



Briefing November 2003

Civil Society and Public Governance Getting a Fix on Legitimacy

“There may still be two superpowers on the planet: the United States and world public opinion.”¹

This briefing is meant to serve as a practical aid to decision-making. It lays out an analytical framework for addressing these questions, providing practical suggestions for those who manage the interaction between public institutions and civil society.

OVERVIEW

There has been a remarkable trend over the past 10 years toward greater participation by civil society organizations (CSOs) in public governance (see Exhibit 1).

There is also a growing recognition of the need to understand the philosophical and practical issues that surround the participation of CSOs in governance.^{2,3} At the heart of the matter is the legitimacy of civil society as a political actor, and the closely allied questions of the accountability, ability to be representative, and competence of these organizations.

Exhibit 1 Definitions

Civil society is the voluntary association of citizens who promote their values and interests in the public domain.

Public governance refers to how decisions are made and power is shared on matters of public interest. Typically, governments are the ultimate (though not the only) definers and guardians of the public interest.

Civil society involvement in public governance concerns activity by CSOs (as actors outside of government) aimed at influencing government actions in relation to the public interest, and demanding accountability from government.

INTRODUCTION

The global movement that protested the war in Iraq is only the most recent indication that civil society has arrived on the world's political stage, and that it is a force to be reckoned with as an influence on public policy-making and execution. Citizens' movements and organizations are demanding that governments not only listen to them, but also introduce or discard policy on all manner of subjects. For example, although the United Nations is traditionally the domain of nation-states, its language and culture have been reworked by the presence of citizens' organizations at the global summits of the 1990s and within specialized agencies, such as the World Health Organization (WHO). The same process is evident in individual countries—think of the protagonists of almost any current policy issue in Canada's federal, provincial, or municipal governments. The demands of civil society span the political waterfront, and come from organizations as diverse as the World Social Forum, the International Campaign to Ban Landmines, and the Canadian Council of Chief Executives.

In the last third of the 20th century, authoritarian governments were shaken, reformed, and even removed by citizens' movements that fuelled a wave of democratization in Eastern Europe, Asia, Latin America, and Africa. In the United States, the civil rights and anti-war movements of the 1960s and 1970s substantially influenced public policy and discourse in that country. Much the same could be said of the environmental and feminist movements in Canada in the last three decades.

The policy activism of civil society draws on and contributes to a widespread perception that there is a crisis of legitimacy in our established institutions and processes of public governance. This activism may be pervasive enough to threaten not only authoritarian regimes, but also the political institutions of established democracies such as Canada—political parties, parliaments, and the public service.

At issue is citizens' right of access to public institutions. The significance of civil society lies in its implications for governance. Citizens are redefining their relations with the state and other public institutions—and they are doing so with considerable energy and creativity. Civil society certainly does not cover the whole story of active citizenship and a functioning democracy at the start of the 21st century, but it is an essential part of both.

So, what are governments to make of all this? Why would governments engage civil society as a source of expertise or as a vehicle of public participation in public governance? How might they do so, and what are the issues they face, if they do? Conversely, what does all this mean for those in civil society who would participate in public governance?

CIVIL SOCIETY AND PUBLIC GOVERNANCE: POLICY ISSUES FOR GOVERNMENT

“Civil society” embraces a vast array of organizations. The label may mean a high-profile body like Oxfam International, with 12 national affiliates and an aggregate program budget in the range of \$1 billion. Or it may mean an informal neighbourhood association, formed by residents to clean up their public spaces. Canada, alone, has approximately 80,000 registered charities, 175,000 not-for-profit organizations, and, by one estimate, another 900,000 grassroots groups.⁴ Any government that wants to engage with civil society is, therefore, forced to make choices. Government still has to work out its position on three important policy questions, which, collectively, shape its overall posture towards civil society. The answers to these questions will also form the basis for practical decisions about how to engage civil society in public governance.

This briefing examines the following:

- What is civil society?
- Why would government choose to work with civil society?
- With whom does government work in civil society?

The analytical framework presented here is meant to serve as a practical aid to decision-making for organizations that want to—or feel compelled to—deepen their engagement with civil society on governance issues. It has immediate implications for leaders in both the public and private sectors.

WHAT IS CIVIL SOCIETY?

How government understands “the nature of the beast” will shape its judgment of whether or not to work with civil society, as well as with whom to engage. Civil society may be described as “the voluntary association of citizens, promoting their values and interests in the public domain.”⁵ It encompasses more than just the voluntary sector or non-government organizations (NGOs). It also includes professional associations,

cultural associations, independent think-tanks and advocacy organizations, informal groups and networks, and broad social movements. This definition may extend to cooperatives, independent educational institutions, unions, and business associations.

There are many ways of understanding civil society—there is a cottage industry producing definitions—but the important point is that each holds different implications for public governance. Some definitions narrow the field by emphasizing the organizations within civil society. This approach may lead policy-makers to focus on organizational effectiveness. Other definitions are wider, extending to social movements, which are often important sources of energy, ideas, and innovation in a society. This creates a challenge for government: how do you tap into something that lacks an easily identifiable structure? Still others emphasize civil society as a public social space where citizens and organizations act and speak. This approach directs attention to the factors that shape that space and action—human rights, constitutional protection, laws and regulations, and political cultures.

Assumptions about the nature of civil society will shape a government's thinking about the next two policy questions: whether or not to work with civil society, and who will represent civil society in that relationship.

WHY WOULD GOVERNMENT CHOOSE TO WORK WITH CIVIL SOCIETY AND, IN PARTICULAR, WHY WOULD IT CHOOSE TO ENGAGE IT IN PUBLIC GOVERNANCE?

Different rationales are evident:

1. There is an established tradition of governments working with civil society organizations for technical and operational reasons. They are sometimes engaged as a source of expertise, or for the community contacts they offer, to extend the reach of social programs. As a source of fresh ideas, CSOs can also stimulate innovation within government organizations.⁶
2. Civil society may be seen as representing people excluded from mainstream political or economic processes. CSOs thus function as intermediating structures. By engaging with CSOs, mainstream institutions may be seeking to gain legitimacy or to pre-empt criticism. Similarly, governments sometimes engage critics in civil society to draw protest into the mainstream and get it "inside the tent."
3. Civil society may be a "listening post," offering new ideas for policy and operations.

4. Governments committed to reforming authoritarian practices may seek to consolidate their support base by promoting or protecting citizens' activism—for example, by introducing legislation on rights of assembly, free speech, and access to information.

These four points contain two different perspectives. One sees civil society as a practical asset for government—a source of expertise, financial resources, and audiences for its messages or services.

The second presents civil society as a positive political force. Its value lies in its ability to be representative—its potential for articulating voices not usually heard within conventional political institutions. This view is likely to be controversial. By incorporating civil society into public governance, government may be seen to acknowledge criticism of established politics and public/political institutions, thereby diminishing the status of traditional actors, such as political parties and parliamentarians.

Civil society intervention in political systems suggests that formal governance processes may not fully reflect citizens' interests and values.

In assessing these arguments, we have to make a critical distinction between representation for legislative purposes, and representation for participation and voice. In a representative democracy, the former is generally accepted as the responsibility of elected members of parliaments, assemblies, and congresses. The latter is the domain of civil society. Does government blur this distinction by engaging civil society in public governance? Is it, in effect, redefining its own accountability to the public? Civil society intervenes in the legislative, executive (administrative), and judicial parts of the political system. Often, this is precisely because citizens consider these processes to be insufficiently responsive to, or representative of, their values and interests. By bringing civil society into public governance as a way of strengthening citizens' participation and voice, government implicitly calls into question the capacity of established institutions such as parliament to intermedicate between it and citizens. The governance questions thus become: What room is there for CSOs to add value to public governance? Can civil society promote the public interest in a way that formal governance bodies such as parliament, Cabinet, and the public service (the executive arm of government) cannot?

If civil society holds the promise of stronger representation and participation, that promise also carries the burden of choice. This leads to the third key policy question:

WITH WHOM DOES GOVERNMENT WORK IN CIVIL SOCIETY?

When government wants to engage civil society, does it simply “round up the usual suspects” for consultation? Whose voices are considered to be valid in public discussions of values and policy? Whose knowledge is considered to be credible?

What legitimacy can civil society command to support its claim for access to governance?

The necessity of choice takes us to the question at the heart of this briefing: what legitimacy can civil society command to support its claim for access to society’s institutions and a place in public governance?

LEGITIMACY

Legitimacy is the moral basis or rightfulness of an institution’s authority. Public trust in an institution shows it has legitimacy. It is a vital organizational resource that cannot be taken for granted. Government has an obligation to satisfy itself and the public at large about the legitimacy of civil society actors who demand a place in public governance.

The issue is a challenging one for any government. Civil society is about public business—the expression and pursuit of values in public life, and citizens’ rights to speak and act publicly in support of these. Some CSOs may take positions that are unpopular with the government of the day, and yet still be legitimate. This is why an understanding of civil society as a social space is important. By acknowledging diverse social actors and their rights of public expression, government is affirming that it is not the sole voice, arbiter, or guardian of the public interest. By extension, its own legitimacy may be open to challenge. This tests—and perhaps exposes—a government’s political self-confidence and its level of comfort with dissent.

To understand legitimacy in civil society, government—indeed, any social actor—needs to scrutinize three key factors:

- Values and mandate;
- Representation and accountability; and
- Credibility and competence.

VALUES AND MANDATE

Government agencies regularly enter into policy dialogue with organizations in civil society whose values and mandates are consistent with their own. Policies on health or education services are examples of such topics. The CSOs involved might include professional associations, community groups, or voluntary organizations contracted to deliver services. This is the straightforward case with an accepted political/administrative process. But, it is not always as simple as this.

For example, how are we to assess political protest, such as a demand for access, by groups that are not part of an established process? What of groups who don’t “play by the rules”? Some analysts consider lawfulness to be a defining trait of “civil” behaviour and civil society. For an established government, it may be axiomatic that only “law-abiding” groups need apply.

“Lawfulness” can lead into slippery territory, and citizens may lose trust in the law itself.

But even “lawfulness” can lead into slippery territory. Government, and the law itself, can lose legitimacy and the trust of citizens. South Africa’s African National Congress and its political allies encouraged and drew upon a broad popular movement in defiance of the laws of apartheid, to bring electoral democracy to that country. Conversely, what about groups in civil society that operate legally but are associated with values that most would regard as unhealthy, such as racial intolerance? One approach to this issue proposes a public code of conduct, with the United Nations Charter of Human Rights as the ethical guide for any civil society organization engaging in the political process.

REPRESENTATION AND ACCOUNTABILITY

The legitimacy of a CSO is tied to the way its practices and policies represent the values of its members, supporters, and intended beneficiaries. There must also be accountability processes that serve as checks on their ability to be representative. If an organization establishes regular processes by which its constituency can understand and evaluate its activities, then its internal legitimacy can be checked and renewed (or lost).

Citizens' organizations sometimes claim to give voice and public presence to sectors of society excluded from mainstream politics. This may imply a sizable number of people, especially if we see social movements as part of civil society. On the other hand, the growing influence of CSOs over public and private decision-making has invited close questioning of claims that these organizations are genuinely representative of and accountable to their purported stakeholders. Much of the criticism about lack of representativeness has come, as one might expect, from the right of the political spectrum.⁷ But concerns have also been raised by observers regarded as more sympathetic to the role of organized civil society. A recent study by the One World Trust, a long-established U.K.-based NGO, concluded that major international NGOs such as CARE International, the World Wide Fund for Nature, Oxfam International, the International Confederation of Free Trade Unions, and the International Chamber of Commerce have mixed records with respect to representation and accountability.⁸

There follows a tough but unavoidable practical task. Government has to weigh an organization's responsiveness to its constituency and the quality of its accountability.

With rights for civil society come obligations, CSOs ought to be accountable not only to members, supporters, and beneficiaries, but also to others who are active in the public domain—hence the importance of tolerance and the respect for others' rights of expression and dissent. Accountability takes financial expression as well. Funds going to CSOs are intended for public business, whether they come from governments or from donors; from this follows the imperative of financial accounting and disclosure.

For organized entities, such as non-profits or charities, the task of assessing these relationships may be manageable, if sometimes controversial. There are procedures for registering and monitoring financial assets, bylaws, governance, and the like. Countries may use a Charities Commission, a Registrar of Societies, ad hoc commissions, as well as their tax systems. Codes of conduct may be created as well.

For government, the sheer numbers and scope of civil society pose a challenge. A single CSO may have a narrow sectoral or thematic mission. Conversely, a national government must deal with a spectrum of issues covering all such organizations. The question of the depth and breadth of a government's understanding of civil society follows. Not only will a government register and keep track of thousands of CSOs, it will also need to understand their cultures and capabilities.

The challenge for government is to make "reality checks" by seeking out competent dissonant voices.

CREDIBILITY AND COMPETENCE

Finally, government must consider a CSO's credibility and competence. The legitimacy of an organization is also, after all, a practical matter. Competence is about performance, expertise, and "track record." From competence comes credibility. These are among the most common criteria used by governments and multilateral agencies to make choices about operational cooperation with CSOs.

In the case of CSO involvement in service delivery (e.g., delivery of social programs), application of the competence criterion is often a relatively straightforward matter. In other areas of CSO activity, however, competence may be a controversial criterion that must be applied with much care and judgment. Take the example of Amnesty International (AI), one of the world's best-known international NGOs. On the one hand, AI's contribution to human rights through more than 40 years of research and publication on repressive practices has been widely recognized.⁹ Its reputation has allowed it to sustain its base of members and donors. On the other hand, AI's impartiality (and therefore competence) has also been called into question

from time to time by critics representing a broad range of political persuasions and social perspectives. A recent case involved its report on a military incursion by Israeli forces into a Palestinian refugee camp at Jenin. While AI accused Israel of “war crimes” arising from an alleged massacre at the camp, a UN investigation reached a more balanced conclusion, finding fault on both sides and noting that Palestinian militants shared responsibility for civilian deaths in the camp.¹⁰ This example highlights the inevitable interplay between research and advocacy that characterizes the work of many policy-oriented CSOs. Technical competence (or the lack of it) should not be confused with the political popularity of conclusions flowing from research conducted by CSOs. Indeed, if policy-oriented CSOs wish to be seen as legitimate advocates, they must maintain a reputation for producing competent, objective analysis.

ENGAGING CIVIL SOCIETY IN PUBLIC GOVERNANCE: PRACTICAL ISSUES

The policy issues described above will never be completely resolved. But, assuming that some reasonable degree of resolution is possible, what practical steps follow?

There are well-researched protocols to guide working relations with civil society. Within the UN system, for example, most specialized agencies have recently reviewed their policies on interaction with civil society. Two key points stand out.

The first is the need to make a clear distinction between representation for legislation and representation for participation and voice. An intergovernmental agency such as the World Health Organization will engage civil society in both its operations and its governance processes (see Exhibit 2).¹¹ A CSO may obtain accredited access to the governing bodies of the WHO—but only as an observer, not as a voting participant.

Secondly, there is a wide spectrum of working relationships, from an informal exchange of information, through different types of operational cooperation, to a formal agreement on accredited access to the governing bodies of the WHO. This exhibit summarizes the range of relationships.

The practical requirements of a protocol of this kind can challenge civil society organizations to create comparable guidelines for their own participation. These should include principles and methods of disclosing financial and program information; codes for governance, accountability, advocacy, and fundraising; and strategies for self-regulation.

IMPLICATIONS

Public officials must, inevitably, make choices about whom they will engage with in civil society and whom they won't. This briefing has suggested that legitimacy (defined in terms of values, representation, accountability, and credibility) is a key criterion that public sector organizations should be using when they make those choices.

Rigorous and transparent analysis of legitimacy (and its associated issues) is often avoided because it can lead to uncomfortable questions about influence and power. The literature, to date, is thin on the question of how legitimacy mediates (or ought to mediate, for the issue is also a normative one) relationships between public sector organizations and civil society organizations. This briefing has presented a framework for analyzing and applying this concept.

Finally, it is worth noting that the debate about the place of civil society in public governance is relevant to corporate governance as well. The core of the discussion is about citizens' access—via CSOs—to society's major institutions, whether they are in the public or the private sector.

As private sector organizations come under pressure to respond more meaningfully not just to shareholders but to their full range of stakeholders, the question of how corporations can most productively interact with civil society is becoming urgent.¹² Nike, Inc.'s sweatshop controversy and Talisman Energy Inc.'s confrontation with activists over its Sudan investments are well-known cases of the influence that civic groups are demanding—and attaining—in relation to corporate decision-making.

More broadly, initiatives such as the UN Global Compact (which claims participation from roughly 1,200 private sector, labour, and civil society organizations) and the Global Reporting Initiative (which some regard as an emerging de facto global standard for corporate social reporting) are creating pressure on corporations to engage with CSOs.¹³ They speak to the need for developing a well-considered corporate approach to civil society.

Therefore, the challenge facing corporate leaders mirrors the one facing public sector leaders. Corporate leaders—and their boards of directors—will have to adapt to the demands of civil society organizations for influence over corporate decision-making. Today, many Canadian boards of directors appear unready to rise to the challenge. Only 4 per cent of boards surveyed in a recent study have a committee that focuses on “public policy and social responsibility.” Only a quarter of boards have formal processes for overseeing “non-shareholder interests.”¹⁴

Corporations will have to find a *modus operandi* whereby corporate and civic leaders can join in productive discussion about the social, environmental, and economic impact of corporate decisions. Corporations will also have to find a practical way to respond to growing demands by civil society for information about the social, environmental, and economic impact of corporate operations.¹⁵

Anecdotal evidence makes for a compelling case that corporate leaders in Canada and around the world are struggling with these questions. As they cast their eyes beyond shareholders to the full range of stakeholder interests, they find themselves asking: To whom are we accountable? To whom must we listen? To whom must we respond? What ought we to disclose, and to whom? Careful application of the legitimacy criterion may go a long way toward answering these questions for corporate leaders, just as it will for their public sector counterparts.

Exhibit 2
Civil Society Relationships to the World Health Organization



Source: The Conference Board of Canada.

1 Patrick Tyler, *The New York Times* (Feb. 17, 2003).
 2 We will examine this issue primarily as it plays out in democratic systems of governance—those with sufficient political space and legal protection for citizens to organize, speak, and act in the public domain.
 3 See “Suggested Reading.”
 4 Michael Hall and Keith Banting, “The Nonprofit Sector in Canada: An Introduction,” in Keith Banting, ed., *The NonProfit Sector in Canada: Roles and Relationships* (Kingston: McGill-Queen’s University Press, 2000), p. 11.
 5 Adapted from Kumi Naidoo and Rajesh Tandon, “The Promise of Civil Society,” in CIVICUS, *Civil Society at the Millennium* (West Hartford: Kumarian, 1999), pp. 6–7. Civil society is commonly described as “that part of public life between the state and the market.” The image of a “three-legged stool” is often used to highlight the social presence of government, business, and civil society.
 6 David Greenall, *Organizational Innovation: The Link with Stakeholder Engagement* (Ottawa: The Conference Board of Canada, September 2003).
 7 See <www.ngowatch.org>, a collaborative project of the American Enterprise Institute and The Federalist Society.

- 8 Hetty Kovach, et al., "Power Without Accountability" (London: One World Trust, 2003). See also "Holding Civic Groups Accountable," *The New York Times* (July 21, 2003).
- 9 "Sins of the Secular Missionaries," *The Economist* (Jan. 27, 2000).
- 10 "Palestinian refugee camps," CBC News Online (Aug. 1, 2002); "Amnesty says Jenin operation 'war crime,'" BBC News World Edition (Nov. 4, 2002). Fifty-two Palestinians and 23 Israeli soldiers died as a result of the Israeli operation in Jenin.
- 11 This example draws on a recent policy review by the World Health Organization, to which one of the authors contributed. See Document EB111/22, *Policy for relations with non-governmental organizations: Report by the Director-General* (Geneva, Nov. 25, 2002); and WHO/Civil Society Initiative, *Review Report: WHO's Interactions with Civil Society and Nongovernmental Organizations*, WHO/CSI/2002/WP6 (Geneva: 2002). See the WHO Web site at <www.who.int/gb>.
- 12 The pressure is not only coming from stakeholder activists, but also from within the traditional framework of shareholder value. See, for example, "Sharing the Responsibility of Corporate Governance," *Harvard Business School Working Knowledge* (May 5, 2003), <http://workingknowledge.hbs.edu/item.jhtml?id=3458&t=corporate_governance>.
- 13 See <www.unglobalcompact.org/portal> and <www.globalreporting.org/>.
- 14 *Canadian Board Index*, SpencerStuart (Toronto, 2003).
- 15 See SustainAbility and the United Nations Environment Program, *The Global Reporters* (London: SustainAbility, 2000); and SustainAbility and the United Nations Environment Program, *Trust Us* (London: SustainAbility, 2002).

Suggested Reading

Bendell, Jem. "Civil Regulation: A new form of democratic governance for the global economy?" in Bendell, ed., *Terms for Endearment: Business, NGOs, and Sustainable Development* (Greenleaf Publishing, 2000).

Brown, L. David. "Civil Society Legitimacy: A Discussion Guide," in L. David Brown, ed., *Practice-Research Engagement and Civil Society in a Globalizing World* (Cambridge: The Hauser Center for Nonprofit Organizations/CIVICUS, 2001). pp. 63-80.

CIVICUS and The Commonwealth Foundation. *Citizens and Governance: Civil Society in the New Millennium* (London: The Commonwealth Foundation, 1999).

Kovach, Hetty, et al. "Power Without Accountability" (London: One World Trust, 2003).

McIntosh, Malcolm and Ruth Thomas. *Corporate Citizenship and the Evolving Relationship between Non-Governmental Organisations and Corporations*, a study prepared for the British-North American Committee 45 (2002). Available from the C.D. Howe Institute, <<http://www.cdhowe.org/english/publications/currentpubs.html>>.

Moore, Mick and Sheelagh Stewart. "Corporate Governance for NGOs?" in Deborah Eade, ed., *Development, NGOs, and Civil Society* (Oxford: Oxfam, 2000). pp. 80-90.

Nelson, Jane and Simon Zadek. *Partnership Alchemy: New Social Partnerships in Europe* (Copenhagen: The Copenhagen Centre).

Spencer Stuart. *Canadian Board Index* (Toronto: 2003).

Zadek, Simon. *The Civil Corporation: The New Economy of Corporate Citizenship* (London: Earthscan Publications, 2001).

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by John Saxby and Mark Schacter

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