

# Essay 5

From: Alan Fowler & Kees Biekart (eds) (2008) *Civic Driven Change: Citizen's Imagination in Action*. The Hague: Institute of Social Studies. (see also: [www.iss.nl/cdc](http://www.iss.nl/cdc))

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## Civic Driven Change ~ The Law and the Outsiders

When I was sixteen, in the mid-1980s and a couple of years before the political change in Hungary, my mother took me along to a summer camp organized for students of social work. This was the first ever class of university students of social work. In the socialist system there was officially no poverty and so there was no need for subjects like social policy or social work. My mother was in the team of university professors who fought for years to finally have such curricula introduced in Hungary. The camp was in a village near the Ukrainian border, which has today developed into a very nice town, but the area itself remains one of the most deprived regions of the country.

There was a gypsy ghetto at the edge of the village, quite far from any central infrastructure. The gypsies lived in mud houses and had no gas, water or electricity. But there was a plan in place to introduce the water pipes to their street, which had been a plan for years but somehow never got to be realized. We, the students, went to investigate the case at the local government. They said that the pipes themselves had already arrived and were just waiting to be laid but they were so short on workforce that they could not yet find the 'experts' to dig the drainage ditch for the pipes. We asked for the plans and realized that one did not need 'experts' to dig those ditches but only lots of hands since the plan showed clearly where and how the digging should be done.

So we tried to talk to the gypsies to get them to dig the ditches themselves. They did not want to as they said the government should do it. Moreover, it was not up to them, they did not know how to do it and did not want to mess with the local government; and it will never get done anyway. They gave up all hope and did not see any possibility of getting out of the situation. But we felt strongly that if only someone took the initiative and did that work then the local government would have no excuse not to lay the pipes, and these people

would have the water before the winter came. So we just started to dig the ditch ourselves, a dozen or so young students from Budapest, mainly women. The gypsies were mostly unemployed so they did not have much to do and just loitered around watching us working. After some time, an hour or so, the older women started telling their sons, who were otherwise strong, able men that they should not let these fine ladies from the city do the dirty work and they should help out. One or two joined in and eventually the whole village was digging the ditch, the women were cooking, we were done in two days and had a big party each night.

There was much follow-up work needed to finally get the pipes laid before the winter but that project kicked off a real development process in this village and today it is one of the wealthiest towns in Eastern Hungary.<sup>1</sup>

When I think back to this story, the clear and strong message that comes across - and which I internalized and followed in my work ever since - is that people are just as responsible for their own fate regardless of the hopelessness of the situation they are in. Even if their situation might not get objectively much better, the sense that they had done something to change it, taken control of their lives, had the power 'within' made all the difference.

This learning point raises the issue of rights and responsibilities, which in my view are intricately tied to the concept of 'civic'.

### 'Civic'

What is 'civic'? I understand 'civic' as that identity which is connected to the political community and reflects the persons' place and role in it. By political community I mean the community which sets the rules that affect the distribution of resources and power, including power for the legitimate use of physical force (coercion) and power to grant and claim rights and obligations.

## 2 *Civic action in developed democracies*

In the developed Western/Northern democracies the uncontested political community that defines civic identity is the democratic nation state (including the European Union as a quasi-federation of nation states which is in a way creating a supra-state). Therefore in these countries, civic will most often equal 'citizen'. That is, 'civic action' will be that which people undertake in their roles of voting, taxpaying citizens of a country and as such, members of the given political community.<sup>2</sup> Even if the action concerns a local or seemingly non state-related issue, most of the time there is an underlying right or duty claimed which is derived from the constitution or another law of the nation state.

For example, in local citizen actions aimed to stop a new commercial investment, campaigners will rely on substantive and procedural arguments enshrined in law rather than just saying 'we don't want this investment' - since all parties involved have rights and responsibilities and when these are conflicting, there needs to be a legal way to resolve it. They may suspend the investment through demonstration at the site and not letting the excavator start digging the ground ('only through our bodies'), but in the longer term, the judicial process will decide.

This is not to say that all civic action needs to invoke legal rights and responsibilities; however, those that do not imminently do so will also in some way invoke the moral and ethical principles that are considered the foundations of the legal system. For example, a non-governmental organization (NGO) organizing volunteers to help the elderly, a self-help club for addicted people, a vegetarian newsletter service, a cancer advice centre: all are examples of everyday civic action that build on solidarity, pursuit of happiness, the importance of health and the human life. These are part of civil society and as such, reflect cultural norms of the society itself. In most Western or Northern democracies the legal system reflects those same norms, not the least of which are due to civic action (e.g. the women's, black and human rights movements). Therefore there is an implicit understanding that these actions are citizen's actions which enrich and enhance the political system (democracy) even when there are no direct political implications attached to them.

Civic action sometimes reflects varying cultural norms - there are many contested issues, such as abortion, hate speech or gun control. However, in democracies these are seen as part of the ongoing debate on rights and responsibilities and - as long as they do not resort to violence - are generally accepted citizen activities. In fact, civic action can play a big role in changing cultural norms over time: for example, in the United States the first NGOs that tried to talk about cancer faced resistance from the public while today this issue is being commonly addressed (the same happened with the anti-smoking movements).

In fact, one of the challenges that European democracies are facing today is that some of the cultural norms of

Muslim immigrants are not in line with the European legal (and cultural) norms. In such cases, there is no legitimate form of civic action to take place to raise awareness, organize public support and press the government to change the laws - these norms are simply outside the scope of the debate. Excision of girls, forced marriages, honour killings cannot be taken into the legal system and thus, the state needs to persecute them. This is just to 'negatively' illustrate that in the developed democracies (legitimate) civic action draws on the rights and responsibilities enshrined in laws and is therefore strongly related to citizenship.

### *What about the 'non-developed' or 'non-democracies'?*

Civic action in such countries also relates to the political community the persons see themselves belonging to, which may not be the nation state. Unlike in the developed democracies, in many cases the primary, main identity in this regard is related to religion, ethnicity, tribe, caste etc. In the Balkans we are witnessing the struggle of ethnic groups to accept the nation state as the primary political identity versus the ethnic identity that remained the strongest one despite the communist rule. In the Middle East, a similar struggle is going on to reconcile Islam as the main political identity with the nation state concept. In Central Asia, in Africa, and in many countries tribal identities are the strongest when talking about political community.

This would entail that 'civic action' could be directed towards reinforcing as well as reforming or overthrowing a regime of ethnicity, religion, tribalism - it could be helping or hindering democratization. For example, in Serbia after Kosovo declared its independence, Serbs undertook a range of civic actions (people acting up to influence their political community) against independence. For weeks, every day Serbian bakers gave away free bread and biscuits in front of Albanian bakeries so that people did not go into their shops (they are still doing that in many places.) They would block the roads to stop trucks carrying goods to Albanian settlements. These actions are civic actions based on an ethnicity as civic identity and are in the way of democratization.

In the Soviet Union and in the countries of the former Soviet block, the main political identity had been that of class. This political identity seems to re-emerge in some countries of Latin-America (see Venezuela, Bolivia) and has long remained in Cuba. It is intriguing to me that many among the Westerners left who work in development seem to accept more the class identity as a basis for civic action than of other non-citizen identities such as ethnicity or religion. Even though, ultimately, this also can very well be an anti-democratic movement.

### *Civic rights and responsibilities*

Identities always come with both rights and responsibilities. In relation to CDC, and especially in the context of

international development, the so-called 'rights-based approach' is often referred to as a starting point that asserts the rights upon which civic action can draw in any country, or internationally, regardless of the laws of the given country or the countries involved.

The UN documents which provide the basis for those rights internationally,<sup>3</sup> spell out, among others, that 'all human beings have a responsibility for development, individually and collectively'.<sup>4</sup> However, in practice much of the discourse and the approach to various development projects taken from a 'rights-based approach' focus on the duty of the state to provide for those rights and work with disempowered communities to increase their level of participation in the state decisions, rather than addressing the problems directly themselves thereby fulfilling their cited responsibilities as a 'human being'.

It is interesting to pose the question from a 'rights-based perspective' (for example based on Evelina Dagnino's analysis in Essay 2), whether the story from the gypsy settlement could be seen as 'continued disempowerment from within, shown in the lack of political self-organization to make the government fulfil its obligations?'<sup>5</sup> This implies a question of whether it would have been better or more necessary in some way to 'force' the local government to dig the ditches rather than doing it themselves.

On the one hand, this is context dependent. In the Central and Eastern European (CEE) context, where the state has been omnipotent and society trained to be passive and accepting of state directives, acting up to take care of your own life without the need for government is in itself an act of advocacy and a demonstration of changing power relations. Alongside the big-picture politics and economic pressures, it was citizens' stories like the above that led quietly to the velvet revolutions across Eastern Europe. That self-care is a virtue of civiness which was as true in 1989 as it is today, at least in Hungary, where the state is still dominating the lives of everyday citizens.<sup>6</sup>

On the other hand, this is a question of pragmatic effectiveness as well, since if the gypsies had tried to organize themselves and conduct some kind of a participatory interest-representation project to get the local government to comply with its obligation to provide water, they would surely have spent two, if not three more winters without water. Whether for lack of culture or out of sheer hopelessness, there was clearly resistance among them to organize; they viewed the local government as an agent of repression; it would have been no good to force an alien concept of 'advocacy' on them. (Not to mention that local governments in this part of the world are absolutely immune to the pressures of disempowered groups which are not politically affiliated in some way).

At the same time, exactly through experiencing the feeling of 'acting together', 'creating something valuable for all of us', were they able to learn what 'organizing' means and how they are able to do more together than each of them alone. The first time they needed the involvement of the social worker students to achieve this; the second time

they had their own impetus to do something for the community together (for example, build stone houses); and the third time they had the pride of hard-working, value-creating citizens to go to the local government and claim their rights. This is of course gross simplification of a process that took several years and necessitated a holistic approach; but its logic is important. It is after all, the citizen who asserts his rights towards the state and one cannot do that unless one really lives the experience of being one.<sup>7</sup>

Successful social movements that have been able to bring about 'positive' social change<sup>8</sup> in the long term, from Gandhi's passive resistance to MLK's civil rights movement, have thrived on pride and self-esteem that comes from a feeling of 'worthiness' as a human being; of being valuable despite horrific circumstances. Often those, entrenched in social structures that have kept them disempowered for decades and centuries, will not have that inner understanding of 'worthiness'; even though they will feel the injustice in their current status quo. To tell them: 'you are valuable and you have rights' means little until they experience themselves that they are able to create value and claim what it is worth, from society. This sense of constructive ability has to be there beyond the feelings of anger, revolt and vengeance of the disempowered for social change to lead to long-term development. Having lived in South America and in Eastern Europe I can say that it is 'easy' to fire up people and take them to the barricades to claim their rights; it is much more difficult to maintain that 'rights-based approach' in their everyday lives, when as much is up to them, individually and collectively, as to their elected officials.<sup>9</sup>

In sum, while a rights-based approach is noble in its intentions, in practice it often misses out on acknowledging the power of individuals when they are in a seemingly disempowered position. An emphasis on the rights is a good argument for the state (to ensure that it provides those rights to its citizens) but is only half of the argument for civic-driven change.

### **'Driven'**

Change happens in any case; but if we aim to pose a direction for change, it will need to be 'driven'. A key question will be: who is in the driving seat, and what makes it possible for them to drive?

### *Individual and collective agency*

In the case of civic-driven change there is usually a distinction being made between the role of the individual and the collective (often positioning the collective agency as key for CDC).<sup>10</sup> As others have pointed out, this is a false dichotomy, yet I would like to make a distinction as well. My tenet is that while CDC ultimately happens through collective action, it is, at its core, up to the individual to make it happen. In social structures, there is no predetermined way of development (see below), and change hap-

4 pens through a number of generally unpredictable yet invariably related actions of countless individuals.<sup>11</sup> In some way, any event of change in social structures is an aggregate of the choices and decisions of many people made in a certain direction.

Individual people are therefore at the core of change, because every person needs to make their own choices. While individuals are deeply influenced by society and reference groups within, ultimately they will each make their own decision about how to behave in a certain situation. Just like it is not possible to breathe, eat, digest, or feel collectively, it is also not possible to act collectively. Act together and in concert, yes, but it will be up to every single person to do or not to do something. The pressure to act as everyone else does is proportionately bigger in collectivist societies that punish diversions of the rule.

I would like to make a note on the understanding of 'collective'. The collective as an agency has different levels and meanings to it. As institutionalized power structures, collective agencies have a major role in state-driven change and change driven by other power structures such as churches or tribes. As informal social structures, collectivist societies can have a role in change by establishing cultural norms that all members are to follow.<sup>12</sup> And there is the formal and informal association of people as a collective, which expresses itself in various organizational forms (e.g. NGOs, cooperatives and other civil society or business organizations). Within all of these forms of the collective, however, there is a conceptual difference between collectivism and community. The first one can be considered as a coercive system where people share and cooperate because there are strong disincentives (physical, moral, material punishment) if they do not do so.<sup>13</sup> The second can be considered as sharing and cooperation by voluntary choice, that is, when there is no punishment involved and when there are positive incentives and benefits to association. In this regard, ultimately, to have collectives as effective agents of change, 'citizen' individuals are needed who are making a positive voluntary choice to be part of the collective.

### *Legal space for civic-driven change*

While civil society organizations (CSOs) and especially NGOs have been subjected to much criticism in the past decade, their role as agents of social change remains of central importance and cannot be underestimated. While civic action cannot be located exclusively in 'civil society', it is the various forms of CSOs that most often provide the institutional framework in which a group of people (whether social workers, teachers, entrepreneurs, bus drivers or bankers) can realize their goals of civic action. Therefore, CSOs can be regarded as potentially the most effective collective agency for CDC.<sup>14</sup>

Over the past few years a clear tendency could be observed across the globe on the part of governments to restrict the legal space in which CSOs operate. These

efforts are not typically outright violations of human rights, although 'too many regimes still employ standard forms of repression, from activists' imprisonment and organizational harassment to disappearances and executions' or straightforward prohibitions of forming CSOs per se.<sup>15</sup> Rather, these are subtle legislative techniques, including provisions drafted with sophistication, to maintain an appearance of being legitimate requirements within an existing body of law. At the same time, these requirements, coupled with arbitrary implementation practices, place a range of sometimes insurmountable barriers in front of the formation and operation of CSOs. The Defending Civil Society Report, published in early 2008 by ICNL and the WMD, cites examples from 47 (!) countries, mostly 'semi authoritarian or hybrid' regimes, where such provisions were adopted or drafted over the past years.

The Report identifies five broad areas of legal barriers:

- *barriers to entry*, particularly the use of law to discourage, burden, or prevent the formation of organizations;
- *barriers to operational activity*, or the use of law to prevent organizations from carrying out their legitimate activities;
- *barriers to speech and advocacy*, or the use of law to restrict CSOs from engaging in the full range of free expression and public policy engagement;
- *barriers to contact and communication*, or the use of law to restrict CSOs in their ability to form networks and limit their international exposure; and
- *barriers to resources* or the use of law to restrict the ability of organizations to secure the financial resources necessary to carry out their work.<sup>16</sup>

These are a variety of barriers, from the requirement to have 500 members to establish an association (Turkmenistan) to allowing government representatives to attend meetings of the association (Syria) and giving ground to terminate a NGO when it is 'necessary' or 'in the best interests of the public' (Argentina). Interestingly, however, governments have given several very similar reasons for introducing the restrictive measures:

'Governments have tried to justify and legitimize such obstacles as necessary to enhance accountability and transparency of non-governmental organizations (NGOs); to harmonize or coordinate NGO activities; to meet national security interests by countering terrorism or extremism; and/or in defence of national sovereignty against foreign influence in domestic affairs. This report exposes such justifications as rationalizations for repression, and, furthermore, as violations of international laws and conventions to which the states concerned are signatories.'<sup>17</sup>

This trend points to the importance of articulating what the report calls 'international principles protecting civil society'. These are a series of principles and rights already embedded in international law, including norms

and conventions that regulate and protect civil society from government intrusion, and upon which civic action may draw to protect the space for legitimate civic action. It is of central importance to CDC to preserve and expand legal space for civic agency - individually and collectively.

### 'Change'

However important it may be to create an enabling environment for civic-driven change, CDC is not always a wonderful event. As illustrated in Section 1 above, civic-driven change can be good or bad just as state-driven or market-driven change - which also incorporate the not so obvious assumption that we put a value judgment to change.

#### *Value judgment of change*

Civic action is not good in itself. Very often, civic action is based on values that are unacceptable in a democracy - racism, sexism, chauvinism, segregation, violence. The most extreme form of expressing civic action in this sense is of course terrorist activity, when the primary political identity calls for violence against civilian people who are not part of that community.

Anti-democratic civic actions happen everywhere, not just in the Global South. However, in democracies today the issue is defending something already present, and there is usually a way of mitigating and counteracting these values. When, however, these anti-democratic values are the ones already present, they stand in the way of social change and the stakes are raised.

If it has been relatively easy to agree to the above, it would signal that the reader has a similar value system as I do and finds racism, patriarchal society and terrorism intolerable. However, by putting a value judgment to change we wander onto slippery terrains.

It is not so easy to agree on a range of other values. I personally do not believe that the civic movement in South America that brought socialist leaders to power is pointing in the 'right direction' for social development (which I believe to be that of liberty, democracy and the rule of law), while others may see it as a 'good change'. In Hungary recently there has been a referendum on whether tuition fees should be introduced in universities. The voters responded with an overwhelming 'no'. I found the referendum as well as the result problematic,<sup>18</sup> while many Hungarians (the majority) saw it as a great victory of democracy. I believe that in post-socialist countries the government should not provide too much funding for NGOs while many NGOs and experts think that the government is not funding NGOs enough. In another example, one group of women would fight for state-financed full-time motherhood, while others believe such institution would harm emancipation rather than help it. Even more extreme is the example of prostitution (abolitionists versus legalization groups). On a global level, for example, we can look at the 'fair trade versus free trade' debate, and the examples could go on and on.

When we put a value judgment, we also define the change we want and would be happy about, and the change that is not welcome to us, by our standards. Can international development, or for that matter, anyone working in development, even at home, in one's local community, set those standards? I believe that yes, we all have a moral right to determine what we believe is good or bad for society 'in abstracto' and therefore, to influence other people to believe that as well. The important ethic here is to make our 'projects' clear.<sup>19</sup> We should then, however, do away with the pretence of 'respecting the local culture', 'not importing foreign models', acknowledging 'one's own, local form of democracy' etc. All these issues come into play when we start looking at the 'how', at the means and ways to achieve change; not the 'why', or the 'what' as the vision and goals of change.

#### *Inducing social change*

Among development theories fashionable in recent years in Central and Eastern Europe prevailing among non-state actors (especially US and European private foundation donors) is one that stresses the importance of 'organic development', 'emerging' versus 'prescribed' initiatives and 'need-based programming'. This theory came as a much needed counterbalance to the prescriptive, objectives-based development aid framework.<sup>20</sup>

In our opinion, however, while the principles it emphasizes are key to a healthy civil society, organic development in this context is a somewhat misleading concept. In nature, organic development is a given, an objective and unchangeable course of 'action': a plant is genetically programmed to develop into a healthy plant under certain circumstances; it has no choice. When it lacks the circumstances, such as water or sunshine, it will die, but when it has ideal circumstances, it will survive, thrive and develop. In nature, the concepts of 'organic' versus 'artificial' make sense, but the concepts of 'planned' or 'intended' and 'unplanned' or 'unintended' do not.

Contrary to such development in nature, in the realm of organizations and social concepts, such as civil society, there is hardly a pre-programmed way of development or a prescribed 'ideal' state into which an organization or a sector should develop. We can all enumerate the characteristics of a 'healthy and vibrant civil society' but what we may mean by those words may be very, sometimes fundamentally different on many accounts. And, as the examples above have shown, there is little agreement on how societies should progress in general.

However, if we agree that in social development, unlike in nature, there is no prescribed route of progress, we cannot really speak of 'organic' development. In that case, any 'unobstructed ideal way'<sup>21</sup> of development is determined by the decisions of people involved. And this leads us to another ethical yardstick in international development: decisions should - ideally - be made by those affected by them.

Decisions made at the organizational, community and societal level are therefore subject to the value systems, cultural attitudes, world views and personalities of people who make those decisions.<sup>22</sup> The choices people, organizations and policy makers make in the questions raised above, and in all the fundamental questions of development, will depend on whether they prefer process or results, being principled or pragmatic, freedom or equality, state protection or free market, solidarity or self-care, globalization or localization, segregation or integration, the collective or the individual and so on. It is clear that even in developed countries, where there are well-functioning civil societies, their nature and their role differ according to a complex historical and cultural environment in which each civil society developed.<sup>23</sup>

If we agree that people should decide by themselves what they see as an ideal way of development, why make any development interventions at all? The moment we are doing that, we are not 'diverting' some already existing development process from its 'organic' route, but we are trying to influence the existing social processes into a direction we consider better than the way it would evolve without our intervention. We see that people are not empowered to see their own potential, that people are poor and helpless, that people are discriminated against, that people are subjected to dictatorial rule - and we do not like it. Our values differ from the existing 'organic' process and we would like to influence it in a way we believe it to be better.

On the one hand we say that it is only the affected people themselves who have the right to make decisions about their lives. On the other hand we want them to make their decisions in a certain way - be empowered and not resign to their fate of hunger and discrimination - we want to influence people to behave that way. People behave and make decisions based on their own values, world views and cultural backgrounds.

Therefore, any development intervention, whether through grant-making, capacity building, empowerment, or other action, will first need to define what it considers an ideal state and then 'define the exact values and principles that are the key motivators of that ideal state and which make it possible'. One then needs to find the best, most effective way to ensure the existence of these values and principles in people's minds, to enable and encourage people to internalize those and act upon them - and then those people will likely by themselves make the decisions necessary to achieve the desired state of the organization, sector or society. Desired by us first, and by themselves, subsequently. Therefore, the key attribute in any development intervention is to influence the values, culture and attitude of those affected - and that is about the most difficult thing to achieve.

### *Challenges in changing cultures*

The extent to which values need to be changed to achieve a certain goal can vary. Often, when we differ with people,

we do not want to change them or their world views; we only want them to behave in a certain way. (In relation to CDC and NGO work, this is usually the case in fundraising, lobbying and other ways of mobilizing support). From rational argumentation to emotional blackmail, from finding mutual interests to setting an example, there are but a hundred ways to achieve that. However, in the case of social change we are talking not of a one-time behavior; not even of a new routine - we are talking about deeply engrained cultural patterns (such as patriarchy or inheritance of power) that will only change when the base of values and convictions related to those patterns change.

One great challenge is to reach the scale where a new behaviour will be accepted and followed by enough people that it brings about a change in cultural norms and usually, power relationships (to reach a 'critical mass'). The chances for civic-driven change to achieve this is generally much bigger in free societies when civic initiatives have space for using various channels and techniques of influence - but without coercion and manipulation.<sup>24</sup> Law (that can be both a 'sword' and a 'shield') is an important tool not only to provide and protect the space in which civic action may be expressed but also to support and encourage change through civic action by prescribing norms for society.<sup>25</sup>

Another great challenge is to influence people's choices - but without violence, oppression, or manipulation. In this area thus far international development loses out to the state and other power structures which use the violent, manipulative, oppressive techniques successfully. In my view, the key to intervention in development processes is to find ways to influence how people apply their inner drivers without forcing or imposing them, i.e. without violence, punishment or manipulation.<sup>26</sup>

It is often argued that we have to respect local cultures and traditional values in society. However, such a desire might be an illusion in the longer term. Western societies do not look today as they used to be a hundred years ago; and today's generations do not, for the most part, regret that. Change is inevitable; what might be an important yardstick, the next ethical 'commandment', is to ensure that change happens, whenever possible, in a non-violent way that is also respectful of the human dignity of all parties involved. One of the most effective ways of doing that in human societies is to submit the actions of change agents, including civic agency, to the 'rule of law'.

### **CDC and the rule of law**

It is beyond the possibilities of this essay to provide an in-depth analysis of linkages and correlations between the rule of law and CDC, civil society or development. Instead, a few insights are offered based on the experience of the so-called transition countries and to provoke further discussions.

Rule of law is often seen as a political or legal matter. In addition, more recently - over the past two decades - it has increasingly been of interest to economists and the international development community as either a means or an indicator of growth and development.<sup>27</sup> Similar to the concept of 'citizenship', there is a 'thick' and a 'thin' meaning attributed to the rule of law. The thin meaning is rather formal and considers a number of necessary means to implement the rule of law, for example, property rights, efficient administration of justice, or predictability of regulation. The 'thick' meaning, however, equates rule of law with a political morality of liberty and democracy. 'Thick' definitions treat the rule of law as the core of a just society. Its adherents say a country can be spoken of as being ruled by law only if the state's power is constrained and if basic freedoms, such as those of speech and association, are guaranteed.<sup>28</sup> Rule of law builds on 'natural' or 'inalienable' rights of the individual, which are also enshrined in the international human rights instruments.

Based on the experience of transition countries in Central and Eastern Europe, one might extend the notion of 'thick' rule of law to apply to civil society and civic action. In other words, *the rule of law is just as much a social and cultural matter* as it is a legal, political or economic one. In countries where the rule of law is more functional, people uphold its principles as important values on which they base their actions and apply them in practice. This means, e.g. that there is a basic understanding of their rights and responsibilities among people; that complying with law rather than avoiding it is the norm; that conflicts should be settled through the judiciary rather than through one's own initiative; that everyone is equal in front of the law, etc. Even in politically fully legitimate and institutionally functional democracies, when the culture of the rule of law is absent, there is a greater space for 'uncivic' action whether within government, business or civil society (e.g. corruption, discrimination, tax evasion etc.). An example of this is shown by some of the new EU member states (primarily, Romania and Bulgaria), which have a score of 50 out of 100 and as such are ranked on par with Ghana, Morocco or Egypt in their Rule of law indicators in the 'Worldwide Governance Indicators' project of the World Bank.<sup>29</sup>

What this may imply for civic-driven change is that in many developing countries civic action that aims for social change would need to build a rule of law culture - along with delivering services or advocating policy change - in order to ensure the sustainability of their achievements. This can be very difficult given that in countries with poor governance there are counter-incentives to following the 'proper' (i.e. legal or ethical) course of action. An example can be given from the experience of the 'CEE Working Group on NGO Governance', in which one of the biggest challenges across the participating countries has been to convey the concept of conflict of interest to NGO leaders and activists (including those who were otherwise committed to fight for transparency - in the public sector).<sup>30</sup>

A concrete issue of debate in recent years has been whether NGO representatives may sit on decision-making boards of state-funding agencies and, if so, whether these organizations should be eligible for funding. From Hungary to Azerbaijan, the answer has been a resounding 'yes'. The reason being, that it would be 'unfair' to the organization if it were excluded from the funding opportunity just because it has a highly qualified leader who is invited (or elected) to sit on the board of an official funding agency. Any alternative solution (e.g., limiting the terms of service, thus the NGO would only be excluded for a couple of years) was dismissed. The underlying message was: if everybody engages in this practice, why should I put myself in a disadvantaged position just to be the 'good guy'? The same can be observed regarding tax evasion: the more people avoid paying their taxes the more taxes those few have to pay who do pay it and the less they will be willing to do so - thus creating a vicious circle of a culture of tax evasion.

This question also relates to the issue of risks discussed in Essay 6 by Shirin Rai. When the dominant culture in society or in communities is intolerant of what one may call a 'rule of law' culture, the risks associated with trying to introduce any element of such a culture (e.g. gender equality or equal participation in political decision making) are incomparably higher.

Does that mean that in a democracy with a 'rule of law' culture (i.e., not just a democratic state, but also a democratic society) civic action is at its full potential? Not necessarily. Much discussion has been going on about the passivity of the electorate in Western Europe; about the lack of citizen initiative and the general apathy towards public affairs in welfare states. However, it is in these countries where civic action has the opportunity to most freely and most effectively influence social change in the long term.

Here we should refer back to the issue of legal space. In my view there is a basic difference, a threshold line between oppressive/autocratic and democratic regimes in terms of civic-driven change. In the one case, civic-driven change can lead to regime change when the legitimate use of physical force by those in power is questioned. In the other case civic-driven change might lead to more political leverage for a particular excluded group within society (like the Roma, but even if it concerns a majority group, like women) but without basically changing the political structure of this society. Although there are always risks and costs associated with acting up to change something, these are fundamentally different in a democratic (rule of law) country and in a dictatorship. There are of course many shades in-between; in general it can be said that the more democratic the country, the less 'demanding' it is to 'empower' people and rely on them as agents of change. The techniques to be used in each case are different as well, which is often overlooked. Moreover, it may be more important for international development agencies to induce civic-driven change in those countries where essentially regime change is needed (regardless of what it

looks like on the surface). This then raises the issue of the political agenda of the international development community (apart from humanitarian aid).

Civic-driven change delivers its robust and best potential in the long term under democratic circumstances, when risks and costs of expression and action are lowest (free speech, freedom of assembly and association), when arguments and activities toward change can be freely pursued. Civil society or civic agency needs to bring about regime change when there is no democracy, in order to be able to fulfil its real potential in the longer term. This is not at all to say that civic action has no value in autocratic or semi-democratic systems but in these cases either it will essentially submit itself to the status quo (like providing humanitarian aid or basic social services) or if it wants to change it, its efficiency will be lower and the costs associated with it will be higher, until and unless it succeeds in bringing about democratic change.

## Notes

<sup>1</sup> The project concerned the whole village, not only the gypsy ghetto. Its success was due to a holistic approach in which all local inhabitants and key stakeholders (the mayor, the employers, the priest, the chief of police etc.) were included over a lengthy period of time.

<sup>2</sup> Citizenship here is understood both legally and as a 'thick' concept which is to include the 'horizontal', people-to-people relations and the 'concern for the good of the whole' (see Essay 8 by Rajesh Tandon).

<sup>3</sup> Most importantly, the Declaration on the Right to Development; but also key human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

<sup>4</sup> Article 2.2., Declaration on the Right to Development

<sup>5</sup> See Dagnino in Essay 2.

<sup>6</sup> E.g., there are more than 3100 local governments in a country of 10 million people; almost 60% of one's personal income is due in taxes; and over 50% of GDP is being redistributed by the state. Source: Central Statistical Office publications (2008).

<sup>7</sup> Here I would like to make a footnote about democratic elections. It is commonly held that 'freely and fairly' elected governments are legitimate. However, an issue can be raised about whether elections in countries where the electorate is de facto disempowered and/or acts on the basis not of its citizen identity but on the basis of another civic identity (as listed above) can in fact be considered 'free and fair'.

<sup>8</sup> I realize that 'positive' depends on one's world view; I mean here - essentially - democratization and the promotion of the rule of law.

<sup>9</sup> As an example, I worked in two regions in the Ukraine developing social services through local government - NGO cooperation about a year after the Orange Revolution. People in those villages had no trace of the dignity borne by their peers who spent freezing nights on the streets of the capital, even though many had their children or friends involved. Someone who was there himself said, 'We thought we had to do nothing else but keep up our demands long enough so they give in. Look now - I am having doubts it was worth it.'

<sup>10</sup> I refer especially to the policies and programs in international development which benefit directly either the state (at central or local level) or NGOs and other types of civil society organizations.

<sup>11</sup> This understanding of change is also akin to the complexity theory presented by Fowler, A. (2007) *Civic-Driven Change and International Development: Exploring a Complexity Perspective*. Contextuals no 7.

<sup>12</sup> Although it could be argued that these two types of collective agencies usually have an interest in and are therefore inclined to maintain the status quo, and are more resistant to change than the smaller collectives.

<sup>13</sup> An example of the collectivist type of civil society organization was the pioneers' organization of socialist countries, a 'civil society organization' of which every schoolchild had to be a member.

<sup>14</sup> Their actual effectiveness is of course subject to a range of contextual factors addressed in other parts of this chapter and in other chapters; e.g., the approach they take to democracy, the value base upon which they act, their governance, their resources and capacities etc.

<sup>15</sup> *Defending Civil Society*. A report of the International Center for Not-for-Profit Law (ICNL) and the World Movement for Democracy (WMD), February 2008 [http://www.icnl.org/knowledge/pubs/ICNL-WMD\\_Defending\\_CS.pdf](http://www.icnl.org/knowledge/pubs/ICNL-WMD_Defending_CS.pdf)

<sup>16</sup> *Ibid*, based on pages 8 and 10.

<sup>17</sup> *Ibid*. page 3

<sup>18</sup> According to the Hungarian Constitution there can be no referendum conducted on budgetary issues.

<sup>19</sup> See Evelina Dagnino's essay on the 'political projects'.

<sup>20</sup> This school of thought has been advocated by the Development School, building on the work of development professionals especially from South Africa. This section is largely based on the paper 'Comments to the new strategy of the Trust for Civil Society in Central and Eastern Europe' by the Civil Society Development Foundation, written by Nilda Bullain and Balazs Sator (2005).

<sup>21</sup> See Kaplan, A (1999) *Capacity Building*. Capetown: CDRA.

<sup>22</sup> Much of this is nicely laid out in the various drivers described in the complexity theory by Alan Fowler; see Fowler, A. (2007) *Civic-Driven Change and International Development: Exploring a Complexity Perspective*. Contextuals no 7. Utrecht, Context.

<sup>23</sup> See for example the models for third sector development in Salamon, Lester M. (2003) *Global Civil Society: An Overview*. The John Hopkins Comparative Nonprofit Sector Project. <http://www.jhu.edu/~ccss>; and the models of government-NGO relations Europe, in Bullain, N. (2005) *Civil Vision - A Concept for Comprehensive NGO Legal Reform in Hungary*, ECNL and Okotars Foundation, Budapest.

<sup>24</sup> I realize that there is a debate about what constitutes manipulation and that according to some, almost all communication can be seen as such; however, I believe that where there is space for a free exchange of information, we cannot talk about manipulation in a systemic way. In such cases, civic agency has many more opportunities to influence change.

<sup>25</sup> This issue deserves more examination and elaboration. This is only to signal that there are many problems involved when laws try to prescribe norms in order to change culture and in their relation to the local context. This, among others, is one reason why in many countries the implementation of international human rights instruments at the country level lags well behind the vision of the law.

<sup>26</sup> An interesting case for further debate is entertainment education, based on the so-called 'Sabido methodology' that uses soap opera to convey key development messages to wide audiences. Recent studies have demonstrated measurable impacts of this method regarding fertility as well as women's emancipation more generally. Chong, A., S. Duryea and E.L Ferrara *Soap Operas and Fertility: Evidence from Brazil* (April 2008). CEPR Discussion Paper No. DP6785. Available at SSRN: <http://ssrn.com/abstract=1142167> See also e.g., The Communication Initiative <http://www.comminit.com/en/node/201243>; Population Media Center <http://www.populationmedia.org/>

<sup>27</sup> See 'Order in the Jungle', *The Economist*, 13 March 2008.

<sup>28</sup> *Ibid*.

<sup>29</sup> <http://info.worldbank.org/governance/wgi/index.asp>

<sup>30</sup> See Wyatt, M. et al. (2002) *Nonprofit Governance Practices in Hungary*, Civil Society Development Foundation Hungary and BoardSource, Budapest.