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Civil society and the Health and Social Care Act in England and Wales: Theory and praxis for the twenty-first century

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ABSTRACT

In this paper we revisit the notion of civil society in the light of recent attempts to privatize health care in England via the passing of the Health and Social Care Act of 2013. This legislation promises a re-commodification of the National Health Service (NHS) in England. The Bill was bitterly contested during its passage through parliament, most vigorously in 2011. Much of the opposition occurred at a time of widespread, global rebellion, most notably in the 'Arab uprisings' and through the 'occupy movement'. Despite a plethora of protests, we argue, a non-porous boundary between what we call the 'protest sector' of civil society and the wider public sphere of the lifeworld has become apparent in England. A good deal of collective action, whether campaign-focused (like opposition to the Health and Social Care Bill) or more generalized (like rejections of corporate greed), has so far proved ineffective, at least in the short-term; no crisis of legitimation is apparent. We highlight a new 'class/command dynamic', leading to oligarchic rule, in the present era of financial capitalism. We use this health care case-study to re-examine the notion of civil society and its changing properties in what Castells calls a 'networked society'. The contribution ends with a discussion of the role of the sociologist re-civil society and the advocacy of both 'action' and 'foresight sociologies'.

1. Introduction

> *The reform of the National Health Service is, of course, to bring it back into the marketplace and degrade it back into making health care a commodity – so it's not reform at all'.*
>
> *'If we don't understand that we've got to do everything, up to and including breaking the law, to defend the National Health Service, then we're finished'.*
>
> (Quoted by Loach, 2013: ix)

The notions of the public sphere of the lifeworld and civil society are members of a family of concepts. They have been subject to fairly exhaustive review and it is not our intention in this contribution to rehearse this voluminous literature yet again. Rather, we intend to develop a strand of thought and investigation emanating from Habermas' (1989) pioneering socio-historical study of the emergence – and subsequent decline – of a 'bourgeois' public sphere. We utilize the recent reform of the National Health Service (NHS) in England and Wales to characterize wider changes in civil society. In particular this approach affords us a critical standpoint from which to interrogate these recent reforms, with a view to exploring possible explanations for the relative success of this reform programme in the face of a vociferous and sustained civil society protest. This is interesting in a wider sociological context in the sense that tampering with the NHS was widely perceived, to be politically ill-advised to say the very least. That the coalition government managed to enact such a radical reform programme, (Pollock et al., 2011), in the face of a sustained public campaign against those reforms, with apparently little or no negative effect merits further exploration. In effect, this framing allows us to address a question of how this reform was enacted in face of such pronounced opposition, and to posit a partial explanation drawing upon an observed decline in the possibilities for communicative action across all sectors of civil society.

In the opening paragraphs we sketch Habermas' original analysis, paying particular attention to the conceptual framework within which it is couched and the ways in which it anticipated his later 'mature' works. This allows us to introduce the system/

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lifeworld dichotomy, strategic versus communicative action, new social movements and so on. We follow this up with a 'refinement' (taking account of a range of criticisms) of Habermas' account of the lifeworld and civil society, which involved a split of the latter into enabling and protest sectors. In the third section we offer a brief characterization of post-1970s financial capitalism, which prepares the ground, in the next section, for an extended case study of the background to and genesis of the Health and Social Care Bill and its transmutation into the Health and Social Care Act of 2013, which effectively (in all but name) privatized the National Health Service in England (see Pollock et al., 2011; Reynolds and McKee, 2012; Davis and Tallis, 2013). In the concluding paragraphs we return to the theoretical domain to address the dialectical relation between theory and research: how might our broadly Habermasian framework help us to understand the contested passage of the Health and Social Care Act and the re-commodification of the NHS in England, and how might our detailed case study inform and suggest theoretical revisions?

2. From Habermas on the public sphere onwards

Habermas' analysis of the origins of a European public sphere was presented in a thesis initially rejected by Adorno at Frankfurt but later accepted by Abendroth at Marburg. In it he wrote of the rise of a *bourgeois* public sphere, initially in England in the eighteenth century and subsequently elsewhere in Europe. The public sphere here represented the *public use of reason* (as articulated by private individuals engaged in argument that was 'in principle' open and unconstrained). It was a domain in which activities of the state could be confronted and critiqued. The emergence of the public sphere was facilitated, first, by the rise of the periodical press, and second, by the establishment of new centres of sociability like salons and coffee houses. Habermas maintained that this led to a greater accessibility and scrutiny of Parliament and a constitutional extension of rights of freedom of speech and expression. Over time, however, the public sphere experienced a decline (Habermas writes of its 're-feudalisation'). Thompson (1993: 173) summarizes:

> 'what was once an exemplary forum of rational-critical debate became just another domain of cultural consumption, and the bourgeois public sphere collapsed into a sham world of image creation and opinion management in which the diffusion of media products is in the service of vested interests'.

But this did not address the full complexity of public sphere. Thompson developed a sustained critique, within which he asserts four broad criticisms of Habermas' theorization. Firstly, he neglected non-bourgeois or popular forms of popular discourse and activity, some of which were militantly opposed to bourgeois culture and practice; secondly, he overlooked prior historical examples, notably around the time of the English Civil War in the seventeenth century; thirdly, he underestimated the significance of the *absence of women* (as feminists have subsequently argued, their absence was *constitutive* of the public sphere: it was juxtaposed to the private sphere in a gender-specific way); and lastly, he exaggerated both the precipitous nature of the decline of the public sphere and the passivity of later recipients of media products.

These criticisms are compelling, and Habermas (1992) later clarified and/or revised some of the judgements in his early text. Yet his pessimism is still widely shared. In this paper, whilst cognisant of these criticisms, we seek to apply Habermas' notion of the bourgeois public sphere (and its subsequent decline) to offer a critical context in which to interrogate the NHS reforms. While earlier concepts of civil society and the public sphere were pitted against the power of the state, in his neophyte and explicitly Marxist texts Habermas set them in opposition also to the economy. By the time he was writing the public sphere of the lifeworld, (to employ his terminology), had been substantially *colonized* by the subsystem of the economy as well as that of the state, via their respective steering media of money and power. In the terminology of Habermas (1984, 1987), the 'communicative action' characteristic of the lifeworld (oriented to mutual understanding and consensus) had been attenuated, without accountability or redress, by the 'strategic action' characteristic of the system (oriented to outcome alone). For example literature from the turn of the century is replete with references to the vanquishing of what Oldenburg (1997) called 'third places', that is, casual, everyday meeting places like cafes, bars, shopping malls and launderettes. Mayhew (1997) has contributed the thesis that a new cadre of professional specialists, using marketing and promotional campaigns, has come to dominate public communication: he writes of a 'new public', subject to mass persuasion through relentless advertising, lobbying and other forms of media manipulation. Spaces and opportunities for communicative action are in decline whilst spaces and opportunities of strategic action are on the rise.

Four further matters might be mentioned at this point. The first is an elaboration of the Habermasian framework. Habermas positioned civil society at the interface of the private and public spheres of the lifeworld. In *Between Facts and Norms* he wrote that civil society consists of those 'more or less spontaneously emergent associations, organizations and movements that, attuned to how societal problems resonate in the private life spheres, distil and transmit such reactions in amplified form to the pubic sphere' (Habermas, 1996: 367). Scambler and Kelleher (2006) suggested that two sectors of civil society might be distinguished. What they called the *enabling sector* of civil society is located in, or derives its impetus from, the private sphere of the lifeworld. It is within the enabling sector that issues of potential concern are first delineated, typically as part and parcel of everyday intercourse and often in Oldenburg's third places. The *protest sector* of civil society is located in, or is directed towards, the public sphere of the lifeworld. It is within the protest sector that people come together or are mobilized, in networks, campaign groups, social movements and other varieties of association in pursuit of influence (the steering media of the public sphere) for purposeful change (third places are often salient here too). This addendum to Habermas will be utilized later.

A second consideration concerns social movements. Habermas concluded with some reluctance that 'old' class-based movements had ceded territory to 'new' social movements. Producer society had been displaced by consumer society, and collective action had come to focus on identity and belonging rather than the (re)-distribution of material goods. Edwards (2004) argues, we think with justification, that Habermas has become overly ready to write off class politics. Indeed, an excellent study by Houtman et al. (2012) shows that class politics is alive and well but has been compromised by an increase in cross-cutting *cultural* alignments. Class, we submit, is far from dead even if class-consciousness has for the time being become an unlikely precipitant of collective action.

Third, after the global financial crisis of 2008–9 and the Arab uprisings, there occurred a series of global-to-local protests, campaigns, marches and *occupations*, many under the umbrella of a broadly anti-capitalist 'movement of movements' In the United Kingdom the foci of discontent embraced the ending of the Education Maintenance Allowance (EMA), (Taylor-Gooby, 2013) the tripling of student fees, (Glennerster, 2013), benefit cuts, corporate tax evasion and avoidance (Farnsworth and Irving, 2012) and, of principal concern here, the Health and Social Care Bill (Davis and Tallis, 2013). Activists engaged under various philosophical and political flags; they were heterogeneous and smart, bound together less by what they stood *for* than by what they were *against*, Kaldor