1: Solving Land Conflict in Africa

These institutions compose the regulative as compared with the communicative boundary of civil society, and they compel states to enforce civil obligations vis-Ã -vis such other noncivil institutions as families, states, religions, and primordial communities.

Bruce Sievers In The Place of the Arts in Multi-focus Foundations , Bruce Sievers writes that the rationale for supporting both the arts and the nonprofit sector as a whole is integrally linked to their capacity to advance pluralism, promote voluntary action, accommodate diversity, and champion individual visions of the public good. As Sievers reported, the group of foundation leaders who gathered in June found that civil society was a useful conceptual framework for their discussion of the place of the arts in their institutions. Strengths of nonprofit arts activity were seen to be essential features of a healthy civil society. The concept of civil society, like that of democracy, has come to have worldwide resonance. From the earliest times, human communities required cooperative behavior for survival, and it is clear that ancient patterns of social coordination imprinted institutional practices and beliefs that still shape our contemporary world. Recent decades have witnessed a great surge of new interest in civil society. Scholars, commentators, and political actors of all stripes have debated the concept, universally acknowledging its centrality to the rise of modern democracy while disputing its definition and function. It remains a contested and elusive idea, simultaneously animating and complicating contemporary debates about the nature of political life and the best paths toward solutions to social problems. One fact is given. We are all members of civil society. Just as citizens relate to the state and family members relate to domestic life, we all connect to each other in society through a network of values and institutions that define us as actors in the civil sphere. The quality of our participation in private and public life is in fact closely intertwined with the character of our actions in civil society. Common to all of these meanings, however, are two central ideas: Together these ideas reflect the myriad interests and identities present in contemporary society and the task of working to improve conditions in the world. In a social environment increasingly beset by intolerance, threats to freedom of belief and action, and an inability to pursue common goods, the prospect of strengthening civil society suggests a ray of hope in an otherwise dishearteningly bleak picture. This hope is justified, I believe, not just because the mores of civility suggest an aspiration toward more harmonious social relations, but also because the historical development of civil society has been a vital force in the creation of modern liberal democracy and continues to play that role today. While civil society provides an enabling framework for democracy, it contains at the same time an intrinsic tension, a fragile balance between private and public interests. Maintaining this balance is essential to finding solutions to vital challenges in modern democracies that demand public resolution, challenges such as environmental degradation, fundamental educational needs, ethnic and religious strife, and deterioration of public decision-making processes. These are often described as issues of the commons, the resolution of which will determine the future of humankind. It refers to a central tradition in Western thought: These goods include not only air and water, but also such public benefit ideals as social justice and civic commitment, and they cannot be achieved by individual decision-making alone. Rather, they are created and sustained by common action and by the frameworks of institutions and norms that make such action possible. The commons are critical to the well-being and ultimately the survival of the community. It is a story that has profound importance for the future of social and political change and, ultimately, for democracy itself. The story emerges from the gradual intermingling of seven threads of historical development in the world of ideas and the evolution of institutions that surfaced in early modern Europe. Roughly from the beginning of the 16th century, these threads became woven into the fabric of a new social form that spanned national and intellectual frontiers. Each of the seven strands in this story is complex in its own right and has its own theoretical justification. Four reflect institutional structures that have evolved through the course of Western history to form the structural framework of modern civil society. This conception of civil society, as a constellation of seven defining elements, draws upon the work of many contemporary scholars and theorists. These thinkers reflect diverse cultural and philosophical traditions, and their analyses of the nature and dynamics of civil society draw on

distinct traditions of social thought. Although among them we find broad agreement on the idea of civil society at an abstract level, when we probe further into their content we find significant differences. Nevertheless, it is useful to explore the areas of intersection among diverse theoretical perspectives and to understand them in relationship to historical developments. What follows, then, is a brief summary of the seven strands as identified by contemporary theorists. Nonprofit and voluntary institutions. A widely shared view identifies civil society with the set of nonprofit in the United States or nongovernmental worldwide organizations. Especially in the United States and western Europe, there is a well-grounded body of law that establishes the status of entities in each of these three sectors, and the structure and behavior of nonprofit organizations can be described in terms that are specific and comparable. Despite the clarity and concreteness of this definition of civil society, however, its descriptive and analytical power is limited. Equating civil society with the nonprofit sector excludes important institutional and normative dimensions that are of fundamental importance to understanding its central role in political and social life. A second thread of broad agreement among contemporary theorists focuses on the rise of the individual and of individual rights as a distinctive characteristic of civil society. For example, John Keane, Ernest Gellner, and Adam Seligman anchor civil society primarily in the growth of a sphere of private action and individual rights that is defended against the state. Keane, in particular, emphasizes the gradual separation of civil society from the state in a classic study of the development of civil society thinking since the 17th century. The rule of law. Although laws are set and enforced by governmental bodies, they require a pre-political legitimacy that inheres in civil society and transcends the authority of a given regime. As Dahrendorf and others suggest, the rule of law is essential to guarantee other elements of civil society, especially the protection of individual rights, from the arbitrary exercise of power. Robert Payton and Kathleen McCarthy argue, from quite different theoretical perspectives, the critical significance of philanthropic values and practices to the constitution of civil society. Closely related to the tradition emphasizing individual action on behalf of the common good, philanthropy becomes an essential vehicle to realize this intention. Payton views philanthropy as the central value of civil society, and McCarthy describes how a wide range of groups animated by a philanthropic impulse shaped the emergence of American civil society in the 18th and 19th centuries. The concept of free public communication has flowed into the stream of the development of civil society since the early modern period. Not as frequently invoked, but nevertheless widely understood as essential to the gestation of the civil society idea, is the norm of tolerance. An outcome albeit unintended of the religious wars of 16th and 17th century Europe, this normative element is implicit in the growth of idea of civility. My central argument is that they are constitutive and interactive components that together create the necessary conditions for the successful functioning of modern civil society. They are mutually supportive and interdependent. This approach views civil society as a singular social construct, comprising both institutions and norms, that has historically evolved through the seven conceptual streams. Civil society is the arena outside family, government, and market where people voluntarily associate to advance common interests based on civility. For example, private associations depend upon individual rights specifically the right to associate and to freely advocate points of view , legal protection of those rights, dedication to common purposes, philanthropy, and tolerance of co-existing associations to carry out their purposes. What becomes evident in the way the seven elements interact is the centrally important relationship among the three constitutive norms. Tolerance has become the connecting link that allows competing individual visions of the public good to coexist and to reconcile the private and the public in civil society, albeit always provisionally. Civil Society and Democracy The development of modern civil society has been inextricably linked to the development of liberal democracy. Civil society is the precondition for democratic decision making, whether democracy is conceived as deliberation or as interest group pluralism, and this is true even if the goal of democracy is to transcend particularism and arrive at uncoerced agreement or a common will. In the 17th century, James Harrington famously described this evolving complex of ideas when he advanced an idea of government that was beginning to appear in the works of non-traditional political writers: These, in effect, became the founding pillars of the newly emerging liberal democratic state. For Harrington and his contemporaries, civil society was the arena in which this tension played out. It was there that individuals came together through civil

interactions based on trust, tolerance, and a shared sense of public purpose, to form a natural community of common interest to pursue collective purposes. Radically differing visions of spiritual or political ideals could co-exist in this arena because it was the realm in which the free play of ideas produced public consensus that then produced the basis for ultimate action by the state. Civil society organizations could propose, but only the state could dispose. Contemporary theories of liberal democracy have been strongly imprinted by that historically determined structure in which civil society and the modern democratic state became mutually interdependent. To sustain the conditions that support it, civil society requires an anchoring in governmental authority, and, conversely, liberal democratic government requires a balancing of private and public purposes that is the product of a robust civil society. Theorists have highlighted two essential features of the concept of liberal democracy: Contemporary political theorist, William Galston, further defines what is protected by limiting government through three key concepts: The challenge for liberal democracy, then, is reconciling these forms of pluralism with the legitimate exercise of public power. The more diverse and differentiated a society is, the greater the challenge. The growth of exaggerated individualism in civil society becomes clearly one of the preeminent public concerns for liberal democracy. The financier and philanthropist, George Soros, shares this concern over what he expresses as the rising dominance of the self-interest values of the market: The health and evolution of civil society thus has profound importance for the unfolding of political life in the 21st century. This article is adapted from extracts from the first two chapters of a forthcoming book by Sievers, Civil Society and the Fate of the Commons, to be published by the University Press of New England. Verso, and Ernest Gellner, Conditions of Liberty: Civil Society and its Rivals London: CIVICUS is an international alliance dedicated to strengthening citizen action and civil society throughout the world. An Inquiry into a Category of Bourgeois Society, trans. Fall , pp. Amy Jacobs, Civil Society and Fanaticism: Conjoined Histories Stanford UP, , p. Polity Press, , pp. Liberty Fund, , pp. Theory, History, Comparison, pp. Finn Heinrich and Lorenzo Fioramonti, ed. Kumarian Press, , p. Robert C Post and Nancy L. Many scholars who write about the constitutive elements of civil society also connect these elements to the effective functioning of liberal democracy. George Soros, Open Society: Reforming Global Capitalism New York: Public Affairs, , p.

Despite its worldly flaws and contradictions, however, solidarity and the project of civil society remain our best hope: the antidote to every divisive institution, every unfair distribution, every abusive and dominating hierarchy.

This interactive and discussion-oriented reading group looks at key debates in media law in a digital context. The group is particularly interested in the current socio-cultural settings of media-related laws that affect issues such as free speech, government accountability, individual and civil rights, media companies and media production. By addressing these issues in the framework of this single course, and through key texts and prominent guest speakers, the reading group will provide its participants with a solid foundation in media law theory and practice to face current challenges in the field. It will outline key theory, concepts and practical cases of media law and policy in the digital age and furnish participants with tools to analyze contemporary media law issues in new media environments. Foundations of Media Law. Digital Speech and Democratic Culture: Law Review 79 1. International Journal of Communication 1: Sociological Theories of Law. Major Principles in Media Law. The Civil Force of Law. Constitution and United States Culture. Oxford Handbook on the US Constitution. Finding Ourselves at the Movies. The Cultural Study of the Law. Where Law Meets Popular Culture. University of Alabama Press. Available online at http: Fear, Risk and the First Amendment: Unraveling the Chilling Effect, Faculty publications Paper Trials of the First Amendment. The Emergence of Diffuse War. Informal Laws and National Security State. Incendiary Speech and Social Media. Texas Technology Law Review Defamation and Discourse in Cyberspace. Duke Law Journal Defamation and Public Speech in U. New Zealand Sociology 23 2: New York Times v. Internet service provider immunity Zeran v. The False Tradeoff between Privacy and Security. Configuring the Networked Self: Law, Code, and the Play of Everyday Practice. Yale University Press, pp. The Pentagon Papers Case. Tim Wu, Columbia University Reading: Network Neutrality, Broadband Discrimination. Journal of Telecommunications and High Technology Law 2. Stanford Public Law Working Paper. Open Access and Comcast Corporation vs. The Trials of King Lear. Law and Justice On the Small Screen.

All complex societies have states, and they are extraordinarily important, but it is vital not to conflate states and their powers with the institutions of the civil sphere. States are organizations that exercise social control in formal and explicit, if sometimes indirect ways, by requests if possible, by commands if necessary, and by force if.

Alexander Author Information Jeffrey C. He is also the author of The Meanings of Social Life: A Cultural Sociology Oxford, Jeffrey Alexander offers sociology at least a place from which it may begin again. A work of great importance, an enduring contribution to the literature on civil society and democracy. Its influence will be felt in political, cultural, and theoretical sociology for decades to come. One of its most distinctive and welcome features is its insistence that good social theories have a disclosing power that is practically efficacious Its most significant contribution By arguing persuasively that the civil sphere is a great achievement of Western modernity, and by encouraging us to work towards its realization, the book itself is a remarkable achievement. There is much to be learned here about the historic and sociological nature of racial, gender, and ethnic oppressions, and the struggles waged to over throw them. Indeed, reading The Civil Sphere generated the same sense of intellectual excitement that I experienced the first time I read Durkheim or Weber or Habermas--and for similar reasons: The Civil Sphere addresses big and important questions about freedom, inequality, and solidarity. For Jeffrey Alexander this is it. A magisterial book, a contribution to social theory that will be talked about, criticized and never overlooked. The book will challenge and shape the discussions in cultural sociology for many years to come. As such it is a book about the need to place justice at the centre of the sociological enterprise. From the point of view of contemporary critical social theory, one of its most distinctive and welcome features is its insistence that good social theories have a disclosing power that is practically efficacious. As such it is also a book about the illuminating power of theory. Its most significant contribution, however, is its presentation of a strong vision of civil society and the case it makes for taking up the project of civil repair. It aims to provide a new theory of contemporary society, based on a new interpretation of solidarity [that] is a radical challenge to political economy. This is a book worth reading by both social scientists and the general public, for its persuasiveness can inspire us to imagine that another world is possible"--Mediterranean Quarterly "All sociologists, social scientists or writers probably nurture some secret ambition of writing a mega book that will immortalize them by its originality, the persuasiveness of arguments, impact, or its sheer size. For Jeffrey Alexander, this is it. The Civil Sphere can taken as conclusive evidence that sociology is alive and well, and more importantly relevant to modern social action. It will find its place on the shelf with the other great classics of sociology. Newsletter of the Theory Section of the American Sociological Association "The book is an exercise in forging theory as a tool for democratic practice. He offers a penetrating and original causal interpretation of the success of the Civil Rights Movement, and addresses with understanding and fresh perspective the question of Jewish assimilation in post-civil rights America. A powerful and provocative account of civil society, this brilliant piece of theorizing is fueled by an expansive moral vision. Alexander punctures the overblown claims of other thinkers both left and right, and stunningly combines theoretical vigor with a subtle, becoming humility in the face of the best achievements and most compelling aspirations of the civil sphere. The Civil Sphere is remarkable for its clarity and depth of exposition. In sum, an extraordinary and necessary book. In this breathtakingly erudite tour of literature, history, philosophy, and social science scholarship, from Hannah Arendt to Woody Allen, Alexander takes on in a single volume both foundational questions of the human condition and the political exigencies of our day. Somers, Professor of Sociology, University of Michigan "The Civil Sphere is at once an energizing ideal for democratic society, and a source of violations of its own ethos. He provides fascinating analyses, among other events, of the civil rights movements, and of modern anti-Semitism.

4: Regulative Institutions (1): Voting, Parties, Office - Oxford Scholarship

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Bringing Democracy Back In: Public Opinion PollsCivil Associations6. Voting, Parties, OfficeCivil Power: Office as Regulating Institution7. The Antidemocratic Face of Law8. Uncivilizing Pressures and Civil RepairSpace: The Geography of Civil SocietyTime: Civil Society as Historical SedimentationFunction: Gender and Civil Repair: Race and Civil Repair 1: Toward the Civil Rights Movement Race and Civil Repair 2: Race and Civil Repair 3: Losing Control over the Symbolic CodeBirmingham: Solidarity and the Triumph of Tragedy Race and Civil Repair 4. Reviews "A genuine masterpiece This is a book worth reading by both social scientists and the general public, for its persuasiveness can inspire us to imagine that another world ispossible"--Mediterranean Quarterly "All sociologists, social scientists or writers probably nurture some secret ambition of writing a mega book that will immortalize them by its originality, the persuasiveness of arguments, impact, or its sheer size. For Jeffrey Alexander, this is it. A magisterial book, a contribution tosocial theory that will be talked about, criticized and never overlooked. A work of great importance, an enduring contribution to the literature on civil society and democracy. Itsinfluence will be felt in political, cultural, and theoretical sociology for decades to come. It aims to provide a new theory of contemporary society, based on a new interpretation of solidarity [that] is a radical challenge to political economy. Indeed, reading The Civil Sphere generated the same sense of intellectual excitement that I experienced the first time I read Durkheim or Weber or Habermas--and for similar reasons: The Civil Sphere addresses big and important questions aboutfreedom, inequality, and solidarity. The book will challenge and shape the discussions in cultural sociology for many years to come. Jeffrey Alexander offers sociology at least a place from which it may begin again. Its influence will be felt in political, cultural, and theoretical sociology for decades to come. One of its most distinctive and welcome features is its insistence that good social theories have a disclosing power that is practically efficacious Its most significant contribution By arguing persuasively that the civil sphere is a great achievement of Western modernity, and by encouraging us to work towards its realization, the book itself is a remarkable achievement. There is much to be learned here about the historic and sociological nature of racial, gender, and ethnic oppressions, and the struggles waged to over throw them. The Civil Sphere addresses big and important questions about freedom, inequality, and solidarity. For Jeffrey Alexander this is it. A magisterial book, a contribution to social theory that will be talked about, criticized and never overlooked.

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Experience teaches that additional preventative measures are required, such as conflict resolution, land management and psychotherapeutic approaches. Not even a perfect land market can prevent conflicts unless regulated by governing institutions. There are two types of institution: Constitutive institutions are needed to enable an economically efficient land market through land rights, land registration and rule of law, while regulative institutions are necessary to make the land market socially sustainable and environmentally sound through land management and ethical principles. However, even with all these institutions in place, land conflicts can still occur, mainly as a result of extreme emotional and material needs. Endless Procedures In most African countries many constitutive and regulative institutions suffer from massive functional deficits: Land-administration authorities deal-ing with land registration, land-information systems, land-use planning and land development lack trained staff, technical infrastructure and financial resources. Administrative services are over-centralised and responsibilities are often not clearly assigned or are overlapping, impeding co-operation and co-ordination. As a result, the little available and mostly incomplete or isolated data on land ownership and land use is being gathered by diverse non-co-operating institutions, making its proper use difficult or even impossible. The result is endless procedures and low levels of implementation. Neither institutions constituting nor those regulating the land-market make any substantial contribution to the avoidance of land conflict. Given the low salaries and openness to motivation payments, they rather contribute to them. Legal security is limited by insufficient implementation of rule-of-law principles, while mechanisms for sustainable land development suffer from the fact that ethical principles are not broadly acknowledged. The crucial point for all institutions is lack of implementation. Unclear implementation guidelines and contradicting legislation worsen the situation. Political will is very unsteady. The imperfect constitutional institution of land-markets promotes land-ownership conflict, while poor regulative institutions are responsible for both land-ownership and land-use conflicts. Normal Misbehaviour Functional deficits are not the core reason for land conflicts; they merely facilitate them. Profit maximisation on the part of a multitude of actors is the driving force, either by unjustly grabbing land or by excluding disadvantaged sections of the population from legally using it. Theoretically, these actors include all social gatekeepers, mostly identifiable with principals in principal-agent-relationships. Social and religious values are of little relevance in everyday life; self-interest is paramount to public interest, a scenario that underlines the importance of ethical values and rule-of-law principles in preventing land conflict. If individual profit maximisation under a widespread absence of functioning institutions is the underlying reason for land-ownership conflict, then a capitalistic land-market associated with increasing land prices can be seen as facilitator. As long as land has no monetary value ownership conflicts are rare. Fears and Desires Like any egoistical behaviour, the taking advantage of functional deficits for the sake of reckless individual profit maximisation is based on emotional and material needs, which are a consequence of psychical fears and desires. Such psychical phenomena form the basis of land conflicts. Typical is existential fear fear for continuing existence , which can result in extreme emotional and material neediness for shelter, or a longing for survival and self-esteem. This may sometimes result in desire for power and a strong need for independence, often expressed as accumulation of wealth. It is usually a combination of very strong emotional and material needs that allow people either to break instituted rules or to profit from institutional shortcomings. Land-conflict resolution should therefore look at the psychical fears and desires of those breaking the law or profiting from loopholes. Impact of Change Institutional changes are conflict-prone and therefore tend to mark phases of increased land conflict. While some forms of land conflict can occur under different, and even stable, institutional framework conditions, others depend upon institutional change. Multiple sales due to legal pluralism are, for instance, typical of those slow institutional changes that lead to the overlapping of two systems. Likewise, illegal sales of state land are quite common in

situations of either abrupt institutional change marked by a temporary absence of rules, or longer-term absence of a functioning legitimated institutional frame i. Changing framework conditions often provide the basis for land conflicts. Natural disasters such as droughts and floods lead to rural-urban migration. Natural population growth results in increase d demand for land, and consequently land prices. The introduction of a market economy endows land with monetary value, there by eradicating traditional methods of land allocation. Increasing poverty makes it difficult to acquire land legally. And, last but not least, any institutional change causing a temporary institutional vacuum in the land market creates fears, desires, needs, interests, attitudes and opportunities concerning land use and ownership that are no longer controlled and therefore easily escalate into conflict. Poverty, institutional change and other changes in society includ-ing war and peace influence one another, provoking strong psychological desires and fears that result in extreme emotional and material needs. Looking at these from an analytical perspective, they can also be attributed to political, economic, socio-economic, socio-cultural, demographic, legal, administrative, technical concerning land management , ecological and psychical causes. All are also included in the model presented in Figure 2: Legal, administrative and technical causes are summarised under institutional shortcomings. Land Conflicts Among the many different ways to classify land conflicts, the one based on the social dimension of a conflict is the most suitable of all, especially when it comes to conflict resolution. One possibility of classification offered by conflict research in this regard is distinct-ion according to the social level at which a conflict takes place: While in the case of land conflicts the inner-personal level can be ignored, the other three are very useful for classification. Land conflicts within one country will then occur at either the interpersonal or inner-societal level. In the long term, land conflicts can only be resolved and avoided if addressed by an integral and system-oriented approach. Core elements of conflict resolution and prevention are therefore the establishment of a state under the rule of law and implementation of good governance to minimise abuse of power and corruption. Beyond this, integration is required of psychotherapeutic methods for active trauma counselling and reappraisal of historical injustice so as to restore missing trust in the state and its institutions. Further elements are functioning, regulative and constitutional institution of locally adopted land-markets, a transparent capital market and a co-ordinated system of arbitration boards and jurisdiction. Preventive Measures Good governance is of particular importance in this context. Criteria such as sustainability, subsidisation, equality, efficiency, transparency, account-ability, public participation and security, if applied to land tenure and urban land management, form a good basis for development in developing countries to be relatively free from land conflicts. Tools and approaches to avoiding and resettlement of land conflict can be distinguished as preventive and curative measures. The former focus mainly on institutional framework conditions such as establishment and strengthening of constitutive and regulative institutions and establishment and control of an accessible and transparent capital market. Curative Measures Curative measures include a much broader range of activities, broadly divided into three types: Conflict resolution, including moderation, mediation and arbitration can take place at different levels; it can be applied within the formal and within the informal sector, or even in mixed forms hybrid structures. Conflict resettlement institutions can also be administration-based, be it state or traditional. Land management includes various ways of clarifying land rights and security of tenure. It embraces surveying and land registration, land consolidation, land readjustment, land sharing, land pooling, land-use planning, investments in the housing market including housing for the middle-class, social housing, concessions, site and service programmes and site without service programmes , recovery of state assets and an increase in transparency and documentation of land conflicts, for example through state land inventories and GIS specially designed to document land conflicts. Psychotherapeutic approaches are required because conflict over land, like any other type of conflict, often ends up in a vicious circle wherein the parties stick to their positions and unconsciously force each other to adopt increasingly extreme positions. People normally tend to project negative characteristics onto one another until at last the opposite party incorporates these. Reality becomes more and more distorted and the other party ends up carrying responsibility for all sorts of negative aspects of life; for example, squatters often point to the state as being responsible for all their problems, whilst the state considers them a handicap to any development. In such situations it becomes necessary for both parties to change their perception of the other,

so as to pave the way for equitable dialogue. This can be achieved by sociodrama. As it can not generally be expected that both parties do this together, they can at least do it among them selves, thereby experiencing the feelings of the other party and developing empathy for their position, behaviour patterns, interests and needs. As an alternative, street theatre and TV soap operas can be used to address the various types of land conflict people are typically involved in. Land conflict can be minimised only if all approaches are combined as required by the specific case and adapted to the specific situation with respect to existing rules, organisational structures and overall cultural, political, legal, economic and conditions of the prevailing social framework. Concluding Remarks No matter how difficult concerted action might seem amid the chaos and confusion following conflict, land questions have to be dealt with as early as possible. Each land conflict needs its individual solutions, adapted to its local, regional, national and supranational political, socio-economic, cultural and power-related framework conditions. It depends on each specific case which of the tools and approaches presented here can or must be applied for effective solutions to land conflict. Land plays a key role in post-conflict reconstruction. Good Urban Land Management.

Regulative Institutions (2): The Civil Force of Law. The Democratic Possibilities of Law. Bracketing and Rediscovering the Civil Sphere: The Warring Schools of.

From hiring a new officer to promotion time or the unfortunate occurrences when a dismissal is the appropriate option, law enforcement executives are faced with a wide array of choices and consequences. Some administrators have these decisions complicated by a strong civil service board or political pressure, while others might have very limited options if they lead an agency with fewer than 10 officers. Whatever the situation, administrators must not only make the best decision for everyone in the department and the community they serve, but they must be able to justify and, in some cases, defend their decisions under intense scrutiny. This is where an understanding of a conceptual framework aids the police leader in the decision-making process. On such framework that can aid in police personnel decisions was proposed by W. Richard Scott in his model for analyzing institutions presented in his book Institutions and Organizations. Scott believes that these pillars stabilize and provide meaning to institutions through processes that they set in motion. One example is how the normative practices aid in harmony between officers by establishing a code of acceptable behavior and maintaining this code. It is these pillars that serve as motivating factors and hold the organization together. Each pillar corresponds to a distinct arena of personnel decisions in police agencies. For example, officers are generally hired within the normative pillar. Criteria for employment and scenario questions reflect the norms and values of the department, and candidates are usually selected according to best fit. Disciplinary action is within the regulative pillar. Officers who violate regulations and act outside their authority are subject to specified sanctions. Promotions occur within the cultural cognitive pillar. Officers who take on a role within the department are promoted to reflect their role. While the action in promotion may take place in the regulative pillar, the decision is made in the cultural cognitive pillar. In order to truly understand how the pillars apply to police organizations; however, a clearer understanding of each pillar is required. The first pillar, regulative, is the least complex to understand and apply to the police profession. The regulative pillar in a law enforcement organization is composed of the standard operating procedures, rules of criminal procedure, criminal and vehicle codes, police contract, and state statutes that govern police power. This pillar is the codified framework around which a law enforcement organization is built. It is the source of the authority to arrest externally and to provide disciplinary action internally. It is quite literally the regulations that govern the operations and actions of the agency. This dynamic connects most clearly because police are the teeth of the regulative pillar of society in general. The next pillar is the normative pillar. This is the unwritten rules of how an organization functions. It comprises the norms and values that dictate behavior within the organization. The norms are the guiding principles on how things should be done, and the values are the idealized form of how things ought to be. While the ideas of roles within the organization stem from this pillar, it is the next pillar that gives them life. The cultural cognitive pillar is essentially the culture of the organization. The cultural cognitive pillar is the self-actualization of the officers and of the institution as a whole. This pillar is where the organization establishes its identity and reputation. In this pillar, officers identify themselves according to the normative roles, and they assume these roles, creating and attaching meaning to the roles and other symbols within the organization. Cycle or Ladder Much like the discussion over the model for the use-of-force continuum in police work, there is some debate as to whether the pillars are seen as a ladder or a cycle. While the pillars range from basic regulations to how officers see themselves in the organization, the pillars are not exclusive of each other and can be seen as functioning in a cycle. The regulative pillar defines the organization through rules and laws. The normative pillar then guides the behavior and values of the organization. The individual within the department can be seen as an entity brought into the group through regulations, such as a motion passing in borough council to approve a new hire. That officer is then shown the norms and values by their training officer and supervisors during his or her formative years in the department. The officer eventually understands the operational side of the agency enough that the officer begins to assimilate into the culture and define his or her own role within the group. In the cultural cognitive

stage, that officer may define a role to a degree that the officer is then promoted, which is a codified role definition under the regulative pillar, and the cycle begins anew. The needs are physiological, safety, love or belonging, esteem, and self-actualization. Each need must be met before the higher order need can be addressed. The regulative pillar serves to meet the physiology and safety needs. This pillar establishes the roof over the head of the member and provides security through their contract and laws governing labor practices. The normative pillar meets the love or belonging and esteem needs. The normative pillar is where an individual is able to fall in and follow the group. This pillar provides the individual with the guidance and comfort of being part of a group and is where a person answers the question of how the group sees the individual. The cultural cognitive pillar meets the self-actualization needs of the individual. In this pillar, officers are no longer concerned with how the group sees them, but rather how they see themselves in the group. In this pillar, a person becomes the group member that the person wants to be and enables himself or herself to effect change within the organization in a way that is not possible when acting within the first two pillars. This allows the decision maker to consider the impact of his or her decision on the person as well as the group. It is through the lens of the pillars that these personnel matters can provide a clear picture of how personnel choices affect an organizatoin and under which lens they are to be considered. By keeping these decisions within the appropriate pillars, a leader can provide stability in times of change. Because police officers are required to meet a wide array of specifications and possess a number of competencies unrelated in any other field, it becomes increasingly important for administrators to understand how these functions fit into the organization. By assigning the question to one of the pillars, an administrator can quickly decide what internal system in the department is at issue or where to look for a solution. Discipline—The Regulative Pillar The regulative pillar is applicable within the disciplinary and dismissal code. While awards and citations are given for exemplary work, those decisions are made on a case-by-case basis and their application might not be codified. The disciplinary code, however, must be specific and must include defined sanctions for violations. In this framework, a formal disciplinary action must be taken. An understanding exists that informal sanctions for violations of department norms may occur, such as the loss of an assignment for not representing the department in a manner that demonstrates the values of the group. These sanctions are not discussed here. The disciplinary process in a police department is not only laid out in policy, but also heavily influenced by litigation. For a formal sanction to hold up in civil proceedings, the offense must clearly be a violation of the disciplinary code. While certain offenses may be up for debate, matters such as theft, sleeping on duty, intoxication on duty, and the like are clearly defined. Violations of this nature have a sliding scale of discipline in which the administrator is given sanction guidelines based on the nature of the offense. The common practice in police agencies is to adhere to what is known as the Loudermill letter and the Loudermill hearing. He appealed the termination and filed a suit under the Civil Rights Act claiming that his termination violated his constitutional right to due process. He was not given notice of the charges against him for which he faced disciplinary action and the substantial delay in the appellate process with the administrative review board, which in this case was the civil service commission. This case led to the practice of the Loudermill letter in which an officer is given formal notice of an offense and that disciplinary action is pending. The officer is then able to respond in writing or prepare a response for a hearing. A Loudermill hearing occurs where the offender meets with the administrator and is represented by a member of the bargaining unit or an attorney. This process applies to public sector, tenured employees who have a property right in their employment under U. This practice clearly falls under the regulative pillar, but how is the conceptual framework applied to the practices? The answer lies in a holistic analysis of the problems within an organization. A police chief or candidate looking at an organization from the outside can use the framework to explain ongoing problems in the organization. If a department has fired a number of employees who later won their jobs back, then it is clear that the issue is not one of behavior under the normative or culture pillars, but a problem in the regulative pillar. The way in which the offender was sanctioned did not comply with state law or departmental policy. If that is the case, then the policies need to be changed, the law better understood, or an executive hired who applies the policies and law correctly. Understanding the pillars is also crucial in bringing disciplinary action against an officer. An officer can commit an egregious breach of normative social

protocol within the department, but if the action falls under the normative pillar, then disciplinary action under the regulative pillar is sure to fail when challenged. Hiring Standardsâ€"The Normative Pillar Hiring a new officer is another crucial personnel decision law enforcement executives make. The pool of applicants can vary greatly depending on economic conditions and turnover rates in the area. The qualifications for an officer fall under the regulative pillar, but the actual hiring decisions are made under guidelines from the normative pillar. The first place this is seen is in the use of interview scenario questions during the interview process. Police interviews are different than interviews in other jobs. Candidates can be asked about every mistake they have ever made, whether that mistake was in their professional or private lives. It is in the nature of the answer given that the interviewee is judged, based not solely on knowledge of the law, but also their likelihood of conforming to the values and norms that exist in the department. The phrase for these norms in the world of police work is police discretion. The idea behind police discretion is that officers need to choose the best use of their time. If an officer stopped every violating car and made an arrest for every single infraction, nothing more would ever get accomplished. Officers must be able to sort through the information given to them and make commonsense determinations of the best course of action. The commonsense exhibited by officers or candidates is then judged by the norms and values in the organization for which they are applying. If they generally make decisions that conform to the expectations of the department, then they will move on in the process. This positioning of hiring standards within the normative pillar is not accidental. Knowing how an officer will fit into a department would be impossible prior to hiring him or her. It would also be fruitless to hire an officer merely because he or she retained the most information from the criminal code taught in the police academy. The normative pillar is where screening candidates belongs. Their actual reactions on the street might differ from their answers during the interview process, which is where the probationary period comes in.

7: The Civil Sphere : Jeffrey C. Alexander :

Regulative Institutions (2): The Civil Force of Law The Democratic Possibilities of Law Bracketing and Rediscovering the Civil Sphere: The Warring Schools of.

The rules that are traditionally considered to be regulative are actually a subcategory of constitutive rules. In order to reach these conclusions, it is first shown that there are more constitutive rules than counts as-rules only. The fourth step is to assume that these two kinds of constitutive rules exhaust the space of regulative rules. And that leads immediately to the conclusion that regulative rules are a subcategory of constitutive rules. Keywords constitutive rules, deontic facts, duties, obligations, regulative rules, 1. Regulative and constitutive rules The idea of a rule is traditionally associated with the guidance of behaviour. Rules prescribe behaviour, they can be followed, obeyed and disobeyed, and after the behaviour has taken place, rules can be used to evaluate it as correct or incorrect. This association between rules and the guidance of behaviour is reflected in philosophical discussions about rule following Wittgenstein, ; Kripke, ; Bro ek, , and in jurisprudential accounts of the nature of law. According to Aquinas, law is a rational ordering of things S. Moreover, recent discussions emphasise the behaviour guiding role of law Shapiro, , p. And yet some rules seem not to guide behaviour at all, or only in the secondary sense that they allow the evaluation of behaviour as correct in agreement with the rule or incorrect. Examples of rules which seem not to aim at guidance at all are the rules that confer competences, or define the institutions of, for example, the European Union. Examples of 1 rules that do not strictly guide behaviour but which can nevertheless be used to evaluate behaviour as correct or incorrect are the rules of language and of mathematics, but also the definitions of the scope of terms used in legislation. Rules of games form an in between category in the sense that they only specify what should be done in order to play the game correctly. They do guide behaviour but only for those who want to play the game. The phenomenon that not all rules can easily be said to guide behaviour has found philosophical recognition in the distinction between regulative and constitutive rules. This distinction has gained most of its popularity through the work of Searle , , According to Searle Searle, , p. He mentions rules of etiquette as an example. Constitutive rules, on the contrary would create or define new forms of behaviour. In a later work Searle, , p. An example would be the status of money which is imposed on pieces of paper. My aim in the present paper is twofold. The ultimate purpose of the argument in these two papers taken together is to disconnect the notion of a rule from that of normativity and to emphasise the role of rules as tools by means 1 The argument in this paper elaborates some of the ideas that were mentioned in Hage , and parts of this paper are adaptations of the texts of the sections 2. In my argument I will mostly use legal examples, but I do not think that this bias damages the strength of the overall argument. Three kinds of constitutive rules The first step in my argument that regulative rules are constitutive is to distinguish between different kinds of constitutive rules. It is not my intention to argue that these three kinds are the only constitutive rules, but the existence of at least these three kinds suffices to show that there is no need to assume the existence of regulative rules next to constitutive rules. The three kinds of constitutive rules that will be distinguished are dynamic, fact-to-fact, and counts-as rules. Examples of events to which a dynamic rule attaches consequences are that: Dynamic rules may be conditional, in which case their consequence is only attached to the event under certain conditions. An example is the rule that if it is dark, the occurrence of a car accident obligates the drivers to place a light on the road next to the cars. They are different from dynamic rules because the relation between the connected facts does not involve the lapse of time. An example is the rule which attaches the fact that P is competent to alienate O to the fact that P owns O in a timeless manner. For example, if Smith owns Blackacre, she is competent to transfer her property right in this real estate to Jones. This is a relation between two facts which does not involve any change that occurs in time. Fact-to-fact rules may be conditional too. An example is the rule that the mayor of a city is competent to evoke the state of emergency in case of emergencies. This rule attaches the fact that some person has a competence to the fact that this person is the mayor under the condition that there is a state of emergency. In that case they are also duty- imposing rules. Individuals of type 1 count as individuals of type 2. For instance, under suitable circumstances, causing a car

accident counts as committing a tort, or offering money to another person counts as attempting to bribe an official. Usually counts-as rules are conditional, meaning that individuals of type 1 only count as individuals of type 2 if certain conditions are satisfied Searle, , p. An example from Dutch law art. A dynamic rules generates new facts, modifies existing ones, or takes antecedingly existing facts away as the result of some event. Fact-to-fact rules make that facts of particular kinds go together with other facts in a timeless fashion. Rules have a lot in common with descriptive sentences: However, in this correspondence lies also a major difference with descriptive sentences. With this match I do not mean that the rule is obeyed, but that the content of the rule is reflected in the world. So, the rule that thieves are punishable is reflected in the world if because of this rule thieves are punishable. Valid constitutive rules - which I take to be the same as existing constitutive rules - impose themselves on the world. They have the world-to- word direction of fit because they constrain the world in the sense 4 that not all combinations of facts are possible. As a consequence, these rules bring about facts, and in this sense they are constitutive. Regulative rules Having argued that there are more constitutive rules than counts as-rules only, the next argument step will lead to the conclusion that regulative rules can well be seen as a special kind of constitutive rules. To make this step, an intermediate conclusion is required, namely that there can be deontic facts. Is this similarity misleading, covering up a kind of order as a description? Or does the former sentence, if it is true, stand for a fact? The present argument that there can be deontic facts is unavoidably too brief to convince readers who firmly believe in the gap between is and ought. It makes presuppositions about the role of the mind in structuring the world which I defended elsewhere Hage   Here my argument will essentially be limited to clearing away two possible misunderstandings. Underlying this misunderstanding is the â€" often implicit â€" assumption that the world is inert and that beliefs about facts in the world cannot guide behaviour unless accompanied by a motivating factor such as a desire. This would be the reason why the fact that somebody ought to do something, or â€" probably better â€" that somebody is aware that he ought to do something, guides his behaviour. Because facts cannot guide behaviour, it cannot be a fact that somebody ought to do something. This first misunderstanding has been attacked by Geach and Searle , , basically because the speech act which can be performed with a sentence does not determine the meaning of the sentence. So if the sentence expresses a fact in the second use, it also expresses a fact in its first use. The assumption that the world, and the facts in it, are inert is not very convincing either. If this assumption were correct, it cannot be a fact that your house is on fire, because that fact or the awareness of it will guide your behaviour. If one takes a common sense look at facts, without philosophical prejudices about their inert nature, it is clear that facts, such as the fact that your house is on fire, or the awareness thereof, can and do guide behaviour Hage, , p. Therefore it cannot be a reason against the existence of deontic facts that such facts would guide behaviour. Deontic facts, facts that involve that something should be done, are typical cases of behaviour guiding facts. This misunderstanding is essentially that of applying an ontological realist stance to domains in which this is less suitable. One such domain is that of social reality, because social reality depends to a large extent on what people accept or recognise about it Searle , p. If facts can be mind-dependent and therefore also dependent on standards, there is no good reason why there cannot be deontic facts. Because normative judgments can very well, and often are, expressed by means of declarative sentences, apparently there are deontic facts which are expressed by these sentences. The two objections do not suffice to take the force of this appearance away. Examples would be the rules: It is forbidden to torture sentient beings. Car drivers must drive on the right hand side of the road. However, both sentences can not only be interpreted as rule formulations, but also as descriptive sentences which, if they are true, express deontic facts. Moreover, if these sentences are true, the most likely explanation is that this is so because the rules with the same formulation brought about the facts which made the sentences true. To show that this has everything to do with the relation between constitutive rules and facts, and nothing in particular with regulative rules as such, we will start with a competence conferring rule. An example would be the fact-to-fact rule that owners of real estate are competent to mortgage this real estate. Let us assume that this is an existing valid rule, and also - for the sake of argument - that reasoning with rules is not defeasible. The rule is applicable to all persons who own real estate, and gives all these persons the competence to mortgage their properties. The rule applies only to individual cases and makes that in all these cases the owners of real estate

have the competence to mortgage it. Indirectly, via these individual cases, the rule also makes that all owners of real estate are competent to mortgage this real estate. The same line of reasoning can â€" almost literally - be applied to rules which do lead to deontic facts. An example would be the fact-to-fact rule that car drivers should drive on the right. Let us assume that this is an existing valid rule. Then, if Schmidt drives a car, the rule makes that Schmidt should drive on the right. The rule is applicable to all persons who drive cars and imposes on all these persons the duty to drive on the right. The rule applies only to individual 3 If the defeasibility of reasoning with rules is taken into account, the argument becomes more complicated, but these complications do not change the upshot of the argument Hage , p. Indirectly, however, the rule also makes that all car drivers4 should drive on the right. A similar line or reasoning can be used in the case of dynamic obligation imposing rules. An example would be the dynamic rule that those who promise somebody else to do something are from then on under an obligation towards this other person to do what was promised. The rule is applicable to all persons who made a promise to do something, and imposes on all these persons the obligation to do what they promised. The rule applies only to individual cases and makes that in all these cases the promisors are under an obligation to keep their promises. Indirectly, the rule also makes that those who promise somebody else to do something are from then on under an obligation towards this other person to do what was promised. We have seen two examples of rules that constitute deontic facts, primarily duties or obligations for individual persons, but in a derived sense also for categories of persons. These two examples represent two kinds of regulative rules, namely fact-to-fact rules which impose duties on categories of persons, and dynamic rules which impose obligations on persons as the result of events.

REGULATIVE INSTITUTIONS (2 : THE CIVIL FORCE OF LAW pdf

8: Managing Police Personnel Using Scott's Pillars of Organizations - Police Chief Magazine

Week 2: The Civil Force of the Law (2/11/14) Guest: Jeffrey Alexander, Department of Sociology, Yale University Reading: Alexander, Jeffrey C. Alexander, Jeffrey C. Regulative Institutions (2): The Civil Force of Law. pp. in The Civil Sphere.

He provides fascinating analyses, among other events, of the civil rights movements, and of modern anti-Semitism. In this breathtakingly erudite tour of literature, history, philosophy, and social science scholarship, from Hannah Arendt to Woody Allen, Alexander takes on in a single volume both foundational questions of the human condition and the political exigencies of our day. The Civil Sphere is remarkable for its clarity and depth of exposition. In sum, an extraordinary and necessary book. A powerful and provocative account of civil society, this brilliant piece of theorizing is fueled by an expansive moral vision. Alexander punctures the overblown claims of other thinkers both left and right, and stunningly combines theoretical vigor with a subtle, becoming humility in the face of the best achievements and most compelling aspirations of the civil sphere. He offers a penetrating and original causal interpretation of the success of the Civil Rights Movement, and addresses with understanding and fresh perspective the question of Jewish assimilation in post-civil rights America. It will find its place on the shelf with the other great classics of sociology. The Civil Sphere can taken as conclusive evidence that sociology is alive and well, and more importantly relevant to modern social action. For Jeffrey Alexander, this is it. A magisterial book, a contribution to social theory that will be talked about, criticized and never overlooked. It aims to provide a new theory of contemporary society, based on a new interpretation of solidarity [that] is a radical challenge to political economy. As such it is a book about the need to place justice at the centre of the sociological enterprise. From the point of view of contemporary critical social theory, one of its most distinctive and welcome features is its insistence that good social theories have a disclosing power that is practically efficacious. As such it is also a book about the illuminating power of theory. Its most significant contribution, however, is its presentation of a strong vision of civil society and the case it makes for taking up the project of civil repair. By arguing persuasively that the civil sphere is a great achievement of Western modernity, and by encouraging us to work towards its realization, the book itself is a remarkable achievement. The book will challenge and shape the discussions in cultural sociology for many years to come. The Civil Sphere addresses big and important questions about freedom, inequality, and solidarity. There is much to be learned here about the historic and sociological nature of racial, gender, and ethnic oppressions, and the struggles waged to over throw them. A work of great importance, an enduring contribution to the literature on civil society and democracy. Its influence will be felt in political, cultural, and theoretical sociology for decades to come. Jeffrey Alexander offers sociology at least a place from which it may begin again. He is also the author of The Meanings of Social Life: A Cultural Sociology Oxford,

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Rules, facts and descriptions A regulative rule is a rule that guides behaviour by prescribing or prohibiting particular kinds of behaviour for everybody, or for particular categories of persons (or organisations).

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