs) is the term they use, at <http://siteresources.worldbank.org/CSO/Resources/CivilSocietyBook2009final.pdf> (consulted on 6. 5. 2011). Similarly, the a study paper on civil society and its role in improving connection between Croatia and the European Union talks about civil society mainly in the terms of associations, at http://www.eadi.org/fileadmin/WG_Documents/Reg_WG/vidacak.pdf (consulted on 6. 5. 2011))

⁴⁵ Description and explanation of one of many examples of such development can be found in Haque, 2002.

⁴⁶ This example illustrates well how the states give up responsibility in this area. The third sector (if we exclude business according to our definition) is in these cases only partly the final provider of the services, at <http://www.psir.org/justice/ppri67.htm> (consulted on 6. 5. 2011).

⁴⁷ Hirst, 2011, without pagination.

⁴⁸ Work on Roma issue constitutes according to my opinion one of the areas where NGOs support and enhance the work of state adequately, because they are usually locally situated and understand the

to show, the picture is not black and white and such success should not be taken for granted.

From my point of view, the issue of accountability constitutes the major drawback. Because states have certain responsibilities towards their citizens – NGOs do not.⁴⁹ And although there have been many power-sharing shifts going on, states still remain ‘central agents in achieving distributive justice, enforcing rights, providing security, and carrying out many other functions necessary to democracy.’⁵⁰ It is obvious that NGOs can be held accountable for deficient provision of goods or services with the help of the judicial system of the given state – in such case, there is eventually no relief for the state as it has to deal with possible insufficiencies and complaints. Regarding accessible enforcement of state’s accountability, I see more avenues for this – firstly constitutions of the states promise to secure certain rights and some even refer to adequate level of standard of living. Secondly, the states which are going to be dealt with are parties to ECHR and ratified several conventions securing other rights of their citizens. These international treaties offer mechanisms capable of enforcement of state’s obligations.

Referring to the relevance of this remark for the whole work, I believe that this kind of reliance on civil society is also connected to its further simplification and idealisation from the stance of the state. As the aim of this writing should be a critical muse about relations of state and specific part of civil society I assume that state’s uncritical attitude towards general civil society can imply similarly simplified and flattened view on bad civil society specifically. This can result into a state’s incapability or reluctance to admit an occurrence of possibly problematic issue and thus failure to apply adequate measures.

Shortly summarising, I hold an opinion that too much reliance on civil society embodied in NGOs and also reluctance to safeguard some areas of services for its citizens or maybe even willing delegation of such services without real need for, it can

situation better, they do not substitute state and its institution but they work to empower excluded communities, at http://pdf.usaid.gov/pdf_docs/PNADJ864.pdf (consulted on 6. 5. 2011).

⁴⁹ Pierre and Peters (2000, p. 20) talk about separation of effective control over the policy sector and responsibility for the results.

⁵⁰ Warren, 2001, p. 4.

lead into states washing their hands clean of the responsibility for issues they certainly should be responsible for. At this stage we should eventually proceed to the characterisation of bad civil society, render its meaning and attempt to identify threats which arise in this relation within civil society.

4 BAD CIVIL SOCIETY

*'If civil society is a beachhead secure enough to be of use in thwarting tyrannical regimes, what prevents it from being used to undermine democratic governments?'*⁵¹

As it was shown above certain issues have arisen regarding changes in roles and positions of civil society. In this work, civil society is envisaged as a part of society and represented mainly by associations. What then forms a 'bad civil society'? The following part of this thesis should deal with this concrete variable and attempt to make its conceptualisation. Although it might seem an easy task, as it was already mentioned in the introduction, it is unfortunately not so. I would like to show that this area of research has been seriously underdeveloped in the western world and thus I hope to shed light on this controversial issue, which seems to be regarded by many researchers as unimportant.⁵²

Firstly, to operationalise bad civil society it has to be said why this term has been selected. Quite commonly, a phrase 'uncivil society' is used for the same phenomenon which I intend to examine here, but I have decided not to opt for this phrase mainly because it carries multiple meanings. Although authors mostly use this expression in the sense which resembles our conception of bad civil society, there is an influential group of authors, represented inter alia by John Keane, who describe the uncivil society as a predecessor or a counterpart of the civil society. Keane talks about teleological development from barbarism towards the civil society and warns that even after society becomes civil there is still danger of slipping back to incivility. Interestingly enough for this work, state is referred to as one of the sources of such danger because of its capacity to use an excessive force against society and thus it is safer when the state is under

⁵¹ Foley, Edwards, 1996, p. 46.

⁵² Herein it should be mentioned that whilst carrying out the research I have encountered number of studies (mainly of Anglo-Saxon provenience) specifically addressing bad civil society but these were only addressing the problems of the regimes of either the post-colonial states in Africa or Asia or regarding the countries in the recently (though not completely) democratised region of former Soviet Union. Can we say that this shows how arrogant 'we – Westerners' are regarding 'our' western liberal democratic countries? Because we seriously think there is nothing to worry about and that civil societies in stable developed democracies do not face the issue of bad civil society. I consider that an additional reason for necessity of deeper research in this area as there should be awareness raised about this issue.

control of other (specifically supranational) body,⁵³ which corresponds with the idea presented in the previous chapter. Finishing the defence of selection of this term – Keane, and also other authors, grasp uncivil society as ‘a whole unit’; on the other hand, I understand bad civil society as being a part of the whole civil society. This conception is drawn from the authors influenced by the critical theory and it is also solely their work which deals with bad civil society as with a specific problem.⁵⁴

Bad civil society issue can be described as a problem of particularist civility. This civility contains all positive features associational life can offer but only limits benefits resulting from that to its own members. On the other hand, democratic civility, which should be ideally inherent to associations, does not limit its influence and ‘offer’ its goodness to all members of society. This can be also captured referring to the value of reciprocity which is vital for a healthy associational life. Bad civil society groups do not promote this value towards people outside their circle, they rather use language of hate, bigotry, racism and xenophobia.⁵⁵ To identify them requires evaluation of their interaction with other groups as well as examination of values these groups develop and respect and the methods they use to promote them. To clarify the definition, I will use a ‘practical insertion’ when looking at the areas where bad civil society generally ‘performs’. From my point of view, most of the bad civil society activities can be included under a ‘label of hate’ which is characterised by activities ranging from verbal assaults to violence ‘directed at a wide range of individuals because of their particular identity.’⁵⁶ Such hate can be expressed in many forms of extremism and radicalism, namely e.g. through racism – generally aimed at minorities within the state (e.g. Roma population or immigrants) or hate speech or hate crime which could be directed towards literary any distinct groups within society – sexual orientation and religion can be named as representative ‘grounds for attack’. To summarise in my own words, bad civil society forms a part of civil society and bad civil society groups function basically on the same principles as the ‘good ones’. Bad civil society does not have to be violent,

⁵³ Keane, 1998.

⁵⁴ Chambers, Kopfstein, 2001; Chambers, 2002.

⁵⁵ Chambers, Kopfstein, 2001, pp. 838 – 841.

⁵⁶ Bleich, 2006, 2007, p. 9.

spreading or incitement of intolerance or hate are, from my point of view, sufficient grounds for labelling a group as ‘bad’.

We will see some of the contemporary examples later in this work, but to illustrate possible impacts of ‘default’ bonds in society we can have a look in the recent history. For example, we cannot say that the civil society of the Weimar republic was completely bad because it flourished and engaged citizens helping them distract themselves from the ‘unhappy time’ they lived in. But because of this activism and probably the desire for change this civil society helped to get in power to one of the most horrendous regimes of human history.⁵⁷ Similarly, societies in Lebanon or Rwanda were very vivid and active ahead of outbreak of civil wars – but local associations were divided according to religious and ethnical cleavages which sharpened divisions between them. Edwards suggests that ‘the problem here is not collective action per se, but collective action allied to other factors that turn it in particular directions for good or for ill.’⁵⁸ I do not intend to claim that contemporary bad civil society is influential to such a large extent, but it reflects tendencies present in society which should not leave, at least, social scientists undisturbed. We could ‘stay calm and carry on’ ‘if we knew for certain that movements that are bound together by hate or advocate antidemocratic principles would always remain marginal and few in number...But we do not know that.’⁵⁹

Considering current thinkers we can find some references about incivility or uncivil tendencies of civil society in the work of some other authors, but even if they admit there is an occurrence of such phenomenon, they do not address it as a problem. Revivalists praise ‘long civic generation’ after WWII but do not pay attention to fact that this generation is the same one which was lynching African-Americans, confiscating Japanese property and was discriminating on many grounds in many areas.⁶⁰ Putnam, although admitting that bonding social capital can society rather divide than connect, indomitably claims that it is always better to be a joiner than not to be. He

⁵⁷ Berman, 1997.

⁵⁸ Edwards, 2010, p. 54.

⁵⁹ Chambers, 2002, p. 103.

⁶⁰ Edwards, 2010, p. 53 – 54.

believes, that passivity and non-participation are definitely bad for social capital a thus for society.⁶¹ Similarly, Rosenblum, as was already shown, though she tends to be sceptical about political effects of associational life, believes that there is generally an important contribution of associations to the cultivation of peoples' abilities of cooperation.⁶²

Not to leave out other thinkers who reflect the possibility of denotation of uncivil tendencies – Chandhoke acknowledges there are many ways in which civil society can perform its incivility, but uses only the post-communist states as examples and does not explore her thoughts any further.⁶³ Green, coincidentally also dealing with area of former Soviet bloc, looks critically at current approaches towards civil society claiming that we should be aware of the possibility of development of rather anti-democratic values and norms in civil society.⁶⁴ But he does not suggest whether or how to tackle this either.

Chambers and Kopfstein attribute this dismissing attitude to the fact that authors still think in a rather outlived dichotomy of associational life to apathy and isolation of totalitarian regimes which is not valid in contemporary liberal-democratic societies. The attention should be rather paid to the forms of associations which arise and function in our societies.⁶⁵ I think these views reflect general confidence, bordering with an arrogance, which we have in our regimes. Because we do not consider such groups a potential threat to our systems we do not pay attention to signs it might say about deficiencies in our societies. But as I have acknowledged such a problem does exist, I can now proceed to identification of plausible explanations of its emergence.

⁶¹ Putnam, 2000, pp. 350 – 363.

⁶² Chambers, Kopfstein, 2001, p. 842. To add a little note as a matter of interest, Rosenblum intriguingly suggests it is in fact beneficial that radicals and extremists gather in associations as these can in fact help to keep an eye on them. (Rosenblum, 2000, p. 22).

⁶³ Chandhoke, 2007.

⁶⁴ Green, 2002.

⁶⁵ Chambers, Kopfstein, 2001, p. 842.

4.1 What can create bad civil society?

There are countless of possible levels how to approach identification of the source of rise of bad civil society. Firstly, attention will be paid to structural settings which can influence or even incite rise of bad civil society – namely three grounds for such development have been identified, all intertwined, possibly reinforcing each other: 1) unresponsiveness of state, 2) more active participation of radical individuals, 3) economic and social ground and inequality. Afterwards, perspective from the level of an individual will be offered.

Foley and Edwards approach the issue from institutional point of view which also refers to later developed relationship between state and (bad) civil society. They believe that

‘where the state is unresponsive, its institutions are undemocratic, or its democracy is ill designed to recognize and respond to citizen demands, the character of collective action will be decidedly different than under a strong and democratic system. Citizens will find their efforts to organize for civil ends frustrated by state policy – at some times actively repressed, at others simply ignored. Increasingly aggressive forms of civil association will spring up, and more and more ordinary citizens will be driven into either active militancy against the state or self-protective apathy.’⁶⁶

Fiorina looks specifically on political participation and although he concentrates on the United States, I believe that this assumption could be generalised in the environment of western democracies. He assumes that political groups radicalise because ‘unrepresentative people’ get involved – they have the strongest interest into advocating their views and at the same time are the most radical ones in the society. ‘Mainstream’ society stays rather passive as it is generally willing to accept reasonable compromises. He describes the tendency that more people are more engaged in their local communities but lose interest in politics as a generally negative feature of civil society.⁶⁷

⁶⁶ Foley, Edwards, 1996, p. 48.

⁶⁷ Fiorina, 1999.

The issue of inequality and economic frustration is addressed by more authors. Chambers and Kopfstein describe the reasons most appositely saying that ‘economic insecurities weaken commitment to core liberal democratic values by giving people reasons to distrust the promises of liberal democracy.’⁶⁸ Edwards believes that reduction of inequality is the key element for possible limitation of surge of bad civil society. Because both education and economic differences result into inequality disadvantaging poorer and less educated ones, who, according to my opinion have less opportunities and literary less energy to take part in public affairs. These differences also manifest themselves in the power of associations to make their voices heard, because community of educated or better off people has more potential to form relevant group and create enough pressure to push their interest through – working class neighbourhoods are in less favourable position.⁶⁹

Moving forward to the individual level tendencies, I have to acknowledge that exploring this area deeply and thoroughly is far beyond the scope of this work. But I would like to suggest, drawing on the definition of bad civil society, it can be said that ‘simply human’ rivalry of value systems of individuals, lack of tolerance, different perceptions and opinions on controversial issues or feeling of exclusivism within group can, in some cases, lead certain people to expressing their frustrations or discontent in extreme or even violent ways. Additionally, Neuman argues that although people generally approve ideas of democracy and tolerance on the theoretical level, their support for such values decreases when they face practical issues connected to them. Level of tolerance also correlates with the ‘mood’ of society when there are certain periods of time when tolerance of certain groups is not considered adequate (e.g. expulsion of Germans from some European countries after the WWII). Neuman also provides a specific example which can help to illustrate the psychological aspect of tendency to align to radical groups – the concept of social dominance orientation (SDO) which describes need of

⁶⁸ Chamber, Kopfstein, 2001, p. 856.

⁶⁹ Edwards, 2010, p. 56.

some people to exercise dominance over others, preference of hierarchy and tendency to exclude those they dislike from ‘their group’.⁷⁰

To summarise, I do believe that if we do not pay enough attention to the issue of bad civil society, it can undermine our democracies and cause a loss of trust of citizens into it. Because bad civil society, as I see it, not only undermines democratic governance but also – and that is also very important – infringes on others people’s rights and freedoms as I will show in the chapter dedicated to human rights perspective. I consider that a main challenge posed towards state which brings us back to the main question of this work – how should the state regulate this part of civil society.

⁷⁰ Neuman, 2005, pp. 367 – 382.

5 THE STATE AND (BAD) CIVIL SOCIETY

*'To understand the role of civil society in the modern world, we must discern how and under what circumstances a society's organized components contribute to political strength or political failure.'*⁷¹

As I have shown the issues which surround civil society in the previous parts of this paper, it is time now to advance and have a closer look at the state as the 'other part' of the studied relationship. It has been said in the introduction that the state I have been and will keep talking about, is defined by traditional 'Westphalian' criteria with the notion about the changes connected to the processes of globalisation, decentralisation and other which currently, allegedly, cause 'withering' of the state. I have already indicated that my view of this problem is rather 'state-centric' and thus I will devote this chapter to further explanation of my position. I will attempt to do so together with a presentation of approaches of the state towards other sectors of society, including bad civil society. I would like to draw attention to the fact that literature dealing with state's approaches or policies towards civil society does not mention bad civil society at all. Neither have any of the authors make even an impression they count on possibility of appearance of such a phenomenon. I will try to formulate and suggest possibly relevant attitudes towards bad civil society building on my acquired knowledge about the issue throughout this chapter. Later, I will attempt to match the theoretical concepts with the practical cases. First of all, I come back to the connection between the state and society, with other parts of my analysis following.

5.1 An inseparable 'couple'

During the long history of philosophical thinking, civil society and the state have always been addressed in the relation to each other. It was only during the earlier mentioned 'rise and shine' period of 1980s when it happened for the first time that civil society was considered being an alternative to the state. We have seen the examples of this 'wave' in the 'third world' countries whose governments are considered feckless and thus donor agencies bypass them by supporting NGOs in pursuing their activities

⁷¹ Foley, Edwards, 1996, p. 46.

straightaway. On the other hand, in the case of countries under a non-democratic rule, a strong civil society was envisioned as the only way out of the tyranny and for that reason also could have been seen as a durable alternative to the state.⁷² I make this comment intentionally to emphasise its non-viability. I believe that thinking about civil society in such way had flown away with the disillusionment which followed, after civil societies in former communist countries took power themselves. It is also believed that lessons have been learnt from the development engagement and some substantial shifts have occurred. Having explained the main feature of my approach, I have made the ground ready for the presentation of the relationship between the state and civil society – starting in more traditional way, building on the governance theories.

5.2 The resilient state⁷³

Nowadays, there are tendencies to talk about marginalisation of the state, which became just ‘one of the actors’, and some believe that government’s positions have been superseded by networks of cooperative actors who are no longer subordinated to any superior authority. To offer a short categorisation – Pierre and Peters identify a spectrum of models in which possible differences in the position of the state are visible: 1) the etatiste model where the state remains a key actor and has control over the involvement of other actors, 2) the liberal-democratic model presents the state as influenced by interest groups, nevertheless deciding independently who will be given an opportunity, 3) in the state-centric model the state remains in the leading role but its relationships with other actors are institutionalised in ‘corporate-like’ structure, 4) the so called Dutch model only ascribes to the state a role of merely one of the actors and 5) the governance without government model describes the state rather as an arena where private actors play their part.⁷⁴

I am aware of the changes and of the emergence of new actors involved in governance, but I believe that the state remains in the ‘centre of happening’ – it forges new

⁷² Chandhoke, 2007, pp. 608, 609.

⁷³ I have ‘borrowed’ this title from chapter 2 of Bell and Hindmoor, 2009.

⁷⁴ Pierre, Peters, 2005, pp. 11, 12 according to Bell, Hindmoor, p. 12. Alternatively, Pierre and Peters talk about three possible relationships between the state and society – pluralism, corporatism and corporate pluralism. (Pierre, Peters, 2000, p. 34)

partnerships and adopts wider range of strategies. I agree with Bell and Hindmoor who say that ‘...even when governments *choose* to govern in alternative ways, the state remains the pivotal player in establishing and operating governance strategies and partnerships.’⁷⁵ There is no doubt that governments employ ‘smart’ regulatory measures more often these days, but even when they give up some of their competences they arrange the structures in such a way as to retain decisive authority in their hands – devolution in the United Kingdom or behaviour of most of the states within the institutions of the EU can serve as examples.⁷⁶

5.2.1 Governance models⁷⁷

As I will show, not all five of following governance models bear same validity for the problem I analyse in this work, some of them are more relevant than others, but I have decided to present at least briefly all of them to offer a coherent theoretical picture.

5.2.1.1 Communities and associations

I will start with two modes of governance which, although generally representing the changes in the area of governance, do not constitute a relevant method to approach bad civil society – governance via community engagement and governance via associations. The first mode is mainly realised through involvement of the local communities via processes of decentralisation, the latter then through cooperation of the state with groups in the area of implementation of policies, information exchange and mutual assistance. Both of these modes require certain level of power-sharing, though, as I have argued, the state still remains the main coordinator and in fact decides when and how other actors will be allowed to take part. In the relationship of the state and associations, the state searches support and help in certain areas, where it lacks capacities. The state can become heavily dependent on such relationship which can lead to a necessity to

⁷⁵ Bell, Hindmoor, 2009, pp. 2, 3, (emphasis in original).

⁷⁶ They talk about so called ‘metagovernance’ meaning whatever mechanisms of governance are used, the state keeps playing the key role in overseeing, steering and coordinating the activities involved as well as selects main participants and still remains responsible and accountable for the results. (Bell, Hindmoor, 2009, pp. 2 – 6, 8 – 11).

⁷⁷ I am mainly relying on the classification done by Bell and Hindmoor (2009). There are several other options available in the academic literature (e.g. Pierre and Peters 2000) but this one is substantially brief as well as informative.

provide further incentives to motivate the cooperation with associations so that it remains attractive for them.⁷⁸ This is an additional theoretical note coming back the issue of reliance of the state on non-state actors.

5.2.1.2 Markets

Next mode shows possibilities of governance via markets presenting growing use of business in governing. Probably the best proof of such development is an increasing cooperation via public-private partnership (PPP).⁷⁹ Markets can also help the state in areas where it does not have its own capacities, the state has power to provide safe environment for such activities and, similarly to the cases above, retains control and power to ‘manage’ the market.⁸⁰ As I will show in short summary of this chapter this mode does not seem adequate for addressing bad civil society either.

5.2.1.3 Persuasion and hierarchy

Finally, I have proceeded to the two most suitable modes of governance regarding bad civil society – governance via hierarchy and governance via persuasion. Starting with the latter, this form of governance has not been explored as much as others but it has definitely become a relevant way of the broadening of the influence of the state upon its citizens. Although this way of governing needs to rely on willingness of the ‘targets’ to comply, which is not always effortless, it constitutes a powerful non-coercive way of achieving common good goals and definitely deserves further examination. Coming back to the first category of hierarchy, this is probably the most common and most familiar way the state addresses and deals with its citizens – through authoritative imposition of direct orders and legal or other measures. A growth of range of forms of authoritative governance has been documented and the issue of excessiveness of some of the measures has been (and I believe it should be) questioned.⁸¹ This form of

⁷⁸ Bell, Hidmoor, 2009, pp. 17, 18, 160, 161, 184, 185.

⁷⁹ More on this in e.g. Wettenhall, Roger, ‘The Rhetoric and Reality of Public-Private Partnership’ in *Public Organization Review: A Global Journal*, issue 3, 2003, pp. 77 – 107.

⁸⁰ Bell, Hidmoor, 2009, pp. 17, 135, 136.

⁸¹ *ibidem*, pp. 16, 17, 95, 96, 113, 114.

governance is far from disappearing or being replaced, it is just increasingly supplemented by other modes of governance.⁸²

5.2.2 Relevance regarding bad civil society

Should I summarise the relevance of the modes of governance presented above for my research topic I can start with the first two mentioned. Neither governance through associations nor governance through community action provide adequate framework for tackling the issue of bad civil society associations. Drawing from the definitions I have provided earlier, I would not expect that bad civil society groups would get engaged with local issues in reasonable way or that they would be considered a welcomed part of local communities.⁸³ But the examples are known. Chambers and Kopfstein talk about Nation of Islam, an association promoting hate and racism, which is in the same time very popular among African-Americans in certain areas, because it produces many ‘goods’ – such as fighting crime and addressing security in the areas where the government has failed to do so.⁸⁴ The message of this note is, I believe, obvious – the state should definitely not engage anyhow with such groups, needless to say to provide them with any form of support. The state should rather aim at improvement of the provision of the services it is responsible for, so that it can prevent increase of popularity of such movements.

As regards the governance through the markets, I do not see many chances that bad civil society organisations could be firstly able and secondly allowed to become a part of any form of public-private partnership.

Eventually reaching two modes of governance I find relevant and possibly sufficient for addressing the problems bad civil society groups can cause. Starting with the mode of persuasion, it might seem impossible and I do admit this idea is a bit idealistic, but still it might hold some water. Persuasion can be, from my point of view, used as a

⁸² Pierre, Peters, 2000, p. 18.

⁸³ Here I just would like to note that political parties (extreme or radical) as soon as they are elected into the organs of state (either direct or devolved) are not, according to my definition, a part of civil society anymore.

⁸⁴ Chambers, Kopfstein, 2001, pp. 844, 845.

‘preventive measure’ in regulating bad civil society and I will attempt to confirm my idea with illustrative examples in the empirical part of this thesis. I believe that the state can influence (e.g. through informative campaigns) opinions of its citizens regarding e.g. minorities or immigrants and thus reduce their tendency to trust radical or extreme movements. This can potentially reduce numbers of people joining such groupings. I am aware, though, that such activity cannot gain results easily on its own and should ideally be accompanied by other measures. Lastly, I think that governance via hierarchy is an obvious mode which can effectively tackle bad civil society. If some of its actors infringe the law, they can be punished. As I will show, the balance has to be found so that the limitations set forth by the state are not too extensive. By and large, I will explore the issue mainly within two modes of governance. I have opted for governance via hierarchy as the main (and only) model which can deal with bad civil society, but governance via persuasion will be embraced as possibly preventive way to address bad civil society issues.

6 DIFFERENT VIEWS, DIFFERENT SOLUTIONS

*'In a democracy, the government should make use of all available legal measures to protect the liberal democratic basic order.'*⁸⁵

According to Edwards there need to be strong and clear relations between the state and civil society, because valuable cooperation can only develop and bear fruit if civil society acts from the position of an informed and capable counterweight – because if people lead vivid associational lives but do not go to the elections and lose the trust into state institutions that cannot be a healthy development.⁸⁶ This chapter will introduce selected views on the relationship between the state and civil society with an attempt to map a theoretical background for later conclusion of possibly suitable ways to tackle bad civil society. They complement and develop, each to a different extent, the categorisation I have made in the previous chapter. After a general look at an interaction between the state and civil society views from 'idealistic', liberal, regulatory and Marxian stances will be presented.

6.1 Mutual interaction

Moran, drawing on Majone,⁸⁷ talks about the main roles of the modern state among which there are redistribution, stabilisation and regulation. In the framework of these functions the state provides polity for civil society as well as legal framework for its functioning. The state enables associations to gain legal personhood, forms limits to the authority of associations over their members as well as towards outsiders. Further, regarding responsibilities of the state, those should at least amount to the provision of civil peace and distribution of rights and, on the 'generous end' to public funding, general support or even recognition of group identity. A reminder should be made here regarding the dangers of such penetration of the state in the life of associations as public

⁸⁵ Manfred Kanther as quoted in Wise, 1998, 301.

⁸⁶ Edwards, 2004, p. 13; Edwards, 2010, p. 52.

⁸⁷ Moran, 2002, p. 402 drawing from Majone, Giandomenico, *Regulating Europe*, London, NY: Routledge, 1996, pp.34-35.

subsidising can lead to the loss of their independence and adjustment of their behaviour in the way ‘suitable’ for donors.⁸⁸

On the other hand, civil society is believed to fulfil a set of ascribed roles which lead to an interaction with the state and should not be forgotten⁸⁹. Firstly, civil society fulfils an economic role such as providing services – this is one of the controversial issues as I have mentioned above because there are many tasks put on the shoulders of civil society for which the state gives up its responsibility. Secondly, there is a social role which should be expressing itself in production of social capital mainly through elements of associations. This role cannot be taken for granted as I am trying to show throughout my whole work, that social capital and civic virtues are not always results of the associational life. Lastly, there is a political role which dwells in promotion and pursuance of good governance and scrutinising of state’s activity.⁹⁰

All these qualities generally refer to the civil society as it is ‘traditionally’ perceived, but what if it is a bad civil society on the other end of an imaginary rope? Then, if an established framework does not set adequate and quality rules it can be evaded and bad civil society can use such deficiencies to undermine democracy and trust. As Berman puts it – ‘associationism should be considered a politically neutral multiplier – neither inherently good nor inherently bad, but rather dependent for its effects on the wider political context.’⁹¹ Only if the state approaches civil society this way, there can be a chance that policies it pursues are adequate.

6.2 ‘Most common’ note – back to idealisation

I have already mentioned above that idealisation of civil society in general can lead to establishment of policies which can be useless when troubles occur. Similarly, it is precisely the idealised, or uncritical, view of civil society which is very much present in the discussion about the relationship between the state and civil society.

⁸⁸ Post, Rosenblum, 2002, pp. 8, 9, 16, 17.

⁸⁹ I have to add that those roles correspond with rather idealistic approach to civil society, which I have introduced earlier, and that it does not completely reflect ideas and issues solved in this thesis.

⁹⁰ Edwards, 2004, pp. 14,15.

⁹¹ Berman, 1997, p. 427.

Rosenblum, this time together with Robert Post, believe that, on one hand, the state should help to enhance cooperation within civil society and, on the other hand, it should also control that society is not violent and oppressive. Thus government actually partly 'forms' civil society – if there are not any limits to the pluralism within the society, they believe there will be anarchy and chaos.⁹² This could lead to the infringement of both collective and individual rights which would have no meaning if law was not enforced.⁹³ I can endorse this conception without problems. Further, I do agree with their observation regarding the boundary between the state and civil society as they claim it is in a way flexible depending on political culture or historical experience. I do not object either when they argue government has to be able to address inequalities which are within civil society.

Additionally, and here I see a catch, according to them the state should not pursue particularist interests and should act independently and impartially.⁹⁴ Impartiality of the state constitutes, from my point of view, a threat of looking at civil society groups as if they are all the same. I have mentioned above that such scrutiny of civil society is usually done 'with the rose-tinted glasses' and leads to the uncritical view of civil society. Thus this stance cannot be implied in the case of bad civil society because it completely lacks any critical reflection of the possibility of occurrence of uncivil behaviour. On the other hand, on the flip side of the 'coin of impartiality' another stance is offered – impartiality is, from my point of view, hardly possible, as there is always some dominant ideology of the state present. If we endorse this, a new window of opportunity is opened offering an alternative approach towards bad civil society – if democracy and respect of human rights are the dominating ideology, it should implicitly mean that the state should act according to this ideology. Unfortunately, this is not always the case. Because in the reality of actual policies economic and other interests

⁹² The difference between a weak and a limited state can be identified. The limited state does not provide assistance or good or measures because it does not consider it necessary. The weak state is not capable of providing such framework. (Post, Rosenblum, 2002, p. 8)

⁹³ *ibidem*, 2002, pp. 8, 9.

⁹⁴ *ibidem*, 2002, p. 11.

often influence policy outputs more than the human rights discourse and preferences are given to the economic advancement at the expense of protection of human rights.⁹⁵

To summarise shortly their view on civil society in the relation with the state they believe that

‘...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.’⁹⁶

This quotation perfectly shows the limits of this stream of literature regarding this issue as these authors do not even think about the possibility of occurrence of bad civil society groups. Although I tend to pursue a liberal approach with regard to this issue, sticking to this recommendation would lead to opening the way to express their views without possibility to limit its impact. I argue that it relieves the state of an obligation it has from my point of view – to address offensive and intrusive behaviour of some parts of civil society.⁹⁷

6.3 Note on classical liberalism

I feel it is necessary to mention liberalism as a current of thinking not only because I am dealing with liberal democratic states but also because I believe, it has been recently and contemporarily the most influential ideology.

⁹⁵ An example from international sphere comes up my mind – Gaddafi’s regime in Libya was, until recently, widely tolerated in the western (human rights protective) world because of oil resources he, or the state, possesses and because he was willing to cooperate the way which was profitable for some western countries. The attitude has only changed recently in the light of events in the Middle East region – we can only wait to see whether and how will the military operation deal (or solve) with the situation there.

⁹⁶ Post, Rosenblum, 2002, p. 12.

⁹⁷ I would like to make a point which seems interesting and worthy mentioning to me. Rosenblum admits that discriminative associations can appear. But she maintains her idea of ‘logic of congruence’ which is based on the ideal that civil society groups reflect public values and practices. She indeed talks about principles of justice and non-discrimination. From this ‘positive’ point of view is this conception merely improper for studying bad civil society. But if we look at ‘logic of congruence’ from neutral stance, it could be said that civil society reflects any values and practices present in the public sphere. This could actually mean that also bad civil society forms such a reflection. This leads to the assumption that can take us back to the reasons for the emergence of bad civil society – bad civil society represents opinions and values of certain part of the society as whole. (ibidem, pp. 12, 13).

Classical liberalism, as it serves as a source to many views I have been dealing with in this paper, bears many features which make its approach towards civil society insufficient from my perspective. Building on thinkers such as Locke, Hume or Smith liberalism has gained respect for civil rights and has been to a large extent triumphant in the spreading democracy around the globe. The problem of this philosophy, and de facto my own, as I have already pointed out, is its optimism and tendency not to be critical. This is also the ‘heaviest’ legacy which could be said to prevent liberals from recognition, and consequently addressing, of controversies occurring within civil society. But liberal approach of the state bears from my point of view very important value of respect to liberties and freedoms on which I am going to build my own arguments as well.

Liberals draw quite a visible line between the state and civil society ascribing certain roles to each other and emphasise their mutually reinforcing positions. The state in traditionally liberal view is minimal and doing only what is necessary, thus causing least possible harm. Scalet and Schmidtz additionally address issue of liberal tolerance. They refer to freedom of parents to choose ‘life-path’ for their children – I believe this dilemma can be transferred into the dilemma of the liberal state towards bad civil society. The question in this illustrative case is whether parents should have freedom to educate their children in fundamentalist way and thus possibly infringe their future opportunities to enjoy their lives within liberal societies fully.⁹⁸ I will take a liberty here to anticipate one of my conclusions I am going to formulate later. Not only groups which violate law have been identified as being a part of bad civil society and the question lies whether the state, in our case liberal democratic one, can take any action against such bad civil society which complies with the legal framework established by the state. I conclude that the range of actions which the state can take is rather limited – my main assumption is, that the legal framework of the state, which sets the rules for (bad) civil society, should be designed the way, that it protects vulnerable groups and whilst providing freedoms and rights it should clearly create boundaries. Because of the

⁹⁸ Scalet, Schmidtz, 2002, pp. 32, 36, 38, 40 – 43.

respect to freedom of its citizens to choose associations they want to take part in the state cannot deliberately limit their existence. Solving this trouble equals squaring the circle. Should I identify any plausible solutions, I will present them later in this work.

6.4 Regulatory note

Literature dealing with the regulatory state is definitely another relevant source of view at the state – civil society relationship. While I cannot consider all the particular views present in the literature dealing with regulatory approach, I believe that the concepts most relevant for my research have not slipped through my fingers. In his overview, Moran discusses all relevant issues which are currently studied by scholars dealing with regulation and although this field of studies deals mainly with economic issues some ideas also have certain validity for the problem addressed here. A ‘command’ is identified as a traditional form of regulation and, in short, corresponds with orders or regulations ‘sent’ directly from the state towards society (e.g. tax increase). But, as some of the scholars argue, this form of regulation is not effective any more regarding the changes in the position of state in the network of other actors (e.g. international sphere). Thus a notion of self-regulation comes as a helpful concept. According to some scholars, this ‘form’ of regulation is at the end the most effective one, though it is not easily generated because it requires common sense of obligation and willingness to comply with set rules.⁹⁹ Transferring the conception on civil society, I do not doubt that some actors (associations) willingly adjust their behaviour for both their benefit (being positively perceived) and that of all society (pursuing common good goals), but in the case of bad civil society we can definitely say, that this is not the path to follow.

On the other hand, a conception of ‘responsive regulation’ brings some more alternatives how to tackle the problem we face. Moran draws here mainly on the work of John Braithwaite¹⁰⁰ and it actually corresponds with the theories of governance

⁹⁹ Moran, 2002, pp. 397 – 398.

¹⁰⁰ Suggestions for further reading: Ayres, Ian and Braithwaite, John, *Responsive Regulation: Transcending the Deregulation Debate*. Oxford: OUP, 1992; Graborsky, Peter and Braithwaite, John (eds.), *Business Regulation and Australia's Future*. Canberra: Australian Institute of Criminology, 1993; Braithwaite, John and Drahos, Peter, *Global Business Regulation*. Cambridge: Cambridge University Press, 2000.

introduced above. ‘Regulation is pictured as a pyramid of activities, beginning with persuasion at the bottom, and ending with a variety of draconian penalties at the top.’¹⁰¹ Concluding on this suggestion I say, correspondingly to the maintenance of my critical view, that voluntary or persuasive methods could possibly have some effect as ‘preventive’ measures but they are going to be rather ineffective if we aim to address radicals or extremists who are ‘already in action’. This supports my decision to use the hierarchical model as the most suitable one for addressing bad civil society.

6.5 Short Marxian note

To add a distinct view, Marxian perception of the state relationship regarding civil society is unsurprisingly different and very much concentrates on the issue of state control. Robson, whom I have opted for as a representative of this approach, perceives state control of society rather negatively arguing that the state tends to limit community action which challenges its power. He illustrates that showing the case of British and Irish activists whose activities are believed to be depending not only on state support for their activity but also on the needs of the state. He additionally supports this illustration by historical examples of Chartist movement or Fenians who were extensively monitored and special measures were issued by the Parliament to control their revolutionary tendencies.¹⁰² More attention will be paid to his ideas in the empirical part of this work.

6.6 A brief summary

I have attempted to show that political science literature, which is the main source of this work, addresses the issue of bad civil society from the position of the state rather indirectly dealing with general positions of the state towards other actors. Building on this, I have identified governance approaches addressing communities, associations and economic actors unsuitable for the analysis of the relationship between the state and bad civil society. On the other hand, governance models using persuasion and hierarchical orders as their source are, each to different extent, useful for my aim. Human rights

¹⁰¹ Moran, 2002, p. 399.

¹⁰² Robson, 2000, pp. 42 – 45.

aspect of the studied issue will follow in the next chapter, then I will present an empirical experience of the states and will try to 'mix and match' the theory and the practice with and attempt to figure out what are the viable avenues for the complicated relationship between the state and bad civil society.

7 HUMAN RIGHTS PERSPECTIVE

*'This will always remain of the best jokes of democracy, that it gave its deadly enemies the means by which it was destroyed.'*¹⁰³

Globalisation together with other changes in political sphere has challenged many earlier safe positions and roles of the state but

‘states have proved to be surprisingly resilient and innovative in meeting a variety of challenges, for example financial constraints, powerful organized interest or even political protest and legitimacy crises.’¹⁰⁴

Additionally, in some areas states have even adjusted to the new conditions voluntarily and have embraced new roles and responsibilities resulting from them – participation in the system of protection and promotion of human rights definitely represents one of these areas. Not only the human rights protection on the level of the state by its constitution and laws should be taken into account but also international obligations states have bound themselves to respect must be mentioned.

My intention has been to analyse the state's position towards bad civil society and for this purpose human rights perspective cannot be left out. Firstly, rights of those who become a target of bad civil society are at stake, which should not be forgotten. But what is more important from the perspective of this work is that also bad civil society, embodied in groups, like it or not, has its rights as well.

7.1 National human rights measures

As I have already emphasised in the introduction, this work addresses western democratic liberal countries. Thus it is not difficult to identify measures which have been adopted by the states to protect their citizens' rights and freedoms. To illustrate but few of such measures I can start with an example of the Czech constitution. The Charter of Fundamental Rights and Freedoms forms an integral part of the Czech constitutional

¹⁰³ Joseph Goebbels as quoted in Wise, 1998, p. 301.

¹⁰⁴ Pierre, Peters, 2000, p. 25.

order.¹⁰⁵ This Charter establishes protection of sets of civil, political, economic, social and cultural rights as well as rights of minorities¹⁰⁶ – to my best knowledge, such charter resembles provisions which constitute parts of legal systems of many European countries. To show an example from a different political environment, the Constitution of the United States of America with its Bill of Rights consisting of ten Amendments to the constitution, represents protection of basic rights and freedoms from the very beginning of the state's existence in the 18th century.¹⁰⁷ I will show later, that the interpretation of these amendments and the insistence on their protection cause many controversies till nowadays.

Moving on from the constitutions there have been also laws implemented to either enhance protection or to amend gaps in the original system. In the United Kingdom, the Human Rights Act 1998¹⁰⁸ ensures that citizens have the possibility to argue the rights that they are entitled to under the ECHR and also the courts are allowed to adjudicate directly on issues in the Convention.¹⁰⁹ It has compiled rights and freedoms which have been scattered within the British 'unwritten' constitutional system. Another example comes from France where specific antiracism legislation was passed quite early, compared to other European countries – in 1972. This law targets incitement of racial hatred, allows the state to ban racist groups and specifies measures for protection of citizens' rights and broadens options for their defence.¹¹⁰

7.2 International obligations

It has been pointed out several times that the changes in the international arena and the extensive engagement of the state on the global level have led to the widening of the opportunities for the human rights protection and also to strengthening of their position.

¹⁰⁵Chamber of Deputies of the Parliament of the Czech Republic, The Constitution, at <http://www.psp.cz/docs/laws/constitution.html>, (consulted on 16. 6. 2011).

¹⁰⁶ Chamber of Deputies of the Parliament of the Czech Republic, The Charter of Fundamental Rights and Basic Freedoms, at <http://www.psp.cz/docs/laws/listina.html>, (consulted on 16. 6. 2011).

¹⁰⁷The Charters of Freedom, Bill of Rights, at http://www.archives.gov/exhibits/charters/bill_of_rights_transcript.html, (consulted on 16. 6. 2011).

¹⁰⁸Legislation, Human Rights Act 1998, at <http://www.legislation.gov.uk/ukpga/1998/42/contents>, (consulted on 16. 6. 2011).

¹⁰⁹ Haubrich, 2003, p. 24.

¹¹⁰ Bleich, 2006, 2007, p. 12.

Globally, there is a system established by the United Nations – Universal Declaration of Human Rights (UDHR) has partly become a part of customary international law¹¹¹ and system of both charter-based and treaty-based bodies has several mechanisms to both motivate and urge the states to comply with their obligations.¹¹² Regarding European environment, I can mention a regional system of human rights protection embodied by the Council of Europe with ECtHR. Additionally, the European Union, of which the examined states are all members, has confirmed a development of broadening its scope from ‘simple’ economically advantageous organisation towards a regime which also protects human rights by introduction of the Charter of Fundamental Rights.¹¹³ This Charter has become a part of law of European Union and thus serves as an obligatory framework for the EU member states.¹¹⁴

7.2.1 Obligations of the state as well as of an individual

To offer a ‘pocket’ summary of what actually are the obligations not only of the state but also, to a certain level, of every individual, we generally distinguish two types of obligations – negative (which can be described as a duty not to harm) and positive (an obligation to ‘do something’).

Negative obligation is easily attached to both individual and state – as a person has an obligation not to harm others, the state is prohibited to commit certain acts as regards all people within its jurisdiction. Negative obligation is generally connected to the civil and political rights¹¹⁵ and it can be said that it is the obligation, and possible non-compliance with it, which I am looking at while assessing relations between bad civil society and the state.

¹¹¹ Cançado Trindade, Universal Declaration of Human Rights, at http://untreaty.un.org/cod/avl/pdf/ha/udhr/udhr_e.pdf (consulted on 16. 6. 2011)

¹¹²The Office of the High Commissioner for Human Rights, at <http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>, (consulted on 16. 6. 2011).

¹¹³European Parliament, Charter of Fundamental Rights of the European Union, at http://www.europarl.europa.eu/charter/pdf/text_en.pdf (consulted on 16. 6. 2011)

¹¹⁴ More on this issue can be found inter alia in 2010 Report on the Application of the EU Charter of Fundamental Rights, at http://ec.europa.eu/justice/policies/rights/docs/com_2011_160_en.pdf (consulted on 16. 6. 2011)

¹¹⁵ Care, Gibney, Poe, 2010, pp. 43, 49.

Positive obligation is not that easily ascribed to everybody. It is the state as a duty bearer who carries the primary burden to fulfil positive obligation – giving an example from the area of economic and social rights, the state has an obligation to feed and provide shelter for those in need.¹¹⁶ This obligation also refers to the activity of an individual, but it is not possible for each individual to provide for all individuals in need. Thus

‘a reasonable assignment of duties will have to take into account that the duties of any one individual must be limited, ultimately because her total resources are limited and, before that limit is reached, because she has her own rights, which involve the perfectly proper expenditure of some resources on herself... One cannot have substantial positive duties toward everyone, even if everyone has basic rights. The positive duties of any one individual must be limited.’¹¹⁷

To close this short overview, I conclude that it is mainly the state which has responsibility for securing human rights protection, but it is also a task for all individuals at least not to act in breach of their negative obligations towards each other. Obviously, should that be the case, this work would have no purpose any more. Unfortunately, both individuals (in our case generally as members of groups) as well as the states do not play their part as desired.

7.3 What rights are we talking about?

I will show more in depth later that there are many rights and freedoms which can be infringed either by the action of the state in an attempt to tackle bad civil society or by bad civil society in the connection to citizens. I would like to point out that primarily civil and political rights are affected by the conflict between the state and bad civil society. I will list here rights and freedoms, which I believe are the mostly affected, to illustrate some examples of such infringements using ECHR¹¹⁸ as a source.¹¹⁹

¹¹⁶ Care, Gibney, Poe, 2010, pp. 43, 49.

¹¹⁷ Shue, 1988, pp. 690, 691.

¹¹⁸ European Court of Human Rights, Convention for Protection of Human Rights and Fundamental Freedoms, at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (consulted on 16. 6. 2011).

7.3.1 *The list*

My overview, which attempts to point out some cases of conflict between bad civil society and the state, will not be completely exhaustive. It contains cases I have come across together with case law of the ECtHR. Starting with the right to life (Art. 2), the case of *McCann and Others vs. The United Kingdom* shows, how the eagerness to protect citizens against potential threat led to misuse of competence granted to the British authorities.¹²⁰ Sometimes the states go too far in the pursuance of protection of their citizens and it is only the system of international law which can hold them responsible, as it did in this case. I believe that also freedoms in articles 3 and 4, freedom from torture and slavery or forced labour, could be misused similarly. Right to liberty and security (Art. 5) is one of rights most likely to be affected by measures taken by the state with the aim of limit some kind of activity – the example of the British approach will be developed in the next section. Articles 6 and 7 (right to fair trial and no punishment without law) have also been discussed in the context of British environment – specifically regarding anti-terror measures, further explanation will also follow. Further, I believe that Article 9 (freedom of thought conscience and religion) could be easily affected, or possibly under threat, in the case when, for example, members of religious minority in the state get involved in badly perceived or illegal activities. Muslim charities in Britain are under closer scrutiny of both public eye and authorities, because of the cases which draw attention to incitement of intolerance and support of terrorist groups (case of Abu Hamza will be mentioned as an example). Next, freedom of expression and rights to associate and assemble form another set of rights, which are probably the most affected ones by the conflict of bad civil society and the state. Groups

¹¹⁹ I will also show a short example from the United States, but I have decided not to address this region in depth and thus will not make here a separate list suitable for American environment.

¹²⁰ Three members of Provisional IRA were suspected of carrying remote control device which can be used to explode a bomb. They were shot dead by the British authorities in Gibraltar. Violation of Article 2, right to life, was found, because the operation could have been planned and carried out differently without necessity to kill the suspects. (European Court of Human Rights, Case of *McCann and Others v. The United Kingdom*, at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=McCann%20%20v.%20%20United%20%20Kingdom&sessionId=72596238&skin=hu doc-en> (consulted on 13. 6. 2011)).

suspected of subversive, violent or terrorist activities could possibly even face a ban. I will advance in this issue quite substantially in the following chapter showing that some states have opted for a ban of a political party in their struggle against uncivil and threatening behaviour – cases of the Workers’ Party in the Czech Republic or Batasuna in Spain will illustrate this. Should the states be party to any of the Protocols connected to the Convention, protection of property could be mentioned as it could be threatened by possible misuse of ‘general interest’ of the state. Closing up the short overview, I would like to reaffirm again that I am aware of the ‘incompleteness’ of the list and possibility that other rights have also been affected by the clash between the state and bad civil society.

7.3.2 Bad civil society’s point of view

From the point of view of bad civil society no rights are sometimes sacred. It is obvious that bad civil society groups, as any other groups, have their rights and freedoms. But this group of rights and freedoms constitutes in fact a ‘double-edged sword’. Bad civil society uses, or rather ‘misuses’, all the possible protection which is provided by both national and international measures. I will later show the case of the ban of the Workers’ Party in the Czech Republic. This group, although it despises democratic regime in that country, criticises European institutions and, mildly said, strongly dislikes members of other nations, is quite happy to use the ECtHR as an ‘appeal institution’ which should ‘sanctify’ their racist and xenophobic ideas. This note can additionally support my argument about not using ‘cooperative’ methods of governance in the connection to bad civil society, because bad civil society groups utilise possibilities which democratic and liberal orders offer to offend ordinary citizens and the order itself. In such a case not even persuasive methods can make any difference, only direct authoritative measures can limit their activity.

7.3.3 Issue of derogation

Linked to the rights which might be threatened by the conflict of bad civil society and the state, there is an important issue I would like to point out. It somehow categorises ‘importance’ rights – the possibility of derogation under Article 15. There is no

derogation possible from right to life (unless fulfilling a ‘box’ of lawful killing), prohibition of torture, prohibition of slavery and prohibition to punish without law. These non-derogable rights shall be protected under all circumstances. This means that exception from them cannot be used even in the case of fighting bad civil society. No enemy of the state, terrorist or separatist, can be arbitrarily killed, tortured or punished without support of the law. This is a limitation for the state, a threshold which should not be overstepped – unfortunately, it has been.

What about the other rights from which derogation is possible? Can the derogation from them be misused by the government arguing that they have to be limited because of security or safety reasons? To illustrate the issue I will opt for an empirical example already at this place – the example of derogation from Article 5 of ECHR (right to liberty and security) made by the United Kingdom in the aftermath of 9/11 attacks.

The Anti-Terrorism, Crime and Security Act 2001 (ATCSA),¹²¹ in its Part 4, introduced unprecedented measures, which allowed for unlimited detention of foreign nationals suspected of terrorism. Such measures would not be permissible in the ordinary situation because they contravene human rights obligations United Kingdom has under Article 5 (1) of ECHR. This article protects liberty and security and does not allow for executive detention without proper trial.¹²² To make the 2001 Act realisable, British justice and immigration authority, the Home Office, introduced the Human Rights Act 1998 (Designated Derogation) Order 2001¹²³ which provided for derogation from the Article 5 of ECHR. The law was strongly criticised by the British authorities responsible for review of acts in the matters of compatibility with United Kingdom’s human rights obligations.¹²⁴ Furthermore, the implementation of the 2001 Act led to controversial decisions – for example the case of *A and Others* was assessed by the ECtHR.¹²⁵ The decision of the ECtHR said that being detained without charge the way

¹²¹Legislation, Anti-Terrorism, Crime and Security Act 2001, at http://www.legislation.gov.uk/ukpga/2001/24/pdfs/ukpga_20010024_en.pdf (consulted on 29. 6. 2011).

¹²² Chirinos, 2005, p. 265.

¹²³Legislation, Human Rights Act 1998 (Designated Derogation) 2001, at http://www.legislation.gov.uk/uksi/2001/3644/pdfs/uksi_20013644_en.pdf (consulted on 29. 6. 2011).

¹²⁴ Joint Committee on Human Rights and Privy Counsellor Review Committee (Chirinos, 2005, p. 267).

¹²⁵European Court of Human Rights, Case of *A. and Others v. The United Kingdom*.

the applicants were, amounted to the violation of Article 5, but on the other hand claimed, that the derogation itself was done properly and, although it was disproportionate, was nonetheless valid.¹²⁶ I conclude that this decision shows the ambiguity of the measures taken by the United Kingdom – although the rights of the suspects of terrorism were violated, from the legal point of view, no mistake was done because the derogation pursued by the UK was carried out consistently with legal measures. The legitimacy of such action should definitely be doubted. Suggestions were raised for a change of this measure and also for amendment to the way the process with terrorist suspects is carried out. The Special Immigration Appeals Commission (SIAC) is a special body authorised to deal with cases such as A and Others, but the manner in which suspected persons are treated is not compatible with traditional judicial procedures. For example, government can hold the most incriminating evidence from the suspect and therefore he or she is not capable of challenging them.¹²⁷ All of these examples undoubtedly paint not a very positive picture of the British approach towards international terrorists. My suggestion is in the line with Chirino's, who says that if a process is established

‘in which the government must bring formal charges against suspects and incorporate terrorism cases into Britain's established judicial system, the U.K.'s approach could become a model for... other countries to strike a better balance between individual rights and national security.’¹²⁸

Unfortunately, to my best knowledge, not many changes have been made, although such intrusive measures received much criticism. Instead of changes, which would allow for more transparency and lower possibility of infringement of rights of suspects, so called ‘control orders’ were introduced within 2005 anti-terror legislation in exchange for unlimited detention. Control orders work as house arrest with restriction including curfew, seizure of passport or electronic tagging.¹²⁹ Recently, some changes have been

¹²⁶ Vermeulen, Mathias, ‘ECHR judgment in A and Others v. United Kingdom follows House of Lords judgment, says preventive detention scheme violates article 5.1’.

¹²⁷ Chirinos, 2005, p. 266.

¹²⁸ Chirinos, 2005, pp. 275, 276.

¹²⁹ Casciani, ‘Q&A: Control Orders’.

proposed and contemporary coalition government suggests replacing control orders with other measures.¹³⁰ Nevertheless, organisations fighting for the protection of human rights say that no relevant changes are going to take place and that current government simply ‘renames’ the control orders. Most importantly, the criticism says, these measures do not keep citizens safe, because if people are dangerous, they should be in prison (it has happened that the detainees fled). Additionally, the implementation of these measures stays under control of Home Secretary and thus out of the criminal justice system.¹³¹

7.4 Rights of ‘the affected ones’

Finally, although it is not main interest of this work, I believe it is necessary to remember that it is not only democracy and liberal order which are under possible threat from bad civil society. I have already mentioned that it is an ordinary citizen who is in most cases affected by action carried by bad civil society. It has been noted that activities of bad civil society are characterised by hate which can be manifested in many forms – starting with verbal assaults and ending up by serious violence.¹³² To examine specifically to what extent can bad civil society infringe on the rights of citizens we would have to look at the certain groups separately and the answer would depend on the specific activities they opt for as means of expression of their stances – ranging from violation of right to respect for private and family life; freedom of thought, religion and conscience; right to liberty and security to right to life or prohibition of torture or other degrading and inhumane treatment. Such violations also amount to abuse of rights provided.¹³³

¹³⁰ Brown, Rachael, ‘UK Scraps Terrorism Control Orders’.

¹³¹ Liberty, Control Orders, at <http://www.liberty-human-rights.org.uk/human-rights/terrorism/control-orders/index.php> (consulted on 29. 6. 2011).

¹³² See the definition of bad civil society in chapter 3 – p. 21.

¹³³ It is necessary to add that this list is not exhaustive at all and should serve only as an illustration drawing basically on the ECHR, at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (consulted on 16. 6. 2011).

I would like to suggest here, that this aspect of activities of offers large potential for further research for which, there is not enough space in this work.

Closing up this chapter with the examples of negative effects bad civil society activities could have on ordinary citizens, I can now proceed to deeper examination of specific examples reflecting more problems the relations between the state and bad civil society cause.

8 PRACTICALITIES

‘Should we stand silent, tacitly accepting the parents’ illiberal commitment to preventing their children from acquiring the tool to freely choose among alternative ways of life? Or should we force-feed their children a liberal education? If we do, we tacitly repudiate their parents’ way of life. Perhaps we tacitly repudiate our own as well. After all, we’re liberals. We’re supposed to stand for freedom of choice.’¹³⁴

Although it may sound irrelevant, the above quotation, as I have already attempted to show, captures the dilemma of the state ‘whether and how’ to tackle bad civil society. I have already identified what bad civil society is, how it possibly arises, what rights are affected by its activities as well as what rights of bad civil society itself can be affected by an action of the state. I have also attempted to build a theoretical structure of possible positions of the state, which although they did not address the issue of bad civil society directly, can be interpreted the way suitable for my analysis. The following part of my paper, based on empirical research, will present selected examples of bad civil society activism and reactions of respective states to them. Shorter illustrations are coupled with two more extensive case studies addressing issues of terrorism and right-wing extremism. They have been selected deliberately to show cases, which represent quite diverse political environments with completely different experiences both historical and contemporary – thus offering two distinct approaches of the state. An example of hate speech from the United States is added as the US are ‘home’ of bad civil society theory. My aim is not as much to compare examples provided but rather to show positive and negative features of the presented approaches of the states. I will draw attention to the threats the paths they have selected offer as well as try to suggest possible amendments – the overall summary will be offered in the following chapter to provide a well-arranged and comprehensive overview of my conclusions. Before starting with the presentation of the cases I would like to mention again, that the selection of the examples, presenting mainly political parties, does not imply there are mainly political parties representing bad civil society. There are several forms of groups which bad civil

¹³⁴ Scalet, Schmidt, 2002, pp. 41, 42.

society can gather into and the solutions I will suggest in the following chapter could be used for other types of formations too.

8.1 Hate speech versus the United States

Simone Chambers, an American theorist, is the first person from whom I have for the first time read a text about bad civil society. She spreads the knowledge about this issue in the United States and thus at least a small example of local bad civil society should be offered. I have chosen cases of hate speech related to freedom of expression. From my point of view, although I support a liberal approach, what we can see in these examples is rather a misuse of this freedom. Instead of seeing here an issue of infringement of freedom of expression, there is, what I would call, an ‘over-protection’ paid in the latter case by the high price of resignation and mistrust of justice.

In fact, there could be definitely much more than two practical examples dealt with in the US because many groups defend anti-Semitic, racist or xenophobic ideas. Southern Poverty Law Centre (SPLC)¹³⁵ is a civil society organisation fighting hate and other features which characterise bad civil society. In one of their recent reports¹³⁶ they address the rise of so-called ‘Patriotic movements’ and classify Tea Party as one of the examples. Experts on American constitution and political behaviour say that anger has to be let out and that keeping dissent underground will worsen the situation. Some argue that aligning Tea Party next to neo-Nazis is an over-exaggeration.¹³⁷ Well, I believe we cannot say that Tea Party as a whole constitutes an example of bad civil society, as it mainly represents radical dissent, but fringe groups,¹³⁸ which support their rallies and whose language amounts to threats of violence or even killing, definitely do. According to my opinion, Tea Party, having such a broad influence, by not condemning such expressions of hate indirectly supports it and from my stance that can lead to further incitement of hate or even violence within society.

¹³⁵Southern Poverty Law Centre, at <http://www.splcenter.org/?ref=logo>, (consulted on 15. 6. 2011).

¹³⁶Potok, ‘Rage on the Rights’.

¹³⁷McLaughlin, ‘Experts: Angry Rhetoric protected, but can be disturbing’.

¹³⁸Potok, ‘Rage on the Rights’.

Westboro Baptist Church represents a different example. It is a very small, ‘extended family’ group which spreads a message of hate towards, inter alia, gays and Jews and protests on funerals of fallen soldiers.¹³⁹ This group, according to my definition, fits into the bad civil society ‘box’. Interestingly enough, and also sadly, the US Supreme Court does not think so – as in its ruling in *Snyder v. Phelps* it gave Westboro right to express their opinions related to ‘public matters’ regardless of the way they had done it and the distress they had caused the family of the deceased.¹⁴⁰ In this case I dare to consider American justice unjust.

It seems that not only American authorities do not consider above mentioned groups being a problem. I have found interesting comments which refer to these articles on a student blog and students from Rowan University have similar opinion. They claim that Tea Party is not violent enough and the Westboro Baptist Church is really only local and literally a large family group which does not have much influence. Protection of the freedom of expression seems to serve as students’ main argument.¹⁴¹ I do not want to disregard these arguments because they do not come from academic sphere I believe they are more valuable exactly for that reason. These young people, potential voters and active participants in civil society, do not consider these groups bad civil society – inappropriate maybe, but not bad. It seems that tradition of respect for freedom of expression is very strong in the United States and it is given way in the case of conflict of rights. I understand that neither Tea Party nor Westboro Baptist Church can be compared to terrorists (in the sense of violence for example) and, in the case of Tea Party, there even might be some positive outputs of their activity for a (substantial) part of society.¹⁴² Therefore I understand why some people, including students from Rowan University, might argue that these groups simply present their views and enjoy their rights. Because these groups have not infringed the law, they cannot be prosecuted

¹³⁹McBryde, ‘Spreading a Gospel of Hate...’. The webpage of Westboro Baptist Church at <http://www.godhatesfags.com/index.html>, (consulted on 15. 6. 2011).

¹⁴⁰Gregory, ‘Why the Supreme court Ruled for Wesboro?’.

¹⁴¹Political Communication, Rowan University, blog comments at <http://cspc10.wordpress.com/2010/04/25/tea-party-a-bad-civil-society/>, (consulted on 20. 5. 2011); and at <http://cspc10.wordpress.com/2010/04/25/westboro-baptist-church-bad-civil-society-or-just-plain-bad/>, (consulted 20. 5. 2011).

¹⁴²Tea Party, at <http://www.teaparty.org/about.php> (consulted on 28. 6. 2011).

formally. I believe American authorities should attempt for better balance between the defence of freedom of expression and rights which might be ‘offended’ by that. Also, in the case of Westboro Baptist Church, it is true that the influence of the group is not extensive and informal pressure of ‘good’ civil society seems to maintain this situation. The Tea Party case, as I have noted, mainly represents dissent with the current situation and its mainstream is neither aggressive nor offensive. I believe that the pluralism and diversity present in the American society will not allow further development of radical fringe groups. Should their ill-conceived ideas extensively infringe on other people’s rights, I believe that then it is the responsibility of the state to pursue policies to address this.

8.2 Right-wing radicalism and racism versus Germany

The first shorter example will show how Germany attempts to tackle its bad civil society represented by extreme right movements and parties. This case will be contrasted to the Czech issue of banning far-right political party later in this chapter. I have chosen this type of bad civil society in Germany because it is one of the leading countries within the European Union, which often becomes a final destination for all kinds of migration and thus has a diverse society with all the pros and cons.

Regarding Germany’s capability to fight extremism, there is a tool available right in the German Constitution (Grundgesetz). The second part of article 21 declares such parties unconstitutional, which behave or act in a way to affect, impair or abolish free democratic order or even threaten the existence of the state. This clearly leads to a possibility to outlaw any (neo-)Nazi or communist parties.¹⁴³ Since the fall of the Berlin Wall the popularity of extreme-right ideology has grown. Compared to Hungary, where the Jobbik party has already made it to the central parliamentary assembly, the presence of the National Democratic Party of Germany (NPD), which is the major representative of extreme right in the political area, amounts to the seats held in two regional assemblies in the formerly East Germany.¹⁴⁴ NPD slightly lost in the last general

¹⁴³ This conclusion although made independently builds on note from Turano, 2003, p. 731.

¹⁴⁴ Der Spiegel, ‘Number of Violent Neo-Nazi Rising in Germany’.

election in 2009¹⁴⁵ and according to recent investigations there have been drops in NPD membership as well as certain loss of general support. But this should not be ‘calming down’ information. Domestic intelligence says that numbers of violent neo-Nazis have been steadily growing.¹⁴⁶

Paradoxically, the party which sends false deportation orders to politicians of immigrant origin as a part of the pre-election campaign is still getting financial support from the state – and thus from the tax-payers.¹⁴⁷ Regarding this issue, fortunately, the debate on the level of authorities is not silent and suggestions have been made to strip this party of the support for the reasons of unconstitutionality – this would require a wide two-third support in Bundestag as the Constitution would have to be changed.¹⁴⁸ What I do not understand is how it would be possible to restrain financial support for NPD on the grounds of unconstitutionality while not banning the party itself? It seems that German authorities look for alternatives which would help them to avoid the resolute decisions. In my opinion, without a ban, such a change will not be possible.

There have been several attempts made to dissolve the party. They did not succeed for several reasons. When a ‘second wave’ of attempts was made in 2008 Chancellor Merkel argued, that dissolution of NPD would lead its members underground and thus making it less controllable and more dangerous.¹⁴⁹ The Czech case of dealing with an extreme right party, although it was a bit hesitant at first, came to a positive – ‘banning’ – conclusion, which is a better way to go.¹⁵⁰ In my opinion, both of the cases are very similar regarding the behaviour of bad civil society groups, also both of the states had similar positions for the regulation and I think that the Czech authorities made better use of their chance and rightfully banned a party which behaved illegally.

¹⁴⁵ Der Spiegel, ‘NPD’s Racist Election Campaign Flops’.

¹⁴⁶ Der Spiegel, ‘Number of Violent Neo-Nazi Rising in Germany’.

¹⁴⁷ Any party which gets more than 0.5 per cent of the votes in the federal election is entitled to receive financial contribution of 85 cents per vote, which in case of NPD amounts to a sum around a one million Euros. (Der Spiegel, ‘NPD’s Racist Election Campaign Flops’.)

¹⁴⁸ Der Spiegel, ‘Right Extremists Squabble Over a Crossword Puzzle’.

¹⁴⁹ Der Spiegel, ‘New Bid to Ban Far-Right NPD Looks Doomed’.

¹⁵⁰ Germany also has a record of banning Free Germany Workers Party – examined Wise, 1998.

A recent incident when a ‘Nazi crossword’ was published in a party bulletin shows another aspect of policies of German neo-Nazis – they do not want to be perceived as being too nostalgic for the Third Reich period. This strategy should help them to gain more voters.¹⁵¹ Giving this idea a little thought it leaves us with two conclusions – either policies of such radicals will really soften because the attempt to draw new supporters will be followed by an attempt to keep them, and therefore a necessity to stick to the moderated policies; or it will work as a cocoon of the extreme ideas which will burst once the party gains influence. I believe that both scenarios are possible – the first one would be very favourable from my point of view, the latter, I do believe, though it is possible, would not have a huge impact. I think that the part of the population supportive of such ideas will not ever grow big enough to be able to overthrow the democratic rule of law.

As regards the policies of the German state towards extreme right, I have shown that bad civil society’s political activism, although probably fulfilling the criteria for a legal ban,¹⁵² more or less functions and is supported in certain regions. But Germany has not been simply standing by and has attempted to tackle the issue from the early stage. Seeing the above results it is tempting to denounce its failure straight away, but the notion of the complexity of the issue should not allow us to do so. Extreme ideologies of whatever origin draw the attention of, among others, alienated people from the troubled neighbourhood or poor family environment¹⁵³ for many reasons – strong bonds within the group, putative protection and respect between members. Thus Germany set on the route of ‘granting the grassroots’ in an attempt to divert youngsters from becoming members of such movements.

It is indeed an innovative approach. It started in the early 1990s by supporting local projects for problematic youngsters and was followed later on by financial injections for projects which should specifically concentrate on fighting right-wing extremism,

¹⁵¹ Der Spiegel, ‘Right Extremists Squabble Over a Crossword Puzzle’.

¹⁵² The Annual Report of the Office for the Protection of the Constitution from 2006 says the party is ‘racist, anti-Semitic and revisionist and defames democratic and legal order’ (p. 67). (Federal Office for Protection of the Constitution, Verfassungsschutzbericht 2006).

¹⁵³ The case of Daniel can serve as an example (Der Spiegel, ‘Trial by Fire for an Aspiring Neo-Nazi’).

fostering democratic education, promoting diversity or helping victims of violence.¹⁵⁴ There has obviously been much criticism towards this policy. Regarding my work, Germany actually is a relevant example of the ‘persuasion approach’ I have defended above as a possible way of governance for tackling bad civil society – unfortunately not a very successful example.

8.2.1 General note on right-wing extremism

I feel obliged to mention that I consider it quite worrying that this kind of bad civil society (often hiding behind the veil of populism) is currently increasingly ‘spilling over’ the civil society sphere infiltrating official state structures. Germany, in fact, is not the most serious example. The case of Hungary shows Jobbik, a political party which is aggressively nationalistic, claiming that Roma people tend not to work and radical policies should prevent them from exploiting the social welfare system. They believe that the prohibition of Hungarian Guards is a violation of the right to associate and blames the Hungarian political system for being a Liberal dictatorship.¹⁵⁵ And there are more of these examples all over the Europe – True Finns, Geerts Wilders, Marine Le Pen. And they indeed have certain level of popular support. They appeal on nationalism, blame the European Union for its bailouts and identify Muslim immigrants as scapegoats guilty of everything.¹⁵⁶ These events show how thin is the line which divides civil society groups and the official structures. It also supports my worries about the negligence of the issue of bad civil society. The states have been turning their ‘blind eyes’ to the problems which must have been ‘bubbling’ within the European society for some time already. The rise of radicalism has come as an answer for this indifference.

It is merely impossible to address this issue as bad civil society because it has actually ceased to be bad civil society and represents state’s authority. I think that both ‘good’

¹⁵⁴ Bleich, 2006, 2007, pp. 11, 12.

¹⁵⁵ More about the terminology they use and the symbols they claim to be important and truly Hungarian (Day, Matthew, ‘Rise of Hungary’s Far-Right Jobbik Party Stirs Disturbing Echoes of the 1940s’. Manifesto of the party is available at <http://jobbik.com/temp/Jobbik-RADICALCHANGE2010.pdf>, (consulted on 15. 6. 2011). The article about Hungarian state of issues generally (Cohen, Nick, ‘Who Will Confront the Hatred in Hungary?’).

¹⁵⁶ Der Spiegel, ‘Rise of the Populist Parties Pushes Europe to the Right’ and Der Spiegel, ‘The Rise of the Europe’s Right-Wing Populists’

civil society and responsible authorities can fight this because still it is not a majority of society which believes that racism and ‘islamophobia’ are the right paths to follow. Civil society should mobilise in the sense of participation as free election allow not only to further rise of these groups as critics might say, but also for overthrow of such ideas. The state authorities could firstly attempt to ‘ostracise’ these parties and secondly, if they depend on their support, they can eliminate their influence by reasonable coalition agreements. Additionally, as I have said above, the participation of these radical groups in the governments could actually lead to their ‘softening’. They would not be able to put through all the ideas they have and thus will lose some support and could in fact slowly shift towards the ‘centre’ of the ideological axis.

8.3 The Czech Republic versus racism and hatred

Coming to the Czech example of relations between the state and bad civil society, we will have a closer look at racist radicals – specifically represented by the Workers’ Party (Dělnická strana). Putting the issue into the context requires some further explanations about the Czech environment. Starting with the immigration flows, the Czech Republic cannot be compared to Germany or other western countries, because numbers of immigrants are much lower.¹⁵⁷ But still, because of the similarity of Slavic languages and former ties during the communist period, the Czech labour market is a final destination for people coming from further Eastern Europe and Asia. But foreigners (either job-seekers or foreign students coming from more diverse areas) become victims of verbal or even physical assaults quite sporadically. The scapegoat is the Roma population. Therefore Roma people have increasingly become the target of extreme and racist groups.¹⁵⁸ So called ‘Battle of Janov’¹⁵⁹ can serve as an example of many violent clashes between extremists, Roma people and police.

¹⁵⁷ Eurostat, ‘Recent Migration trends: Citizens of EU-27 Member States Become Ever More Mobile while EU Remains Attractive to Non-EU Citizens’, at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-098/EN/KS-SF-08-098-EN.PDF (consulted on 22. 6. 2011).

¹⁵⁸ Mareš, ‘Racist Violence in the Czech Republic’.

¹⁵⁹ iDnes.cz, ‘Extremisté tři hodiny marně dobývali romské sídliště Janov’. Members of Workers’ Party attempted to ‘conquer’ an area where many Romani people live and it resulted in the violent clash between neo-Nazis and police, dozens of people were injured.

This animosity has its roots in the period of communism when Roma people were prohibited to migrate within the state and were moved to the newly-built blocks of flats. Because they were not able to cope with the modern way of living of that period it resulted in conflicts with neighbours. Currently, the hate towards the Romani minority is fed, inter alia, by the accusations of exploitation of the Czech welfare system. The perception that Roma people are deliberately living only from the subsidies provided by the state is common not only among the general public but is, from time to time, mentioned also by the leading politicians of the country.¹⁶⁰

The attempt to disband the Workers' Party started in 2008 as the initiative of the then Minister of Interior, who claimed that the party abused democratic rules of the Czech system and defended ideas which contradict the respect to basic human rights and freedoms.¹⁶¹ But the first attempt to ban the party was not successful. Main arguments of the Supreme Administrative Court read that government was not capable of providing enough proof to ban the party. Putting it boldly – the state administration acted feebly.¹⁶² There were voices which said, that the court's decision was in fact righteous – because the government's advocacy of the issue was so poor, that should the court decide in its favour its impartiality could be doubted.¹⁶³ I believe this 'stumble' reflects how society perceives radical, and especially anti-Roma, tendencies. Mareš in his study illustrates how even Czech politicians are somehow ambivalent, or rather tolerant, towards radical solutions which these movements suggest.¹⁶⁴ Obviously, this

¹⁶⁰ Comment by blogger (Baťa, 'Cesta do pekel podle TOP 09) and article about leading Czech party who wanted to address abuse of allowance mainly addressing 'Roma issue' (Holub, Petr, 'ODS jde proti zneužívání dávek. Začne u Romů').

¹⁶¹ iDnes.cz, 'Rozpusťte Dělnickou stranu, porušuje ústavu, vyzvala vláda soud'.

¹⁶² iDnes.cz, 'Dělnická strana slaví, soud zamítl návrh vlády na její zrušení'.

Just to add a little note, there were not any consequences for any of the state representatives after this attempt failed – which is the expression of 'culture of impunity' which has been developing the Czech Republic for some time now and I would like to use this short comment to suggest further research of this phenomenon.

¹⁶³ Klara Kalibova, human rights lawyer was quoted for Romea, 'Soud zamítl návrh na rozpuštění Dělnické strany, vláda připravila nekvalitní návrh'.

¹⁶⁴ Mareš, 'Racist Violence in the Czech Republic'.

lack of preparation played into the hands of the Workers' Party as it received public attention.¹⁶⁵

The second attempt to deal with the Workers' Party started in January 2010. The Czech government hired an established lawyer, who was renowned for his successes,¹⁶⁶ and the argumentation of the state was better prepared – new witnesses and specialists were asked to present their opinions – and thus it resulted in the first dissolution of the party on the grounds of incompatibility with constitution.¹⁶⁷ The court's decision was later confirmed by the Constitutional Court, serving as the highest appeal court in the Czech jurisdictional system – which dismissed the Workers' Party's complaint.¹⁶⁸ Furthermore the Workers' Party filed a complaint to the European Court of Human Rights.¹⁶⁹

The Workers' Party openly used symbols and posters directly referring to the Hitler's regime – although they always claimed that the similarity of both the symbol of the party itself and the posters they used during the demonstrations was purely coincidental, the resemblance spoke for itself.¹⁷⁰ They cooperated with neo-Nazi militant groups (Autonomous Nationalists and National Resistance).¹⁷¹ The Supreme Administrative Court, inter alia, concluded that the party

‘has as its objective inciting national, racial, ethnic and social intolerance and, as a consequence, an attempt to limit the basic rights and freedoms of certain groups of Czech Republic's inhabitants, especially minorities (typically Roma, but also

¹⁶⁵ One of the judges of the Supreme Administrative Court commented on the publicity of the Workers' Party after the judgment ordering a ban of the party saying that both the possibility of enhancing their influence (because they presented government action as oppression of their rights) and getting weaker (because of the accusations which were risen against them) are relevant. (Sotonová, Jana, ‘Soudce o zrušení Dělnické strany: Řešme příčiny, jinak to tu vyrostě jako plíseň’).

¹⁶⁶ iDnes.cz, ‘Soudní bitva státu s Dělnickou stranou skončila, verdikt padne v únoru’.

¹⁶⁷ Before parties have been dissolved, this is not the first case at all. But this happened on the grounds of incapability to present their documentation related to their financial situation. (iDnes.cz, ‘Soud rozpustil Dělnickou stranu. Ovládají ji militantní rasisti’).

¹⁶⁸ iDnes.cz, ‘Rozpuštění Dělnické strany platí, Ústavní soud zamítne její stížnost’.

¹⁶⁹ Mareš, 2011, pp. 9, 14.

¹⁷⁰ iDnes.cz, ‘Dělnická strana je podezřelá z propagace nacismu’.

¹⁷¹ Mareš, 2011, p. 6.

Vietnamese and Jewish, plus immigrants more generally and individuals of different origins, skin colour or sexuality).¹⁷²

The case did not draw much attention from foreign media. It might have been a very significant decision for the Czech political and jurisdictional systems, but within the larger context of Europe, the Workers' Party was only a fringe group with no real chances to get any influence beyond a couple of areas.¹⁷³

This case was, from my point of view, successfully resolved. It has shown that if the governments want to fight extremism it has work on it properly and should not underestimate its enemy. Although there might be formally different aims of political parties in the comparison to other associations (as political parties usually aim at seizure of power) the message they spread, hate and intolerance, is the same. Therefore, when the state concludes such groups have eventually cross the border of legality of their behaviour, I believe, they can and ought to attempt to make these groups illegal formally.

Another conclusion, which could be drawn from this case, is about the limits of the 'armoury' of the democratic state, which is available for fighting bad civil society. Although the Workers' Party was abolished, the authorities of the state could not prevent the immediate establishment of the successive party – the Workers' Party of Social Justice¹⁷⁴.

The Czech legal system is quite benevolent regarding the rules which have to be fulfilled to establish a political party – at least three people have to form a preparatory committee, at least one thousand citizens have to support the formation with their

¹⁷²Supreme Administrative Court, Judgement Pst1/ 2009 – 348 (Dissolution of the Worker's Party), at http://www.nssoud.cz/docs/Delnicka_strana_original.pdf (consulted on 23. 6. 2011); used wording from Mareš, 2011, pp. 11, 12.

¹⁷³ BBC (Cameron, Rob, 'Far-right Czech Workers' Party to challenge court ban') and The New York Times (Bilefsky, Dan, 'Czech Court Bans Far-Right Party') reported about the issue.

¹⁷⁴ Their contemporary website flourishes with agenda – one of the banners on the home page of the internet presentation reads: Let's stop the invasion of foreign workers. Work first for Czechs and Moravians!, at <http://www.dsss.cz/>, (consulted on 17. 6. 2011).

signature and the future party has to have democratic statues and aims.¹⁷⁵ I believe that similar measures are present in most of the democratically ruled countries. In the Czech case, the importance of protection of civil and political rights was emphasised by the legacy of the former communist dictatorship which ran the country for about fifty years. In that period there were no political parties permitted outside the National Front which was an ‘umbrella organisation’ constituted from the political parties and other movements and which officially supported the communist doctrine. Other politically active groups were ‘underground’.¹⁷⁶ Therefore, after the transition to democracy, freedoms to associate and assemble were on the forefront of protection and promotion – and that is why the legislators in that period did want to restrain the freedoms by setting more specific rules for establishment of political parties. According to my opinion, not many restrictions can be included in laws establishing the rules for the formation of groups or associations, because it could lead to the prevention of formation of democratic subjects as well. Nevertheless, looking at the example of the German constitution, some general conditions reflecting democratic order of the state could definitely be included. For example, in the Czech case, the condition of having democratic statues could be specified by naming what cannot be in such statues – expressions denying e.g. equality of people or democratic order. Such limitations would be, from my point of view, in line with respect to human rights and might help to enhance their protection. Properly functioning liberal democratic order should be capable of setting such limits without restricting any possible dissent a priori.

On the other hand, it also places a twofold burden on the state – firstly, to establish a proper non-discriminatory framework; secondly, to oversee whether the rights and freedoms are not misused. If so, as it was in the case of the Workers’ Party, a clear signal should be sent, that rights and freedoms given by the liberal states are protected and cannot be exploited. This argument reinforces the necessity of hierarchical mode of governance, I have identified as key for addressing bad civil society, because, as we can

¹⁷⁵ The Law on Assembling in Political Parties and Political Movements from October 1992 with its later amendments at the web page of Supreme Administrative Court, at http://www.nssoud.cz/zakony/424_1991.pdf – 22. 6. 2011

¹⁷⁶ More information about the structures in communist Czechoslovakia in Lewis (ed.), 1996.

see, any informal or persuasive attempts to eliminate negative impact of bad civil society group was not sufficient.

I believe the attitude of the Czech authorities was better compared to the German approach in the case of National Democratic Party of Germany, which also had features possibly allowing for its dissolution. We have to bear in mind, that a legal framework established by the state should be sufficient but, on the other hand, cannot be too extensive and infringe on citizens' rights too much, as I think it happens in the case of the United Kingdom, which will follow. There has to be proportionality between protection and limitations. I do not see any conflict between having a liberal and tolerant approach, which I try to maintain throughout my paper, and, at the same time, demand banning of the racist, offensive and intolerant association. Because living within the democratic liberal society does not only bring rights and freedoms but also requires using them responsibly – and abuse of rights with the aim to offend and humiliate others, from my point of view, does not correspond with this requirement. Thus I see the ban of the Workers' Party as a signal to the extreme right movements that not everything will be tolerated and although there are freedoms of expression and association largely protected, expressions of hate towards minorities, immigrants or any other group will be punished.

8.4 Terrorism versus Spain

Spain also had to find its way to battle local bad civil society – in this case it is terrorism. Terrorist organisations could definitely be regarded as being a part of bad civil society as they usually form a voluntary association and their acts are obviously based on intolerance if not motivated by hate. Results of such acts are especially distressful, because usually innocent people are hurt or killed and the whole of society is affected by anger and fear. A short study of the Spanish approach to terrorism will be followed by a larger part of this chapter devoted to the British attitude towards this issue. The differences both in the nature of bad civil society and the reactions of the state authorities will be made apparent.

ETA (Euskadi Ta Askatasuna, in English Basque Homeland and Freedom) is an embodiment of Spanish bad civil society which attempts to pursue its goal by means of

violence and suffering of others. ETA is officially recognised as a terrorist group and has been made illegal.¹⁷⁷ Action taken by the Spanish government affected Batasuna, which was a political party widely perceived as a political branch of ETA, but itself denying any connections with ETA and claiming it ‘fights’ for liberty politically. The whole issue started in 2002 when for the first time a political party was banned under the law on political parties – Ley Orgánica de Partidos Políticos.¹⁷⁸ This law was actually established to address problems which were caused by Basque separatist activism and Batasuna. Analyses dealing with the issue say any better solution has not yet been found. Slightly more than a third of Basques actually wished separation and the region got an immense scope of autonomy and has been allowed to make its own policies regarding many issues. According to the Spanish constitution, the secession is not allowed, thus nothing more can be done.¹⁷⁹ Dobson concludes that although there is a possibility of an infringement on the rights of citizens associated with Batasuna, there seems to be more benefits than risks. He believes that because of diversity of languages and cultures in Spain, freedom of expression is much valued and government itself aims at high level of its protection.¹⁸⁰ Therefore these steps seem to me really as an attempt to prevent rise of bad civil society rather than as a suppression of dissent. Although the ban itself did not have any immediate impact on ETA activities,¹⁸¹ it definitely influenced the possibility of political activism (standing for election) and made the Basque government to take the matter to the ECtHR and searched for support of its freedoms of association and expression (articles 10 and 11 ECHR). The European Court of Human Rights backed the decision of the Spanish government in its ruling from June 2009 and did not find a violation of the rights of the party.¹⁸² It is true that Batasuna

¹⁷⁷ EU list of terrorist organisations available at Europa, at http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/l33208_en.htm (consulted on 22. 6. 2011).

¹⁷⁸ Final judgement was pronounced by the Supreme Court in March 2003, the law was additionally checked by Spanish Constitutional Court which has declared it in line with Spanish Constitution. (Turano, 2003, pp.739, 740)

¹⁷⁹ Turano, 2003 and Dobson, 2003

¹⁸⁰ Dobson, 2003, p. 650.

¹⁸¹ Wilkinson, ‘Policeman Dies in First Eta Killing since Ban on Party’.

¹⁸² Terrorism Case Law Factsheet available at http://www.echr.coe.int/NR/rdonlyres/13BF0C6A-F463-4CE9-B79F-9E9F3EF67B8F/0/FICHES_Terrorism_EN.pdf (consulted on 22. 6. 2011). I could only use

itself did not commit any violence but its refusal to condemn acts of violence committed by ETA, together with refusal to sign a declaration regarding respect of human rights,¹⁸³ does not offer an overly positive picture.

The case is not easily solvable, unsurprisingly, as we are indeed dealing with conflict between the state's power and will to protect law and order, and rights of association which claims to be innocent. There have been voices, mainly from the international human rights community, which say that further banning of the Basque parties in 2009 and a vague definition of terrorism, which can lead to misuse or 'overuse' of this law, seem worrying.¹⁸⁴ Building on the knowledge I have about the issue as I have introduced it so far, I have to say that a proportionality of this measure appears relevant – Spanish authorities definitely restrict their citizens' rights to a certain extent, but Basque political representation does not help to find any better solutions and is not cooperating as desired. What I did find a bit more worrying, was a recent development of the case. A new group had arisen shortly before the regional election in May 2011 asking for 'permission' to take part.¹⁸⁵ At first, bans had arisen preventing it taking part in the election,¹⁸⁶ but eventually those have been moved away and the new formation was allowed to participate.¹⁸⁷ Looking at the contemporary context holistically, I believe that Spanish courts have proved certain reasonability as seeing that ETA has declared ceasefire and Bildu have been claiming they do not support any violent means¹⁸⁸ so they have been given chance to prove it.

In this light, the Spanish authorities succeeded, from my point of view, in finding the right level of limiting the rights of the group. In the situation when ETA did not want to give up violence and Batasuna refused to condemn violence, it seemed, that the ban

secondary sources as the decision of the ECtHR was published only in French and my command of this language is not sufficient for its interpretation.

¹⁸³ Turano, 2003, p. 738.

¹⁸⁴ International Association of Democratic Lawyers, On Politically Motivated Prosecutions and Banning of Political Parties by the Spanish Government, at <http://www.iadllaw.org/en/node/376>, 12. 6. 2011; Also Sortu was banned as it was accused of being just reshaped Batasuna (Govan, 'New Bask Party Banned over Links to ETA').

¹⁸⁵ Burgen, 'New' Eta political wing rejects violence'.

¹⁸⁶ Newsnet Scotland, 'Basque Party Bildu Illegalised in Spanish Election'.

¹⁸⁷ Hedgecoe, Gyu, 'Common Sense Prevails as Bildu Is Allowed to Run in Election'.

¹⁸⁸ Burgen, "'New' Eta political wing rejects violence'.

would help to improve situation sending the signal, that such attitude is not tolerable. While the government opted for giving an opportunity to Bildu in a much more peaceful climate when ETA declared ceasefire and the new party denounced violent practices.

8.5 Great Britain versus terrorism

Great Britain has a long history of fighting terrorism. Many attempts have been made to prevent terrorist attacks, to identify and imprison people who are responsible. Undoubtedly, some measures have to be taken, but there is also need to consider their impact on everyday life as well as on the rights and freedoms to which both ordinary citizens and terrorist suspects are entitled. The fight against terrorism should not make way to arbitrary decisions or degradation of human dignity. Unfortunately, some irreversible mistakes have been made, and thus I believe lesson should have been learnt from them and policies, as well as specific operations, ought to be thought through and realised responsibly.

8.5.1 Northern Ireland example

Special anti-terrorism measures started to be implemented in the period of unrest in Northern Ireland in 1970s. The period of the Troubles was connected to the peaking activity of paramilitary groups from both protestant (unionist) and catholic (republican) camps. Ulster Defence Association formed the largest group in the first camp, Irish Republican Army in the latter and both of them used terrorism as means to achieve ends. Both groups were banned and any alliance with or support for them was made illegal.¹⁸⁹ The establishment of the non-jury Diplock court¹⁹⁰ was one of the special anti-terror measures. The scrutiny of their activity was introduced and it has recently

¹⁸⁹CAIN, Ulster Defence Association, at <http://cain.ulst.ac.uk/othelem/organ/uorgan.htm> (consulted on 13. 6. 2011).

It could be said that these steps actually put terrorists out of the bad civil society area as they can be easily identified as criminals. I argue that the measures applied by government are aimed not only at 'clear-cut terrorists' but also at 'grey cases' of people who can be potentially influenced by 'bad groups'. In such cases, it is arguable from my point of view, whether it actually does not have a reverse effect on such individuals – witness acts of injustice going unpunished can also ignite the hatred rather than prevent it from growing.

¹⁹⁰Northern Ireland Office, Replacement Arrangements for the Diplock Court System, 8/ 2006, at <http://cain.ulst.ac.uk/issues/politics/docs/nio/nio110806diplock.pdf> (consulted on 22. 6. 2011).

started to bring unflattering results. Allegations of torture, inhumane and degrading treatment confirmed even by former police officers show, how British authorities were dealing with its bad civil society back in that period. Hundreds of cases are being brought to the Criminal Cases Review Commission. So far they have shown that dozens of people were forced to plead their guilt regarding religiously motivated crimes they, in some cases, even could not have committed. This led to passing of judgements which sent innocent people to prison for several years.¹⁹¹ The current situation regarding Northern Ireland is mostly peaceful, but reports evaluating the third sector say there are still religious tensions largely present in the society.¹⁹² The situation has definitely improved after the Good Friday Agreement and the slow but steady process of decommissioning of the weapons in use was set in motion.¹⁹³

8.5.2 *Current terrorism threats*

Since the Labour party came to power and facilitated the official end of the Northern Irish problem, several anti-terrorism measures have been adopted. At first as a possible prevention of the terrorism from the side of the embittered former militia members, but lately mainly in the reaction on 9/11 attacks in the United States and on 7/7 attacks in the United Kingdom itself. Their common features from the human rights protection perspective are rather worrying as with every new act¹⁹⁴ there have been new powers and means ascribed to police, including the length of a pre-charge detention has been extended several times.¹⁹⁵ Further, an issue of widening the range of activities which are considered illegal in the connection to terrorism also raises concerns about the excessiveness of anti-terror measures – ‘direct or indirect encouragement’, or ‘other inducement’ are very vague terms which can bear many meanings. The Home Office additionally published a guide which lists inappropriate behaviour and includes many

¹⁹¹ Cobian, Ian, ‘Hundreds of Northern Ireland ‘Terrorists’ Allege Police Terror’.

¹⁹² Heinrich, 2007.

¹⁹³ McDonald, Henry, ‘Ulster Defence Association Destroys its Illegal Weapons’.

¹⁹⁴ Overview of all legislative measures is available at DirectGov, Terrorism and the Law, at http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Counterterrorism/DG_181896 (consulted on 22. 6. 2011)

¹⁹⁵ Horne, Berman, ‘Pre-Charge Detention in Terrorism Cases’.

loose terms which could often depend on personal interpretation.¹⁹⁶ I think that such wide scope of actions which can be considered an offence bring many ‘side effects’, which could have negative influence on other actors in public sphere, e.g. journalists. Such measures, which are nowadays more common, as securitisation is one of the key features of fight against terrorism, can have huge impact on freedoms which are basic for civil society functioning (such as freedoms of expression or assembly) and can be misused to suppress dissenting elements within society. Therefore I believe that states should pay better attention to clarification of vague and broad terms.

In the British case, the impact of anti-terrorism laws on the freedom of expression within the whole society is considered quite significant. Article 19 – renowned international NGO fighting for protection of freedom of expression and information – says British definition of terrorism according to the Terrorism Act 2000 (with its later amendments) is vague and too broad and allows for criminalisation not only of terrorism as such but also of demonstrations or gatherings which cannot be considered terrorism.¹⁹⁷ It is understandable that terrorist groups (including al-Qaeda) were outlawed and the financial support of such groups was prohibited. But broadening of the scope of the acts or actions which are considered illegal in the relation to terrorism – such as glorification, encouragement or justification of terrorism – which were put in force by the Terrorist Act 2006 – makes the situation much more complicated for the charities which are affiliated with certain ethnic and religious groups.¹⁹⁸ The British authorities involved charities in the anti-terrorism legislation and these can be subject to enhanced investigations. Charity Commission¹⁹⁹ says there is not one suitable solution to prevent abuse of charities by terrorists. Guidelines have been produced for trustees to

¹⁹⁶ Article 19, ‘Home Office List of Unacceptable Behaviours: Freedom of Expression Scapegoat of Political Expediency’, 2005, at <http://www.article19.org/pdfs/analysis/uk-list-of-unacceptable-behaviours.pdf> (consulted on 23. 6. 2011).

¹⁹⁷ Article 19, ‘The Impact of UK Anti-Terror Laws on Freedom of Expression’, 2006, at <http://www.article19.org/pdfs/analysis/terrorism-submission-to-icj-panel.pdf> (consulted on 23. 6. 2011).

¹⁹⁸ Sidel, 2008, p. 26.

¹⁹⁹ Charity Commission is a body responsible for control of charities in England and Wales, at <http://www.charity-commission.gov.uk/> (consulted on 23. 6. 2011). There is a special body maintaining same tasks in Scotland – Office of the Scottish Charity Regulator, at <http://www.oscr.org.uk/> (consulted on 23. 6. 2011). In the Northern Ireland – The Charity Commission for Northern Ireland, at <http://www.charitycommissionni.org.uk/> (consulted on 23. 6. 2011).

prevent misuse of charities for terrorist purposes. Funds and assets have been identified as potentially the most likely to be exploited.²⁰⁰ I agree with Sidel, that although both government and the third sector ‘fight the same enemy’, the measures applied can result in an indirect influence. So as the charities will not get involved in possibly innovative but maybe controversial activities, not to draw attention of the authorities.²⁰¹ A positive result of implementation of these measures should be also mentioned. There have been only two cases of the connection between UK settled charities and the support of terrorist organisation proved.²⁰² The case of Abu Hamza, whose speeches were extremely radical while preaching in London’s Finsbury Park Mosque, led to a just conclusion. Firstly, the cleric was excluded from the mosque for misusing his position²⁰³ and later he has been extradited to the United States, where he faced charges for financial support of terrorist organisation. While pursuing justice, British authorities were capable of maintaining their human rights obligations because they requested an assurance from the American counterparts about non-execution of the death penalty in Abu Hamza’s case. Should the United Kingdom extradite him without such assurance, it would act in the breach with the human rights their obligations.²⁰⁴

Coming back, a gradually increasing influence on rights and freedoms of individuals is really the most troubling feature of these laws. There have been complaints made by judges as well as human rights activist groups.²⁰⁵ Measures such as ‘stop and search’ power or control orders offer appallingly wide and unlimited space for the state authorities to ‘play’ with rights and freedoms. Additionally, ridiculous examples of the overuse of the ‘stop and search’ power of the police – checking a 11 years old girl at the peaceful demonstration in the RAF base or an 80 years old RAF veteran wearing ‘anti-Blair’ T-shirt²⁰⁶ – show that rights which should be protected both nationally (e.g. the

²⁰⁰Charity Commission, Charities and Terrorism (factsheet), at http://www.charitycommission.gov.uk/Library/About_us/mp_factsheet7.pdf (consulted on 23. 6. 2011).

²⁰¹ Sidel, 2008, p. 10.

²⁰² (Howell, Lind, ‘Counter-Terrorism Measures and Civil Society in UK and US’).

²⁰³ Casciani, ‘Abu Hamza and the Mosque’.

²⁰⁴ BBC, ‘Hamza faces 11 US terror Charges’.

²⁰⁵ Letter from CIVICUS can serve as an example (<http://www.civicus.org/new/media/CIVICUSletter-UK-counter-terrorism-bill.pdf> (consulted on 13. 6. 2011)).

²⁰⁶ As quoted in Article 19, ‘The Impact of UK Anti-Terror Laws on Freedom of Expression’.

Human Rights Act was introduced 1998) and internationally (within the framework of international conventions United Kingdom is party to) have been affected. The government argues such measures are necessary regarding the level of potentiality of the attack.²⁰⁷

Moreover, the Human Rights Act does not provide much of the manoeuvring space for judiciary as they can only declare the ‘incompatibility’ and have to leave government to change addressed law. It is obvious that these controversial measures were promptly adopted and largely agreed upon straight after the terrorist attacks. But later development shows that some measures have been losing support even in the United States where this ‘anti-terrorism-legal fashion’ started. In the comparison with other countries, Britain is not the only one to pursue anti-terrorism policies and there are attempts to have a common approach on the level of the European Union.

Although a threat posed by international terrorism can be seen as reasonable grounds for strictly set laws in this area, my conclusion is that British anti-terrorism laws have spread too many powers, which are used overly intrusively regarding ordinary citizens’ lives. This was supported, inter alia, by the ruling of ECtHR when a complaint by two British citizens was backed. They complained that they were searched by police officers (this competence is given to police by 2000 Terrorism Act) without any reasonable grounds and that it amounted to an infringement of their right to private life and conflicts also with freedom of association and expression.²⁰⁸ Another cornerstone of criticism towards the British attitude addresses the introduction of the longest pre-charge detention among similarly democratic countries (28 days). The number of days has been reduced to fourteen, but an emergency legislation is being prepared to prolong the period again.²⁰⁹ Further, the eagerness ‘to protect’ lives of ordinary citizens has gone too far at least in two fatal cases when British authorities wanted to stop alleged

²⁰⁷ Interestingly enough I would like to mention a web page of the Home Office where a level of the threat of terrorism is measured every day (<http://www.homeoffice.gov.uk/counter-terrorism/current-threat-level/> consulted on 13. 6. 2011).

²⁰⁸ Gillan and Quinton v. The United Kingdom.

²⁰⁹ Travis, Alan, ‘Plan to Extend Limit of Detention without Charge Criticised’.

terrorists from finishing their task. In the first case, *McCann and Others v. UK*,²¹⁰ as it has been noted above, the action of the British authorities should have been conducted in line with Article 2 of the ECHR which justifies use of force when it is absolutely necessary and the suspects' right to life should have been protected. The second case, currently pending *Armani da Silva v. UK*, relates to the recent action by the British authorities – a 'possible suspect' of London bombings was shot dead only to find out that an innocent person had been killed.²¹¹

Having this overview of activities which have been carried out by British authorities to protect citizens against alleged threats of what can be called bad civil society, it could be concluded that the British government has gone too far. More importantly, there have been some more significant 'side effects' of anti-terror 'protection' – not only has anti-terrorism legislation had a negative impact on the freedoms of the unjustly convicted, but also on the wider areas of public life – namely journalism in the connection to freedom of speech. The Council of Europe have said that all states should pay attention to the securing of rights they are bound to. This recommendation seems more than relevant in the case of Britain with its 'stop and search' rules and increasing possibilities to carry on extensive surveillance of its citizens.²¹² I further agree with the position of Article 19 who recommend making the definition of terrorism narrower because as it is now, it allows the state authorities to use their powers against protesters who block streets and disrupt order – which calls for the response of the state, but definitely does not require to use 'the armoury' of anti-terror legislation.²¹³

²¹⁰ *McCann and Others v. The United Kingdom*.

²¹¹ European Court of Human Rights, Terrorism Case Law Factsheet.

²¹² Hirsh, Afua, 'Freedom of Expression Must Be Protected, Says Council of Europe'.

²¹³ As an example, Article 19 talks about 'Critical Mass' cycling initiative - <http://critical-mass.info/> (consulted on 28. 6. 2011); Article 19, 'The Impact of UK Anti-Terror Laws on Freedom of Expression', 2006, at <http://www.article19.org/pdfs/analysis/terrorism-submission-to-icj-panel.pdf> (consulted on 23. 6. 2011).

9 MERGE OF THEORY AND PRAXIS

*'While States must act to protect their citizens from public order and terrorist threats, their actions must be appropriate and without excess.'*²¹⁴

After the examination of empirical examples, I will attempt to summarise my findings in the following chapter. I have already made some suggestions throughout this writing but I find it appropriate to summarise my ideas about the relations between the state and bad civil society to be able to answer my research question: How can the state regulate bad civil society? From the spectre of state's governing approaches towards civil society, I have identified that only models of persuasion and hierarchy (chapter 5) are relevant for addressing bad civil society and this will be my point of departure for the summary. I have decided to opt for a two-part model which addresses at least some of the causes of development of bad civil society and offers legal framework which can provide reasonable protection of dissent as well as just punishment when the line is crossed. Therefore I will present my suggestion in two separate parts – firstly the pre-emptive measures and secondly the legal framework.

Before I start presenting my conclusions, I have to set off with an acknowledgement of the fact that the state is aware of bad civil society. I have expressed my worry that a too idealistic approach towards civil society can lead to an omission of its negative features. We have been witnessing the increasing reliance on civil society as provider and assistant of certain services in specific areas and thus I feared that the state would perceive the whole civil society very positively not leaving a margin to assess its possible negative features. This has not proved to be true. The cases I have dealt with, as well as policies states use, have shown that the states are very pragmatic. It can actually be said that states identify what they consider being bad civil society – whether it is radicalism or terrorism which are identified as enemies, they are addressed in that fashion without any doubt. This note actually constitutes a first conclusion I have

²¹⁴ Article 19 ('The Impact of UK Anti-Terror Laws on Freedom of Expression', 2006, at <http://www.article19.org/pdfs/analysis/terrorism-submission-to-icj-panel.pdf> (consulted on 23. 6. 2011)); They conclude from *Incal v. Turkey*, application no. 22678/93, 18. 5. 1998, para. 54.

reached during my research – although the theoretical literature does not address bad civil society issue, practical politics does.

9.1 Pre-emptive measures

In the case of radicalism, racism and xenophobia it is obvious that Workers' Party or any of its 'successors' in the Czech Republic, German NPD or Hungarian Jobbik are only 'outputs' of the sentiment of a part of population which feels threatened by foreign workers, Roma population or Muslim immigration. 'They' allegedly either 'steal' jobs or money in the forms of state subsidies and allowances or threaten 'our European values and culture'. The popularity of such ideas stems in the problems which are present in the society and for which no satisfying solutions have yet been found. These radical ideas offer solutions or identify 'the perpetrators' who can be blamed for all the worst which is happening to us. A case of terrorism is more difficult. There might be similar causes for it, but examples in Spain and the United Kingdom show there are many different reasons which can lead people to committing violence.

I have named some of the sources of bad civil society earlier in this work – poverty, increased activism of radicalised individuals, unresponsiveness of the state. I believe that states have many avenues at their disposal to tackle a wide range of problems and their 'traditional' monopoly over the use of means of violence can really be a last resort. I agree with Elias who says that people are not violent by their nature but they turn to violent acts in the situation of conflict and when they are threatened.²¹⁵ Although Elias talks about war, I think we can transfer a situation of conflict to setting of suburbs, or rural areas, where diverse people live together, or minorities are settled, where there is lack of jobs. I believe that many aspects of the modern world result in feelings of insecurity and fear of the unknown which seem to threaten our daily lives. And thus people try to find protection against these mainly unsubstantiated fears as well as solutions for their problems. Such solutions are often offered to them by radical populists or fundamentalist movements and ideas.

²¹⁵ Elias, 1988.

Dearlove makes another interesting point about behaviour of groups which try to draw attention to their problems. He addresses issues of poor people who usually lack voice and representation in the public sphere and he literally talks about groups getting 'louder' to be heard and listened to by the state officials.²¹⁶ I think also this issue can be metaphorically transferred to the bad civil society sphere – because as it was said, that economic frustration is one of the 'sources' of bad civil society, we can identify the radicalisation as a 'louder voice' asking for solutions – because the state is not able or willing to act, people turn their attention to the 'louder' (radical) groups.

'Avenue of education' is another way, I believe, the state can go in an attempt to prevent or at least diminish (further) development of bad civil society. We can see how powerful state education systems were and somewhere still are in the totalitarian regimes. Luckily, pluralism within democracies offers individuals freedom to choose their ideals and respects variety of thoughts and beliefs. Still, the state has the power to influence the 'main message' which is given to young people – and I think it should be a message of non-discrimination and equality. These are the most important values which lie behind respect and protection of human rights and if they are constantly promoted and omnipresent, I think they can 'win the minds' of many.²¹⁷

To finish this section of suggestions, I have to emphasise that I do not want to blame the state for everything. People cannot be prevented to pursue their goals at all costs and I am aware, that the propositions I have made, are demanding. I have also mentioned that some people get involve with bad civil society because they simply wish to, they cannot and should not be prevented in doing so – the following section will eventually suggest how to tackle them with the help of hierarchical measures. On the other hand, in some

²¹⁶ Dearlove, 1974, pp. 29, 30.

²¹⁷ Special education of state officials is one of the specific preventive solutions I would like to suggest. I am aware that it means a lot of investment both money- and time-wise and with rather blurred results, but I think that innovative approaches can bear fruits. Anti-Semitic marches in the Czech Republic can serve as an example, when far-right extremist choose to organise their event on the day when transportation of Jews to concentration camps started (*iDnes.cz*, 'Neonacisté Plzní nepůjdou, úředníci demonstraci zakázali'), or, from the American environment, 19 April was the day chosen by 'patriotic' group to march on protest, which is the day when a Revolutionary War started and the Oklahoma City bombing happened (Potok, 'Rage on the Rights'). If bad civil society can at least be prevented to act such way on the days which are so emotional for certain groups of citizens, then, I think, I might be worthy.

cases people live in conditions from which they cannot get out of, which lead them astray and ‘push’ them into difficult situations – in such cases they should be offered reasonable help and assistance.

9.2 Framework of protection – punishment

It is obvious that persuasion can hardly make some change by itself. I have already noted that it only forms a (rather smaller) part of the set of instruments which can be used to tackle bad civil society – hierarchical approach offers more options firstly to regulate and secondly to punish. The basic tool to tackle bad civil society should be sufficient legislation which involves measures which can secure rights and freedoms of all citizens and is equipped with measures dealing with protection against discrimination. I have shown that minorities or other vulnerable groups are one of the easiest targets of bad civil society activities and thus their protection should be enhanced. For example, the European Commission against Racism and Intolerance (ECRI) in its report from 2009 addressing racism and other issues in the Czech Republic stated that some progress has been done but

‘there is still no comprehensive anti-discrimination legislation in force in the Czech Republic. At the same time, the Czech Charter of Fundamental Rights and Freedoms does not appear to provide effective protection in practice against cases of racial discrimination. Legal aid is, in practice, only available in criminal cases.’²¹⁸

This is an example of insufficiency of measures taken to prevent bad civil society to cause harm to others and also illustrates why many controversial issues can happen in practice. Such inefficiency also indirectly causes harm to the state – inaction of authorities in cases of (not only) Roma discrimination, or even ‘silent support’ in some cases, undermines trust into rule of law and democracy. The state authorities should be responsive. Additionally, as Robson says, state’s action should not only be adequate, but also justified and just and, needless to say, should be transparent.²¹⁹

²¹⁸ European Commission Against Racism and Intolerance, ECRI Report on the Czech Republic, 2009.

²¹⁹ Robson, 2000.

Regarding the practical possibilities to limit the action of bad civil society, there should be clear guidelines to that. It happens quite often that bad civil society organisations fulfil requirements for their founding and running and they are not identified as an issue until problems appear. When this happens within the legal limits the state has established, there could be some limitation of bad civil society realised. To suggest the rules which should be followed, I will use guidelines set by ECHR,²²⁰ which say that measures taken by the state to limit citizens' rights and freedoms have to fulfil three conditions.

Firstly, they have to be prescribed by law. Such law has to have certain qualities. It should be

‘formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given situation may entail.’²²¹

Secondly, the state should only be pursuing a legitimate aim – which aims are legitimate differs with each right. For example, Art. 2 protecting right to life says this can be limited when ‘absolutely necessary’, inter alia, while protecting others from unlawful killing. Article 5 (right to liberty and security) could be limited when a person should be subject to lawful arrest or detention. Finishing with Articles 9, 10 and 11 protecting freedoms of thought, expression and assembly, similar legitimate aims are mentioned – the state's conduct is only legitimate ‘in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’²²²

²²⁰ European Court of Human Rights, Convention for Protection of Human Rights and Fundamental Freedoms, at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (consulted on 16. 6. 2011).

²²¹ The Sunday Times v. United Kingdom, para.49.

²²² European Court of Human Rights, Convention for Protection of Human Rights and Fundamental Freedoms, at http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/ENG_CONV.pdf (consulted on 16. 6. 2011).

The third requirement says that any restriction should be ‘necessary in democratic society’, which means that there is a pressing social need for that and limitations ordered by the state have to be relevant and sufficient.²²³

Building on these requirements, it might seem that quite clear limits are set to the action of the state, but as I have shown in the above examples, although there might be limits in the paper, the realities are much more complex and often it is difficult to assess the situation. The doctrine of margin of appreciation,²²⁴ which is applied by the ECtHR, is an expression of the diversity of interpretation of some rights in the different states. Therefore, similar cases might be solved distinctly in the different states although they respect the same set of officially established guidelines. The diversity of perception of the nature of a potential threat was, I believe, well presented in the case of the British derogation from the Art. 5 of the ECHR – the United Kingdom was the only member state of the Council of Europe which felt the need to take such steps.²²⁵

Giving little space to the theorists, Chambers and Kopfstein, building on the American tradition, believe there could not be any limitations put in place by the state as it would violate values of toleration and respect.²²⁶ Putnam recognises that freedom of association can be hard to sustain because some political associations do not really contribute to ‘effective governance’ and are able to develop pressure to threaten democratic rule.²²⁷ Sidel, talking about terrorism, says it does not have to be a core reason for growing regulation of the third sector, but there might be other issues present and anti-terrorism measures can serve as an excuse for enhanced regulation.²²⁸

These ideas illustrate, how contradictory this issue could be and that it is really hard to find out clear cut solutions. I have attempted to show firstly the pre-emptive measures which could be taken with the aim to prevent an establishment of bad civil society or, if it already exists, help to eliminate its influence. Secondly, I have shown the necessity to

²²³ See *Handyside v. the United Kingdom*, paras. 47, 48 and *Lingens v. Austria*, paras. 39, 40.

²²⁴ Council of Europe, Judicial Professions, The Lisbon Network, ‘The Margin of Appreciation’.

²²⁵ *Case of A. and Others v. The United Kingdom*.

²²⁶ Chambers, Kopfstein, 2001, pp. 844, 845.

²²⁷ Foley, Edwards, 1996, p. 44.

²²⁸ Sidel, 2008, pp. 9, 10.

form a proper, responsive and balanced legal order and I have specified how such a legal order should look like. To add another summarising perspective to my conclusions, the idea of balanced militant democracy seems to me as a helpful conception. Mareš describes it as

‘a democratic regime that takes active steps to defend its constitutional and political values through the use of repressive legal instruments and other measures. It opposes free activity and the influence of movements that wish to replace the democratic constitutional regime with another type of regime (authoritarian or totalitarian) and also the ideologies connected with these movements.’²²⁹

Altogether, I have established a sufficient framework which could, I believe, provide for a guide for the states in the situations of conflict with bad civil society. Summarising on this, possibly the time has come to answer my research question. How can the state regulate bad civil society?

The state can regulate bad civil society by using reasonable and appropriate legal measures which show proportionality between the protection of interests of the state – such as security or order – and protection of rights and freedoms of citizens or groups. The extent of limitations of bad civil society which are acceptable should not be (and could not be) assessed in overall as cases have to be assessed individually. Put boldly, unless bad civil society is out of the legal framework, the state can only regulate it in a way so that it does not infringe on its rights. This has to be judged case by case.

9.3 Final close up notes

Before finally closing up my summary, I would like to add two notes, which I think are also relevant. Firstly, together with the formal structures either attempting to prevent the rise or development of bad civil society or trying to regulate it and keep it within boundaries, there are also informal ways of doing so. Both ‘good’ civil society organisations, politicians or other state authorities can, in certain situations, diminish the

²²⁹ Mareš, 2011, p. 2.

influence of bad civil society groups by addressing them as bad, not cooperating with them and acknowledging that there is not room for them. The extent to which this strategy could be successful depends very much on the political culture in certain states and on the attitude citizens have towards their opinion leaders and authorities and although I am aware that such behaviour will not ‘erase’ bad civil society, it can potentially limit its influence both within civil society and the political sphere.

Secondly, my very last comment is – no issue can ever be generalised. Whatever specific problem I have been talking about, should be approached as a specific case. Of course, we have to build on the knowledge we have gained about the issue and we need to implement general measures and rules to prevent or limit occurrence of problems. I believe that, similarly with issues which we address in our everyday lives, every single case of bad civil society bears specific features which need to be dealt with properly if the problem is to be addressed successfully.

10 CONCLUSION

*'...the key to the success or failure of democratic institutions will lie not in the character of civil society but in their responsiveness as institutions – in their ability to mediate conflict by hearing, channelling, and mediating the multiple citizen demands that modern societies express through civil and political associations alike.'*²³⁰

The final chapter of my thesis will recapitulate and shortly summarise the conduct of my research and the findings I have made and will close up the paper with the hope for further interest of writers and thinkers who should raise the awareness about this topic.

Starting with the analysis of civil society, I had to decide which approach is the most suitable one for grasping the issue of bad civil society – the associational notion of civil society proved to be the most adequate, although with a substantial need for adding a critical perspective. I have attempted to draw attention to the current glorification of civil society as an almighty actor which can provide salvation in many areas. I have critically assessed this perception and hopefully made a clear point about non-viability of idealised notions many authors have about civil society. I also emphasised the necessity of the cooperation of the state and civil society. Although the strong reliance of the state on the help of civil society should be reduced, a vivid, balanced and mutually responsive cooperation is beneficial for all sectors of society. Further, I have also expressed the fear that if the state perceives civil society neutrally without 'a critical eye', it could lead to an inability to address bad civil society issues simply because of unawareness of or indifference to such issues. This worry has been proved as unsubstantiated, because states have shown the awareness about 'their' bad civil societies, whatever form they have taken. Most importantly, the first section of my thesis dedicated to civil society formulated the definition of what bad civil society in fact is and thus the ground was made ready for deeper analysis.

²³⁰ Foley, Edwards, 1996, p. 49.

Second part of my work concentrated on the state as the other main actor in the studied relationship. I have chosen the path of governance theories which offered a suitable framework for selection of the approaches of the state which could be appropriate for tackling bad civil society. After a brief overview of all of them it became obvious that only persuasive and authoritative approaches are relevant for the purpose of my work. This was later confirmed in the practical part of the thesis which illustrated and supplemented my choice. The second chapter dealing with the relations between the state and bad civil society presented different points of view at the issue – I came back to the idealised view at civil society, explained position of liberalism, which is one of the underlying ideologies of my own ideas, and added short notes on regulatory and Marxian approaches.

Human rights perspective, which was included in the following chapter, added another level to my analysis. I have briefly introduced the instruments states have at their disposal on both national and international levels as well as the obligations the state and each individual have. The aim of this chapter was to suggest the ambiguity between the protection of human rights and the state's interests and also the controversies which arise when a clash of the rights occurs. I have illustrated that by showing which rights are affected in such a conflict. Furthermore, an issue of derogation showed the gaps in the protection of human rights in the situation of perceived danger for the state.

Next, an empirical part of the thesis, should have served as a practical illustration to theoretical concepts and ideas. I have concentrated mainly on two forms of bad civil society – terrorism and far-right extremism. These have embodied mainly in the form of political parties which then have been addressed by the states. I have already acknowledged, that this does not mean that political parties are the only bad civil society formations – I have also talked about radicals who exploit charities or hate groups – and I would like to clarify my, possibly misleading, usage of examples. The part called 'Solutions' in fact constitutes a proper conclusion about the issue I have dealt with, explaining the positions I have taken and the suggestions and solutions I have and offer them as plausible for addressing this issue.

Closing the whole thesis with these very last paragraphs, I would like to express my hope that more attention will be paid to the relations between the state and bad civil society so that the deficiencies of actions of the states can be addressed and further development of bad civil society could be prevented or at least limited.

I have attempted to approach the problem from the liberal-democratic stance, having in mind rights and freedoms people are entitled to, I cannot and do not wish to claim, that bad groups shall be prohibited and full stop. One 'statement of week' in my diary expressed by an American writer David Grayson reads: 'Commandment Number One of any truly civilized society is this: let people be different.' Because we live in free and democratic societies people have to be allowed to express their opinions and fears – although they might not think what they really express is fear. If the state cannot prevent peoples' opinions to be extreme, radical or offensive it has to take action and establish just punishment for those who have crossed the line and just redress for those attacked.

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2011

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<https://doi.org/20.500.11825/984>

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