

ROADS TO DEMOCRACY

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INTRODUCTION

Democracy seems to be on the march in the modern world. This has been a remarkable trend in the last two generations or so. The victory of the Allies in the Second World War put an end to the Nazi empire in Europe, and crushed the Japanese Empire in the Pacific. Germany, Italy, and Japan were set on the path to democracy. In the post-war period, all of the traditional empires disintegrated—the British Empire, the French Empire, and others. Dozens of colonies became free. Some of them, too, became democracies, most notably India. In the 1970's, Franco died and democracy triumphed in Spain. Later, there was a trend away from military dictatorship in Latin America. South Korea and Taiwan then joined the club of democracies. The Soviet Union collapsed, near the end of the century. Democracy took hold in parts of this shattered empire too: in some former “satellites” (the Czech Republic, Poland, Hungary), and in some of the national fragments spun off from the Union (Estonia, Latvia, Lithuania). Large parts of the world, of course, remain securely under the control of autocrats. But the United States is (or claims to be) committed to spreading the joys of democratic government all over the world. It even uses this idea as the reason, or excuse, for the American presence in Iraq.

Of course, “democracy” is not a simple concept; and no two systems that claim to be democracies are exactly the same. The “rule of law” is if anything an even more contested concept. For the purposes of this paper, we do not really need to define democracy rigorously. A society with a reasonable dose of freedom of speech and the press, freedom of religion, more or less fair elections, and the customary package of basic human rights, respected (on the whole) by the government, qualifies as a democracy. These will also tend to be societies that respect the rule of law. “Rule of law” is another concept, which is hard to define; the phrase has many possible meanings. For our purposes, however, it simply means a system in which rights and duties can be enforced through an independent and reasonably impartial system of courts. A court system is “independent” when the government or regime has no power or inclination to affect the outcome

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of cases.

No country, of course, is perfect. No country can claim to be absolutely and completely “democratic.” But quite a few come close enough to the ideal type to satisfy its citizens. On the other hand, the “rule of law,” as defined here, is much less achievable. Perhaps it is an impossible goal. Or perhaps not a goal at all, but simply an example of sociological naiveté. That is, judges cannot simply decide “according to the law”; cannot be neutral and impartial as most lay people imagine they ought to be. Norms, values, attitudes, and the politics of the situation are always a factor in the behavior of judges. Nonetheless, there is a critical difference between totalitarian societies, in which a defiant decision can cost a judge his head, or in which higher authorities dictate the results (at least in politically charged cases);¹ and democratic societies, where judges have long tenure or life tenure and are free to disregard what the people in power might want them to decide.

If we look around the world, we see some gray areas—countries which are on the brink of democracy but not quite there; or countries that have been there and lapsed; or countries whose membership in the club of democracies is somewhat doubtful. Still, I think there would be general agreement about the core membership of the club. It would include most of the rich, developed countries: the United States, Canada, all of Western Europe, Japan, Australia and New Zealand, Chile, and Costa Rica in Latin America, along with quite a few other countries. If we were willing to relax our definition, even slightly, we could include a great many more.

Each country has its own distinctive history, of course, and each one has traveled a unique path to its form of democratic rule. But there may be some general paths or patterns on the road to democracy; other paths or patterns might be unique but also uniquely interesting. I want to mention three examples or patterns, without suggesting that they are the only roads that countries have followed in the search for democracy. The United States is one example; Great Britain represents a different path; and Japan a third. Presumably, these different paths have had consequences, politically and otherwise. Still, after I describe the three paths, I intend, in a sense, to take it all back by arguing that the historical paths no longer matter very much in the world we live in today. This is not to deny that they were of great significance in the

1. See Inga Markovits, *Children of a Lesser God: GDR Lawyers in Post-Socialist Germany*, 94 MICH. L. REV. 2270, 2288-89 (1996). In the German Democratic Republic there was “telephone justice,” that is, in a sensitive case, party officials would call a judge and let her know how the case was supposed to come out.

past; or even to deny that to some extent the past lives on, and influences particular forms of democracy, in big and little ways. But in our times, as I have already mentioned, one sees a kind of democratic epidemic, an infectious outbreak of democratic forms, which has swept over large parts of the world. This means, I believe, that there are powerful forces of leveling and convergence at work among most countries, and certainly among all developed countries. The developed countries are becoming a single, universal, world-wide club of nations, subject to common and significant clusters of social and economic forces. It would be foolish to argue that all the differences between the United States, Great Britain, and Japan, for example, have disappeared into the dustbin of history. But there are also enormous commonalities among modern democracies. The similarities, it seems to me, are in many ways more striking than the differences.

I. THREE ROADS

I mention England as an example of one road to democracy. Progress in England proceeded, more or less, in a top-down way. England was, like most European nations, a monarchy. The king stood at the apex of society. In the middle ages, the crown dominated politics and society in general; the crown shared its power with a hereditary class of nobles, and high officials of the church. In early modern times, these ancient power-centers had to move over to make room for rich merchants and a rising business class. Traditionally, the common man hardly mattered, politically. The great monuments along the road to democracy, starting with Magna Carta, were hardly the result of grass-roots agitation. It was the barons who extorted Magna Carta from the king. The nobility and the elites gradually whittled down the power of the crown. Elizabeth I, in the sixteenth century, was still very much the queen; she had to reckon with Parliament, but she possessed awesome authority. By the end of the eighteenth century, the monarch had lost much of this authority. Queen Victoria was largely a figurehead. Parliament governed in her name; and it was Parliament that held power; it was Parliament, along with the Prime Minister, the cabinet, and the growing civil service, that made the crucial decisions, wrote the laws and the regulations, and put them into effect.

Parliament, however, was hardly a monument to democracy in the nineteenth century. One chamber of the legislature was the House of Lords; its members were the country's earls, dukes and barons. The House of Commons was not really a house for commoners; its wealthy, upper-class members were connected by blood and marriage to the nobility or at least to the landed gentry. If an Earl sat in the House of

Lords, his younger brother (technically a commoner) may well have been a member of the House of Commons. In England, the suffrage was extremely narrow, well into the nineteenth century. Change came about quite slowly. Leaders and reformers who pressed for change were almost always themselves from the upper class. Even the formation of a socialist party, the Labor Party, in the late nineteenth century, did not change the demography of reform. Most leaders of the Labor Party came from the ranks of the elite—they went to the same schools and universities as other members of the elite, spoke with the same accent, and shared in the same general culture. Democracy percolated downward from this group. A prime minister from a log cabin, an Abraham Lincoln, would have been quite unthinkable in England. Perhaps it is still unthinkable. This pattern—democracy as a slow evolution, which percolates down from the ranks of the elites—may well be found in other European countries as well.

I think this pattern may have real consequences. Somewhat paradoxically, the aristocratic, top-down nature of the English path may help account for the fact that the British welfare state flourished earlier, and more completely, than the American welfare state. Top-down reform seems, moreover, to be something of a paradox. Why should an aristocracy commit suicide? What led elites to manage, direct, and produce a democratic system? Was it because of the ideas of the enlightenment? Were these men intoxicated with the thought of John Locke or Rousseau—or Karl Marx? Or was it—as seems more likely—because of powerful, slow-moving social changes, which produced both democracy *and* the ideas of John Locke, Rousseau, and Karl Marx? Perhaps it was the impact of the industrial revolution, the rise of modern capitalism, and similar grand historical events, all of which fed the chain of events. This is, of course, far too complex a subject to be handled in these few pages. My point is that, in the short run, the precise pattern of development no doubt made a difference in the kind and quality of British democracy. A society governed by an elite—even a left-wing elite—was a society which, in a way, could afford to concede a great deal to the mass of the people. The *social* positions of the upper classes were not threatened by a welfare state. Habits of deference to authority persisted, and guaranteed that the upper class would continue to rule. This, however, was (as it turned out) only a short-run consequence. The long run is another story.

This brings me to the second pattern, which is democracy that comes from the outside in. In a word, imposed democracy. This is the democracy of Germany, Italy, and Japan. All of them were dictatorships in the 1930s, and expansive dictatorships at that. All of

them were roundly defeated in the Second World War. The United States, England, and France occupied what became West Germany, and imposed democratic forms on this part of the country. The German Basic Law was adopted in 1948-49, when West Germany was still under the control of the allies. There was no plebiscite in West Germany. Democracy was not an option; the occupying powers simply insisted on it. In Japan, perhaps the most extreme case, the American authorities drafted a constitution and essentially rammed it down the throats of the Japanese.² There is a certain irony here: the American occupation, headed by General MacArthur, had virtually dictatorial powers—which it used to create democratic forms.

There were, at the time, many people in the West who were skeptical as to whether these experiments in democracy would work. They doubted that democracy really had a future in these countries. Germany and Japan (they said) had no tradition of freedom and self-rule; did not understand it culturally, and would not easily accept it. These countries were used to a system of blind obedience to a leader or an Emperor. Yet time has proved these pessimists wrong. The imposed democracies have been, in fact, enormously successful. Perhaps the job took a generation or two.³ But both Germany and Japan, today, are mature democracies. They have free elections, freedom of speech, the press, and religion; their legal systems are efficient and respected, and the vast majority of their citizens vote for mainstream parties. It seems inconceivable that Germany, Italy, or Japan would ever revert to authoritarian government. But why, exactly, is this so? This is a question which we will try to answer later in this essay.

The American road to democracy followed a path which seems quite different from the two just described. It can be roughly labeled as a bottom-up development. The seeds of democracy were planted quite early, as early as the seventeenth century, when the first settlers established colonies on the Eastern Seaboard. They had no intention, to be sure, of setting up democratic government. Their tastes were, if anything, theocratic, especially in the Puritan colonies. The magistrates and clergy who ran the colonies controlled many aspects of life with a tight hand. But events overtook the settlements, and, in the process,

2. JOHN W. DOWER, *EMBRACING DEFEAT: JAPAN IN THE WAKE OF WORLD WAR II* 346-404 (1999).

3. G.R. Boynton & Gerhard Loewenberg, *The Development of Public Support for Parliament in Germany, 1951-59*, 3 BRIT. J. POL. SCI. 169, 170 (Apr. 1973). The authors state that, "Between 1951 and 1961, the proportion of the population favoring a single-party system to competitive parties was halved." There was "... a growth in public understanding of the new democratic regime and a rise in positive evaluations of it."

undermined authoritarian government.

The most important factor, perhaps, was the sheer abundance of land. From the standpoint of the white settlers, the supply of land—good land, fertile land—was endless; and it was almost free for the taking. To be sure, there were native tribes on much of the land; but the colonists paid, on the whole, little attention to their claims. They never conceded that the natives actually “owned” the land. Out of the brute fact of abundance of land, there developed a society markedly different from the societies of the Old World. America became a society in which average families and average households had a capital asset: a farm, a house, a shop.⁴ There were no landed gentry. The widespread ownership of land was already evident in the colonial period. There were, to be sure, many members of a landless class—indentured servants, for example. An indentured servant was a kind of temporary slave: he or she usually lived in the master’s house, received no wages, and could not quit work before the end of the term (often seven years). Moreover, the master could sell the servant, and the years remaining on his indenture, to another master.⁵ In the plantation south, the conditions of life (and land tenure) were somewhat more akin to the English situation than conditions in the northern and middle colonies. On the large plantations, African slaves made up the bulk of the work force.⁶ *Their* condition was permanent; and their children were also slaves.

Indentured servitude died out after the Revolutionary War.⁷ Slavery was abolished in the north; and never existed in the new states of the middle west.⁸ In the north and the middle west, and to a lesser degree, the south, average households owned a piece of land. As late as 1850, it was still true in England that a small group of landed gentry owned virtually all the land, living lives of luxury on the rents paid by thousands of tenant farmers. The typical Illinois family, on the other hand, owned his eighty acres of land, either free and clear, or subject to

4. See generally LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* (3rd ed. 2005).

5. See generally ABBOT EMERSON SMITH, *COLONISTS IN BONDAGE: WHITE SERVITUDE AND CONVICT LABOR IN AMERICA, 1607-1776*, 70-71 (1947).

6. Large estates on the Hudson, in upstate New York, were an exception to the norm of small, family farms in New England and the middle colonies. These estates, owned by “patroons,” whose tenants paid them a yearly rent, were a source of considerable unrest, and were eventually eliminated. See CHARLES W. MCCURDY, *THE ANTI-RENT ERA IN NEW YORK LAW AND POLITICS, 1839-1865* (2001).

7. ROBERT J. STEINFELD, *THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870*, at 11-12 (1991).

8. The Northwest Territory Ordinance (1787) prohibited slavery in the territory that later became Ohio, Indiana, Michigan, Illinois, and Wisconsin.

a mortgage. In addition, American government was radically decentralized. The United States Constitution had set up a federal system. The national government had limited powers, and the national capital, Washington, D.C., was an insignificant village. Most of the political activity took place in the states and in towns and cities. Many states clung, for a while, to property qualifications—only landowners or taxpayers could vote, but most male heads of household were already property-owners. Property qualifications began to decay in the Revolutionary period, and were “gradually dismantled after 1790.” By 1850, the property qualification was essentially gone.⁹ Our Illinois farmer had the right to vote; and he counted for something in his small community. The city laborer also had the right to vote, and to make his voice heard. America was, then, already a grass-roots democracy.

Of course, nowadays we look back at the nineteenth century with a much more jaundiced eye. We see the gross and glaring imperfections of American “democracy.” Women did not vote; married women, until about the middle of the nineteenth century, were not much better off, legally speaking, than infants and idiots. They could not control property, or enter into contracts. All economic power was in the hands of their husbands.¹⁰ Millions of African-Americans were slaves, without property, or rights, under the almost absolute control of their owners.¹¹ Free blacks, north and south, were treated everywhere as second-class citizens. Nowhere did they enjoy anything remotely like political or social equality. The treatment of the native peoples was shameful—and at times violent, and almost genocidal. Still, despite all of this, in the eyes of Americans themselves, America was a real democracy, a shining example of freedom and popular government. And most outside observers tended to agree. They obviously were not comparing America with what it would later become; they were comparing it to existing societies, especially European societies. To Europeans, America was a bold new experiment in government of the people, for the people, by the people. It was this aspect of American society that so fascinated observers like Alexis de Tocqueville. America, he thought, was pioneering a “great democratic revolution.”¹²

9. ALEXANDER KEYSSAR, *THE RIGHT TO VOTE: THE CONTESTED HISTORY OF DEMOCRACY IN THE UNITED STATES* 29 (2000); *see also id.* tables A.2 & A.3.

10. The change came with the adoption of the Married Women’s Property Acts; *see* LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 147 (3d ed. 2005).

11. *See generally* THOMAS D. MORRIS, *SOUTHERN SLAVERY AND THE LAW, 1619-1860* (1996).

12. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 9 (George Lawrence trans., J.P. Mayer ed., Doubleday 1969).

And in many ways, America, because of this history, and because of its land tenure system, its decentralization, and its egalitarian philosophy *was*, in fact, a pioneer in many aspects of what we would now consider democratic government. But, paradoxically, some of these same features would later act as impediments—if not to democracy, then to the modern welfare-regulatory state. Federalism, for example, was no friend to social welfare legislation. There was also no reform-minded, liberal civil service. This most democratic of countries has been, in many ways, a laggard in developing a state which provides for the poor, the sick, and the downtrodden. There is much more inequality, much more of a gap between rich and poor, than in many of the European democracies.

These, then, are three distinct patterns of development. Each has had its consequences, politically and socially. The three patterns almost certainly do not exhaust the historical possibilities. Surely there are features in the history of English-speaking colonies like Australia, New Zealand, and Canada that make these countries different both from the United States *and* from Great Britain. Perhaps colonies that became free when the old empires collapsed after the Second World War deserve to be put in their own category: India, for example, and the small countries of the Caribbean (Barbados, Jamaica, Trinidad). There also seem to be countries that became democratic more or less by diffusion; they modeled themselves after countries with long histories of democratic government. There may be countries that democratize under the influence of a powerful, nearby nation. Surely an interesting story can be told about such countries as Spain, and South Korea; Taiwan, perhaps; Greece and Portugal. The European Union, as it expands, insists on a commitment to democracy, from any country that wants to join the club. Its rules and requirements have had an influence on the countries of Eastern Europe that were knocking on the door. Still, in my view, all recent converts to democracy show the influence of cultural diffusion. Or, to put it another way, they show the results of a growing, world-wide culture of modernity—a culture which fosters democracy and the rule of law.

II. FORWARD MARCH

Each of the democratic countries, as I said, has had its own unique history; has traveled its own unique path. But if you put all of these paths together, I think some patterns emerge which are quite striking. The role of modernization, of modernity itself, seems to be decisive. It seems fair to say that five hundred years ago, no society on earth would qualify as “democratic,” under present standards. Perhaps none of them

even came close. Societies were ruled by kings and emperors, by oligarchs and tribal chiefs. Even as late as 1900, the club of democracies was exceedingly small. Even within this club, there were aspects, which were (by our lights) profoundly undemocratic—the place of women in society, for example. In 1900, in democratic America, or democratic Switzerland, women did not have the right to vote.

Since 1900, a great deal has changed. The march toward democratic rule in the twentieth century, of course, was dramatic, but it was hardly a smooth, linear development.¹³ The century included some of the worst, bloodiest, and most tyrannical dictatorships in human history, along with some of the worst examples of genocide and ethnic cleansing. This was the century of Hitler, Stalin, Mao Tse Tung and Pol Pot; the century of the rape of Nanking, the Holocaust, and the slaughter of innocents in Rwanda. Yet the difference between the status of world politics in 2000, and what world politics was like in 1900, is stark and dramatic. In 1900, the great European empires were at their height, or were perhaps still growing. Indeed, what we now consider the third world was a collection of colonies, ruled for the most part from some distant capital: London, Paris, or Lisbon. Buttressed by racist ideologies, the European powers saw no particular reason to grant the right of self-government to “primitive” people, savages, heathens. Even the United States had felt the imperial urge, and swallowed up remnants of the decaying Spanish empire.

Imperialism in its classic sense remained a strong force until about the middle of the twentieth century. Mussolini’s Italy felt cheated out of an empire. As far as he was concerned, this was excuse enough for him to conquer Albania, Libya, and Ethiopia. The Japanese were busy putting together their own empire in Asia. Both Taiwan and Korea were Japanese colonies. Hitler’s Germany swept over Europe, reducing smaller countries to vassals, over which Germany ruled with an iron fist.

Japan and Germany lost the Second World War. This cost the Japanese their empire. The Germans were forced to disgorge all of the territory they had conquered in Europe, and their own country was in part dismembered. Yet the winners of the war soon found themselves no better off, as far as their empires were concerned. The British and the French had to give up their colonies in Asia, Africa and elsewhere.

13. For example, Germany went from autocratic rule under the Kaiser to a more or less feeble democratic regime under the Weimar Republic. This was followed by Hitler and, after his downfall, democracy. Other countries that went from democracy to dictatorship to democracy again include Chile and Argentina.

The Dutch lost their grip on Indonesia. The Portuguese had to let go of Angola and Mozambique. All of the former colonies, with a few minor exceptions, became free and sovereign nations. Some of them also became successful democracies (many, alas, did not). The Soviet Union was the only country that gained territorially, and much of Eastern Europe fell under its influence. Yet, toward the end of the twentieth century, the Soviet Empire itself disintegrated. The fifteen republics that had made up the Soviet Union became independent, sovereign nations. Some of these, too, became democracies—very notably, the small Baltic States (others, especially in central Asia, did not). Russia lost its grip over Eastern Europe, which had been in a quasi-colonial situation, and democracy has blossomed in some of this area as well—in Poland, Hungary, and the Czech Republic. The German Democratic Republic dissolved, and was absorbed into democratic West Germany.

Over the last two generations, then, the march toward democratic rule has been steady, powerful, and seemingly irresistible, in many (but not all) parts of the world. In Western Europe, democracy became virtually universal. The remaining authoritarian governments, in Spain, Portugal, and Greece collapsed, and solid democracies replaced them. The story in Asia and Latin America is more complicated. In South America, countries like Chile, Argentina, Brazil, and Uruguay have shuttled in and out of the camp of the democracies. At present they seem fairly firmly ensconced there. Africa is a more tragic story, but a vibrant democracy exists in the Republic of South Africa; and there are signs of progress in a number of other African countries. Democracy is spreading in Asia as well. Taiwan and Korea have become true democracies and seem likely to remain that way. There are also quite a few countries with imperfect democracies, but which seem to be heading in a more democratic direction though slowly and unevenly. Even some countries which, in all honesty, we would have to label as half-democracies are engaged in struggles to make their governments more accountable, to strengthen the rule of law, and to strive toward stronger constitutional government. Mexico is a good example.¹⁴

14. See Rogelio Pérez-Perdomo & Lawrence Friedman, *Latin Legal Culture in the Age of Globalization*, ch. 1 in *LEGAL CULTURE IN THE AGE OF GLOBALIZATION: LATIN AMERICA AND LATIN EUROPE 1* (Lawrence Friedman & Rogelio Pérez-Perdomo eds. 2003) [hereinafter *LEGAL CULTURE*]; see also Maria Inés Bergoglio, *Argentina: The Effects of Democratic Institutionalization*, ch. 2 in *LEGAL CULTURE*, *supra*, at 20; Edmundo Fuenzalida Faivovich, *Law and Legal Culture in Chile, 1974-1999*, ch. 4 in *LEGAL CULTURE*, *supra*, at 108; and Sergio López-Ayllón & Héctor Fix-Fierro, "Faraway, So Close!" *The Rule of Law and Legal Change in Mexico, 1970-2000*, ch. 9 in *LEGAL CULTURE*, *supra*, at 285. Each of these essays portray countries struggling toward constitutional democracy.

A large part of the world still lives under conditions of autocracy. This includes China, the largest country of them all; it also includes Cuba, Vietnam, and Laos. It includes as well most of the countries in Africa. Some of these countries have gone backwards, and have suffered under truly awful dictators and satraps. The autocratic world includes almost all of the Middle East, from Morocco to the Arabian Peninsula, and beyond (for example, Pakistan). Iran holds periodic elections, but nobody could claim this country as a democracy. The fate of Iraq is very much an open question. Nonetheless, change in the twentieth century has been quite remarkable, and on the whole, has led in a single direction, though with many ups and downs. The world in the early twentieth-first century, as we said, is a very different place from the world a century before.

III. GLOBALIZATION AND ITS CONSEQUENCES

How can we explain this development? Obviously, there is no single factor that we can isolate and say: this is the cause. The expansion of the club of democratic societies is obviously the result of very complex processes. But a few basic facts seem clear. The fundamental fact is a process of cultural diffusion. And it is modernity itself that is diffused from society to society. "Modernity" of course means many things. It has its technological side, its political side, and its cultural side. Most basic of all, perhaps, is its psychological side: the growth of individualism. Whether individualism is the cause or the effect of modernity, or any of its aspects, is a difficult question—perhaps a chicken-and-egg question. In any event, it is a question we do not have to answer here. All that we are claiming here is that democracy is a byproduct of modernity and individualism; democracy results when the public, or some important part of the public, puts political pressure on governments, in societies that have modernized, and where modal personalities have developed along individualistic lines. The argument is also that these forces and pressures are common to the whole developed world. The argument is, in short, that there is a single *basic* culture of modernity;¹⁵ that this culture implies democracy; and that powerful technological forces spread this culture from one end of the globe to another.

That this is now a single, conjoined world, in terms of communication, is completely obvious. It is easy to see how ideas of

15. I have also argued that there is a single *legal* culture of modernity. Lawrence M. Friedman, *Is There a Modern Legal Culture?*, 7 *RATIO JURIS* 117 (1994).

democracy and the rule of law *can* be diffused from society to society technologically speaking. Nor are these ideas easy to resist. China, for example, tries to keep out alien ideas, to control the Internet, to censor the press; and so do many of the autocracies of the Middle East. But this job seems to be growing more difficult over time. We have to ask, however, *why* it is hard to stifle and censor. It was so simple in the past. Diffusion of democratic ideas needs an audience, needs a soil in which to grow. The diffusion, then, presupposes a pre-existing *culture* of human rights. It presupposes a world in which there are eyes willing to see, ears willing to hear, and brains willing to absorb. Globalization provides the fertile soil. This calls for a word of explanation.

First, with respect to that slippery term, “globalization.” The word is in constant use today; but often quite loosely. There are, to be sure, all sorts of definitions and explanations of globalization. The core notion is, in my view, often misunderstood. Many people think of globalization chiefly in economic terms—above all as a matter of international trade. They may also think about political and economic interconnections between nations; and about travel, tourism, emigration and immigration; about multi-national corporations, and the evaporation of borders and of sovereignty. All of these are important factors. But underlying all of them is something far more basic. Globalization, in essence, is a matter of culture.¹⁶ Modernity, we have argued, implies the development of a single world-wide culture. Globalization, too, is a result of modernity; it is a form, or adaptation, of that culture. The diffusion of ideas about democracy and the rule of law is only one example—an important example—of the diffusion of a global culture. The heart of the matter is the spread of habits, behavior patterns, desires and expectations, from country to country. This is more basic than the increase or spread of international trade, or the physical movement of peoples; and is, indeed, an important source of these vital modern processes.

But let me comment briefly about international trade. There has, of course, always been trade between nations and communities; there has always been an exchange of goods between different societies. In the past, though, world trade was, on the whole, asymmetrical. Some countries provided raw materials, which they shipped to other countries. Some countries manufactured finished products, which they traded with countries that had no capacity to produce those goods. Often, it was the case that rich countries bought raw materials, processed them, made

16. See Lawrence M. Friedman, *Erewhon: The Coming Global Legal Order*, 37 STAN. J. INT'L L. 347 (2001).

sophisticated goods, and then consumed those goods in the home country. To be sure, trade is still, and will always be, asymmetrical in certain regards. For example, Saudi Arabia has oil; Japan does not. Bananas, pineapples, and cocoa do not come from Poland. Gold, silver, and copper can be mined in some countries, and not in others. But most products can be, and are, produced anywhere; and then sold everywhere. People buy T-shirts from China, automobiles from Japan, cell-phones from Finland, and running shoes from Indonesia. Not one of these products depends on the location of mines or wells or raw materials, in general.¹⁷

What is even more striking is the globalization of *demand*. The Chinese do not simply make T-shirts; they also wear them. The Japanese make cars, and sell them all over the world (more and more, Japanese companies also *make* them all over the world); they also drive cars, as any observer of the clogged streets of Tokyo can attest. Modern technology—the automobiles, jet planes, and computers—are just as much at home in Seoul or Beijing as they are in New York or in Paris. People's shopping lists are amazingly similar all over the world. If they have money, they want the same goods. They want blue jeans; they want cell-phones, cars, color television sets, and CDs of rock-and-roll music. This similarity of desire is the very essence of globalization. And the similarity of wants and ambitions stems from an underlying similarity of mind-set; in short, a similarity of culture.

This phenomenon—cultural convergence—is visible, wherever one looks in the world, and most particularly in the developed countries of the world. This is egregiously so even if we take Japan as an example. Japan is an exceedingly rich country—the richest non-Western country (except perhaps for a few oil sheikdoms); it has a powerful, vibrant economy, and a standard of living which is the envy of most other countries. Japan is in the forefront of technology. Japanese electronics and Japanese cars are trend-setters all over the world. In Japan, one finds skyscrapers, high-speed trains, computers, cell phones, and all the other trappings of a modern, technological society. Yet among scholars, one sometimes finds the view that Japan is nonetheless essentially *different* from European or North American countries. The Japanese (they say) have modernized, on the outside; but

17. And, more and more, the same could be said about financial and other services. People in Japan can bank in Switzerland or the Cayman Islands. Nobody has figured out as yet how to globalize haircuts and carwashes; but American medical records can be read and analyzed in India, and American airline companies can shift their reservation offices overseas if they wish.

inside, they have never changed. Inside, they retain some sort of mystical essence, some core of Japanese-ness, which stubbornly persists, some national traits that survive in the face of the wild, swirling forces of the contemporary world.¹⁸

Differences between Japan and, say, France or the United States are certainly obvious even to the casual visitor. Yet if we compare Japan today with other developed countries, the similarities (I think) are much more striking than the differences. The tall buildings look like everybody else's tall buildings. The airports are like every other airport. People dress much the same as they do elsewhere in the developed world; people drag out their kimonos and robes, if at all, only for ceremonial occasions. Chairs and tables are replacing tatami mats. The Tokyo Symphony plays Mozart and Beethoven; the Tokyo teenager listens to rock and roll music, and sends text-messages to friends on the ubiquitous cell-phone. Western food is everywhere in the big cities—everything from fancy French restaurants, to MacDonald's and Kentucky Fried Chicken. Of course, the Japanese still eat great quantities of traditional Japanese food—sushi, for example. But Japanese cuisine has itself become globalized. Sushi is no longer something that only the Japanese like to eat. There is a sushi craze in Philadelphia, Caracas, or London. Sushi has jumped over borders, and now encircles the globe. It follows the path of many other foods—curry, bagels, pizza, or egg rolls—that were once associated with a single, national cuisine, and are now available almost everywhere.

Global culture is common to the whole Western world, to the whole developed world. It is also the culture of the middle class in third-world countries. And this global culture is not just food, buildings, technology, and consumer products. It is also a set of attitudes. These attitudes are the ones which lay the basis for the movement toward democracy. It is hard for me to accept the idea that the Japanese are really so different from the rest of the developed world, when they share so much of the technology, so many of the habits and attributes, of these other countries.

It is not easy to explain exactly what social forces brought about the cultural revolution which I have been describing. Obviously, there was no single cause. A whole cluster of factors and forces produced the modern world—the industrial, high-tech world we live in. These

18. On the relationship between Japanese culture and its legal order, *see generally* John O. Haley, *The Myth of the Reluctant Litigant*, 4 J. JAPANESE STUD. 359 (1978); *see also* FRANK K. UPHAM, *LAW AND SOCIAL CHANGE IN POSTWAR JAPAN* (Harvard University Press) (1987).

factors also produced modern culture. The mass media have played an especially important role in creating and spreading that culture. The mass media are among the most influential institutions of modern society. The story of their rise to prominence begins with the popular press; then, in the twentieth century, came radio, then the movies, then television and, more and more in this day and age, the Internet. There is an incredible wealth of words, images, ideas, and conversations on the World Wide Web. We are at the dawn of the Internet Age; but we can already see what a mighty force this medium is likely to become. On the Internet, one can find almost any message one wants, reach out to any group one wants, satisfy almost any taste one wishes to indulge, share messages with people in all parts of the world.

Meanwhile, television has been a particularly potent force in creating our contemporary world. Every middle-class home in the Western world has a television set; perhaps two or three. Indeed, in many countries, no home is so humble as to do without. Even in the third world, all except the most isolated villages have *some* access to television. Satellites make it possible, too, to beam news and images around the world in literally no time at all. By the end of the twentieth century, then, the modern media had greatly reduced the importance of time and distances—culturally speaking, they are almost meaningless. People all over the world watch funerals, coronations—and wars—in real time, as the events occur. But, more significantly, ideas and images circle the globe. The media has also gone a great way toward reducing cultural isolation. There are no longer any hermit kingdoms. No country is an island. Every country is connected to every other country.

The offerings on television are incredibly diverse. There are educational programs, weather programs, shows about crime and police, soap operas, ballets, televangelists, “reality” shows, channels with old movies, channels with new movies, and so on almost ad infinitum. And yet it is not too much of a stretch to say that a common theme underlies almost all of television. Television and the other media spread the message of modern individualism. Not that they do so explicitly, or intentionally. But this is nonetheless the message. Television advertising is a clear case of this underlying message. In most countries, television is awash with advertising. In general, nothing is more characteristic of modern capitalism, and modern society, than advertising. Advertising is everywhere: not only on television, but also in newspapers and magazines, on billboards, in buses and cabs, sometimes even in writing in the sky. Advertising quite consistently tells a story of individualism; and, indeed, of a particular kind of individualism, the type that has been called *expressive* individualism.

This is the notion that a person's main task in life is to develop the self, the personality; to find and develop those attitudes and behaviors conducive to self-realization.¹⁹

Advertising spreads this message. Advertising—whether on the air, in newspapers, or on the web—proclaims the same goals as expressive individualism. It hardly matters what product is advertised. The ads are directed at individuals, not families or groups; not tribes or clans. These messages tell people that they can be happier, richer, better, sexier; that they can have whiter teeth or cleaner clothes or cars that make other people drool. They send a message of self-improvement, a message about satisfaction of desires. Hence advertising—and the mass media in general—subvert traditional values and upends traditional societies. It does this even if the surface message makes exactly the opposite claim. The media also homogenize; they “weaken and then destroy the local and the traditional”; since these depend on “isolation, on the strength of primary groups,” the media “wreak havoc” among non-modern cultures; they flatten out speech-patterns, erode local dialects, and promote assimilation into the majority culture.²⁰

And television, as we said, is ubiquitous. Children are exposed to the magic box almost from the day of birth. Television—and, more and more, the computer and the Internet—rival the parents as teachers, models, and agents of socialization. The parental monopoly has been, in fact, broken. The child learns how to become an individual, a person, and not just a member of the family; and it learns this from the media. The family, indeed, becomes a kind of cocoon, from which the child must escape to become a mature adult. The family of origin turns into a stage of life, rather than a permanent and fixed institution, a life-long haven and protection. This process—the decay or dissolution of the traditional family—goes on in all developed countries, though at different rates and paces. Divorce and family break-ups have become more common almost everywhere. But there are other examples of the process of individuation. For example, in the United States, England, or Sweden, children almost always leave home when they grow up. An adult child, unmarried and living at home, is considered slightly odd. In Italy or Spain, it is still quite normal for grown children to live at home;

19. See generally ROBERT N. BELLAH ET AL., *HABITS OF THE HEART: INDIVIDUALISM AND COMMITMENT IN AMERICAN LIFE* (1985).

20. LAWRENCE M. FRIEDMAN, *THE REPUBLIC OF CHOICE: LAW, AUTHORITY, AND CULTURE* 204 (1990).

but the practice of leaving the nest is probably growing.²¹

It is possible that the modern culture of personality and consumption blossomed first in the United States. This was, after all, the “first country . . . to have an economy devoted to mass production,” the first “to create the mass consumer institutions and the mass consumer enticements that rose up . . . to market and sell the mass-produced goods.”²² This would be no surprise, since the conditions that produced democracy also appeared early in the United States, as we have argued. But the other countries have probably caught up by now. Perhaps Spain or Japan have been slower to absorb this culture than, say, Sweden or the United States. But the movement in all modern countries seems to be going in the same direction.

Individualism does more than undermine the power of the traditional family. It is an enemy of patriarchal authority in general. There seems little doubt that individualism sends a nation down the road to democracy. Or more accurately, it leads to a *demand* for democracy, for human rights, for a society and a climate in which the desires and the attitudes of the individual can be satisfied. Only a democracy is able, on the whole, to satisfy these demands—or at least to make the attempt. The spread of democracy—of the urge to *become* democratic—is one of the phenomena of recent history. Country after country has been influenced by this growing demand; country after country has gone through its democratic revolution, has opted for free elections, constitutions, and bills of rights; or have turned existing paper constitutions into reality. I have already mentioned the many examples: Germany and Japan; all of Western Europe; Poland, and the Baltic countries, among others. Democracy has been surging ahead in Latin America. It is a growing force in Asia. It seems secure in India, which proudly calls itself the world’s largest democracy, and in Korea and Taiwan; there has been ferment and change in other countries as well.

There are, to be sure, gross exceptions to the trend, as we have mentioned. Obviously, there are plenty of societies which try to stifle the democratic urge, and to hold back the forces that lead to it. They have had more or less success. Democracy and the rule of law have by no means conquered the globe. As we mentioned, China, the largest

21. LAWRENCE M. FRIEDMAN, *PRIVATE LIVES: FAMILIES, INDIVIDUALS AND THE LAW* 87 (2004). In 1994, 79% of men in their 20’s in Spain lived at home if they were unmarried; in the United Kingdom only 36% lived at home. See Constanza Tobio, *Marriage, Cohabitation and the Residential Independence of Young People in Spain*, 15 *Int’l J.L. Pol’y & Fam.* 68 (2001).

22. WILLIAM LEACH, *LAND OF DESIRE: MERCHANTS, POWER, AND THE RISE OF A NEW AMERICAN CULTURE* 11-12 (1993).

country in the world in terms of population, is also (so far) the largest exception to the rush toward democracy. Most of Africa, and most of the countries of the Islamic Middle East, seem to be stuck in a pre-modern, pre-democratic phase. Democracy in Russia is shaky at best; and in the former Soviet Republics, with a few exceptions, democracy is still struggling to find itself. Still, to most of us in the West, in the heartland of democracy, most people seem sure that government of the people and by the people is the only long-term option for a sovereign nation. We tend to assume that this is the end point toward which all governments should evolve, must evolve, and are in the process of evolving.²³

But is this really so? Nothing is more risky than trying to predict the future. Democracy has its enemies; and they are strong and implacable. It is not simply a matter of dictators trying to hold on to their power. There is also genuine grass-roots opposition. Religious fundamentalism seems to be on the march, most notably in Moslem countries, but elsewhere as well.²⁴ Some, not all, versions of fundamentalism find it hard to coexist with democracy and the rule of law. Religious fundamentalists in the United States by and large have no particular quarrel with democracy (although they do, in some ways, challenge the separation of church and state). In other countries, fundamentalists are less bashful in their battle with all aspects of modernity, including democratic rule. And they do battle, not in the way of the Amish, that is, by withdrawing from the modern world, and forming a small, closed society; rather, they boldly confront the modern world, and hope to destroy at least some aspects of that world.

Most Americans think that this is a war the other side cannot win. They think that autocracy is doomed. The regimes in Iran, or in China, simply cannot last. They count on modernity, the lure of the Internet, blue jeans, and movies, to overwhelm all the backward, anti-democratic forces. Certainly, this is a possible scenario for the future, perhaps even a likely one. Yet history is full of twists and turns. Nobody predicted the collapse of the Soviet empire. Nobody, really, predicted the rise and virulence of fundamentalist Islam; or, for that matter, of other world religions. Nobody predicted the strength of the Christian right-wing in

23. We also assume that democracy is good for all countries, and that it will bring peace and prosperity. *But see* AMY CHUA, *WORLD ON FIRE* (2003) arguing that in an important group of countries—those in which an ethnic minority is economically dominant—“free market democracy” can lead to violence and severe internal conflict.

24. For a (somewhat dated) overview, *see* *FUNDAMENTALISMS OBSERVED* (R. Scott Appleby & Martin E. Marty eds., 1991).

American politics. Nobody foresaw the “war on terror.” When the Soviet Union disintegrated, many people thought that China—or Cuba—would not be able to go on as in the past; that they would have to undergo radical change. So far, no such thing has happened.

Moreover, there are dangers, shadows on the horizon, even within the West. Democracy implies limits on the power of government. These limits, historically, have been both structural and cultural. The structural limitations include written constitutions, bills of rights, an independent judiciary, and the whole system of checks and balances. More subtly (but probably more crucially) in the developed countries, there is a cultural commitment to democracy and limited government; a commitment to respect human rights and human dignity (at least up to a point). But perhaps limited government, and checks and balances, depended on important technological limitations—limitations which were largely taken for granted. The modern media—expensive and powerful—open the way for regimes and conglomerates to manipulate public knowledge and belief in frightening and threatening ways. At least some people might see dangers to democracy in new structures of control over the media. The free-wheeling, Wild West world of the Internet is also, perhaps, under threat.²⁵

Or consider, for example, the sanctity of the home. Laws (about warrants, searches and seizures, and so on) expressed a policy that seemed to guarantee privacy and safety. A person’s home was his castle, and the state could not invade it, except when absolutely necessary, and when authorized by law. But the rules were devised for an age long before technology made it possible for the police to walk through the walls, so to speak. No legal rules about warrants and the like are truly effective, if there are devices that can listen to whispers a mile away, or unseen eyes that can watch and explore and invade.²⁶ The technology of Big Brother is not science-fiction; it is a plain and arrived fact. It remains to be seen if and how this technology will be used. Will there be sound, effective, workable controls? If not, it is hard to see how democracy can survive in the form we have grown to know and love, and in which we flourish.

25. See LAWRENCE LESSIG, *THE FUTURE OF IDEAS: THE FATE OF THE COMMONS IN A CONNECTED WORLD* (2001).

26. “New X-ray devices can see through people’s clothing, amounting to what some call a ‘virtual strip-search.’ Thermal sensors can detect movement and activity via heat patterns. . . . [P]arabolic microphones can record conversations at long distances. . . . Tracking devices can relay information about a person’s whereabouts. . . . Surveillance cameras have become ubiquitous.” Daniel J. Solove, *Reconstructing Electronic Surveillance Law*, 72 *GEO. WASH. L. REV.* 1264, 1265 (2004).