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# POLITICAL IDEOLOGY AS A RELIGION: THE IDOLATRY OF DEMOCRACY

MAXWELL O. CHIBUNDU\*

“So when they continued asking him, he lifted up himself, and said unto them, He that is without sin among you, let him first cast a stone at her.”<sup>1</sup>

## I. INTRODUCTION

Prior to September 11, 2001, the demarcating line between the rational “us” and the irrational “them” wound around the intelligibility of “nationalism.” The “ethno-nationalist” was portrayed as the modern-day barbarian: the irrational fanatic whose poisonous belief in the value of national identification must be eradicated if humankind is to be saved. In the wake of September 11, 2001, “nationalism” is being valued. In its stead, the religiously driven “Islamist suicide bomber” has become the poster child of fanaticism.<sup>2</sup> A committed zealot whose mindset reveals the inscrutable barbarism of an alien and incomprehensible culture, she is seen as exemplifying what is to be detested and to be feared about “Islamic fundamentalism.”<sup>3</sup> Yet, the earliest modern use of suicide bombings arose in the context of a civil war in which its use was to drive out outsiders rather than to communicate any religious message.<sup>4</sup> Elsewhere, it has been

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\* Professor, University of Maryland School of Law. The author thanks the editors of the journal, and, particularly, its Editor-in-Chief, Veronica R. Jennings, for providing him with the opportunity to reflect on the issues discussed in this essay, and for their editorial assistance. He also wishes to acknowledge the contributions to the essay of his participation in the 2006 University of Maryland “Constitutional Schmooze,” and he hereby wishes to express his especial thanks to Professor Mark Graber for organizing the Schmooze.

1. *John* 8:7 (King James).

2. The conventional wisdom is captured in Dan Eggen & Scott Wilson, *Suicide Bombs Potent Tools of Terrorists*, WASH. POST, July 17, 2005, at A1: “[u]nheard of only a few decades ago, suicide bombings have rapidly evolved into perhaps the most common method of terrorism in the world.”

3. As Gabriel Almond and others have pointed out, given its origins in the internecine conflict among American Christians, politicians and scientists on the question of evolution, “it is ironic that today, ‘fundamentalism’ is used most frequently to refer to Islamist movements.” See STRONG RELIGION: THE RISE OF FUNDAMENTALISMS AROUND THE WORLD 2 (Gabriel A. Almond, R. Scott Appleby & Emmanuel Sivan eds., 2003) [hereinafter STRONG RELIGION].

4. Hizb’allah (or “Hezbollah” (“Party of God”)), a contending faction in the Lebanese civil war, married the self-immolation of the suicide bomber with the by far much familiar car bomb to force the United States and France out of the Lebanese civil war. See, e.g., ROBERT

employed as a tool by Hindus and Sikhs seeking ethnic self-determination in political conflicts with dominant national groups.<sup>5</sup> The two theaters in which it has been most extensively deployed—the conflict between Palestinians and Israelis, and United States occupation of Iraq—are less wars about religion than they are of national identity and political autonomy. In short, the contemporary suicide bomber uses her tool as much for the pursuit of self-determination of her ethno-political identity as for religious purposes. She is involved, it would seem, in much the same quest and contest for political power as any participant in the modern struggle for control of the state.

In the post-9/11 world, the equation of terrorism with Islamic fundamentalism is, for many, as straightforward as it is unassailable. Invoking the mastermind of that event, Osama Bin Laden and his Al Qaeda organization—as the exemplar of modern terrorism, and the latter as the ultimate threat to Western civilization—it has become standard fare to argue that because these actors are fundamentalist Muslims, it follows that they have acted on behalf of fundamentalist or “extremist” Islam, which is said to pose a mortal threat to “Western” or “Judeo-Christian civilization.”<sup>6</sup> This argument is advanced even though Mr. Bin Laden’s grievances can and have been articulated in standard nationalist and secular terms.<sup>7</sup> But when more closely

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BAER, *SEE NO EVIL: THE TRUE STORY OF A GROUND SOLDIER IN THE CIA’S WAR ON TERRORISM* 66-67 (2003); MIR BLOOM, *DYING TO KILL: THE ALLURE OF SUICIDE TERROR* 1, 4 (2005).

5. *See, e.g.*, BLOOM, *supra* note 4, at 45 *et seq.* As Mike Davis puts it: “[s]uicide truck bombs, once the distinctive signature of Hezbollah, have been franchised to Sri Lanka, Chechnya/Russia, Turkey, Egypt, Kuwait and Indonesia.” *See* Mike Davis, *The Poor Man’s Air Force: A History of the Car Bomb*, TOMDISPATCH.COM, Apr. 12, 2006, <http://www.tomdispatch.com/index.mhtml?pid=76140>.

6. In recent months, both Prime Minister Blair of the United Kingdom and President Bush of the United States constantly have asserted that the use of terror represents an “ideology,” but neither leader has articulated with any specificity the content of the ideology. *See, e.g.*, Press Release, Office of the British Prime Minister, PM’s Press Conference (Aug. 5, 2005), *available at* <http://www.number10.gov.uk/output/Page8041.asp>; Prime Minister Tony Blair, Statement to United Nations Security Council on Terrorism (Sept. 14, 2005), *available at* <http://www.pm.gov.uk/output/Page8191.asp>; President George W. Bush, Remarks on the War on Terrorism at The Woodrow Wilson Center (Dec. 14, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/12/20051214-1.html>; President George W. Bush, Speech to the Naval Academy on the War on Terrorism (Nov. 30, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/11/20051130-2.html>.

7. For my development of this claim, see Maxwell O. Chibundu, *For God, For Country, For Universalism: Sovereignty as Solidarity in Our Age of Terror*, 56 FLA. L. REV. 883 (2004). My contention in that essay subsequently has been corroborated by the evidence adduced in United States courtrooms. Thus, the debriefing of Mr. Khalid Sheik Mohammed (purportedly the “mastermind” of the 9/11 attacks) by the U.S. Central Intelligence Agency

examined, what is in fact feared about the contemporary suicide bomber, car bomber, or indeed any “terrorist,” ultimately, is not so much her capacity to do harm as it is the belief that because of her complete and seemingly irrational commitment to a faith or cause that we do not understand, she cannot be reasoned with nor readily bought off. In short, it is at heart a fear of complete and unquestioning loyalty to religion, and “Islamic fundamentalism” is thus no more than a convenient representation of a deep-seated phenomenon.

Precisely what constitutes a religion, and how well does the “liberal” mindset understand the concept? We can of course tell differences among religions. There are the familiar and not-so-familiar doctrines, practices, and institutions by which we segregate religious denominations. More often than not, people simply self-select, and we respect their selection by according them the status of being members of one religion or another. But these do not define what is distinctive about religion or what separates religion from science or politics. A quite standard answer, I think, is that at heart, religion is about faith or dogma: the acceptance of a view that does not have to be sustained through empiricism, or persuasion through falsifiable evidence.<sup>8</sup> This answer is consistent with the liberal viewpoint that presents religion essentially as a private matter, or, at most, an assemblage of private matters. Individuals are free to believe whatever they choose to believe precisely because their belief is of little moment to society at large. “Fundamentalism,” by putting a belief system on a pedestal, thus threatens this perception of religion as a societally (if not socially) inconsequential matter of the heart that is best understood in individualistic terms. “Fundamentalist Islam” thus

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and introduced into evidence at the death penalty proceedings against Mr. Moussaoui, explains the 9/11 attacks as intended to “wake the American people up” to their government’s support of Israel’s occupation of Palestinian lands and of despotic Arab rulers. See The Reporters Committee for Freedom of the Press, *Moussaoui Trial Exhibits and Documents: Substitution for Testimony—Khalid Sheik Mohammed* (introduced as Defense Exhibit 0941, Mar. 28, 2006), available at <http://www.rcfp.org/moussaoui>. But see STRONG RELIGION, *supra* note 3, at 2 (asserting that “Bin Laden, working through his extensive al Qaeda network had engineered the [9/11] attacks as an act of a jihad, or holy war, against the United States and its allies”).

8. This is admittedly a much broader definition of religion than that espoused by those who wish to distinguish religion from science. Typically, these writers emphasize the distinction between “belief in a supernatural being,” which by definition is unverifiable, and acceptance of the validating processes of the “scientific” method of argumentation and refutation. See, e.g., DANIEL DINETT, *BREAKING THE SPELL: RELIGION AS A NATURAL PHENOMENON* (2006). It seems to me that the concept of a “supernatural being” may well be essential to the monotheistic religions of the West, but it is not necessarily so in non-Western belief systems.

is seen as a threat to a hitherto comfortable myth, and because it is from without, it appears less subject to being tamed or domesticated. But is not this a defeatist view of liberalism?

In matters of religion, humankind may be divided into three typologies. There are the believers, the non-believers and the agnostics. Believers inherit the truth: for them, conviction is a matter of faith. Non-believers, again on the basis of faith—or, more accurately, lack of conviction as to the particular subject matter of the faith in question—reject the received wisdom of the believer. They demand empirical validation, and insist on being persuaded through reason and verifiable evidence. A believer in one set of truths may of course be a non-believer with regard to a separate set of truths. What unites both is the certainty that the truths in which they believe necessarily must be accepted by all right-thinking people, and that to question such truth is to display apostasy. All believers are thus “universalists.”<sup>9</sup> Agnostics are indifferent about belief. They disdain participation in the game of faith or lack thereof. Unwilling to make any commitment one way or the other, they expect none in return. Like the believer and non-believer, an agnostic is not indifferent with regard to all matters, but gets off the fence from time to time to subscribe first to one set of faiths, or to denounce others. The agnostic is not a universalist. For her, all claims are provisional, that is, only good until a better truth comes along or the current belief is shown to be flawed. Lacking the certitude of faith, the agnostic, however skeptical about the basis for faith, is nonetheless deferential, if not outright respectful, of believers and non-believers and atheists alike. She is, as they say, a “relativist.”

Until quite recently, liberal political and philosophical thought,<sup>10</sup> like its cousin, industrial scientific thought, was firmly in the agnostic camp. This world view sometimes—but erroneously—termed “secular,”<sup>11</sup> was the product of a particular age and time.<sup>12</sup> It

9. There are of course among believers varying levels of commitment to any belief system, and “fundamentalism” is sometimes employed to indicate this variation. But whether acknowledged or not, any belief system that demands commitment on the basis of no more than faith is by definition “fundamentalist”; and as I shall argue in this essay, this view of fundamentalism is as true in the religion of politics as it is in orthodox religions.

10. The phrase is elucidated below. *See infra* Part III.

11. *See id.* for a discussion of “secularism” and “liberalism.”

12. There is of course a difference between the existence of a viewpoint and the claim that the viewpoint dominates. While contending here that the dominant classical liberal perspective as to religion may be agnostic, I am in no way disagreeing with Peter Berger’s assertion (which I endorse) that “the assumption that we live in a secularized world is false. The world today, with some exceptions . . . is as furiously religious as it ever was, and in some

now appears that we are at the end of its moment, an era that in the overall sweep of human history has actually been quite brief.<sup>13</sup> Ours is an age in which it is essential both to believe in substantive norms, and to proclaim those norms as truths that are superior and exclusive of all others. Contemporary liberal, political and philosophical thought thus is emerging as a religion, one that is not fundamentally different from other religions that have dominated human history—Hinduism, Judaism, Buddhism, Christianity and Islam being the best known. Modern Liberalism is in the midst of an epochal change, transforming a system of agnostic thought into a dogma, going down much the same path that Confucianism once took.<sup>14</sup> Elements of Liberal thought remain, but far from being agnostic about faith, neoliberalism now enshrines certain dogmas as pillars of society that need no empirical validation for their legitimation. This neoliberalism furnishes less a method of thinking through issues than a series of rehearsed dogmas, unquestioning adherence to which is essential for membership in the “community of civilized peoples.” Significantly, it now competes with other religious faiths, casting those with which it wishes to wage war as “fundamentalist,” much as Christianity and Islam have employed “apostasy” “blasphemy” and “heresy” as grounds for separating believers from those who would defile them.

This essay explores one area of liberalism’s move from agnosticism to theistic liberalism (or, as I shall sometimes refer to it, “neoliberalism”): namely, the deification of “democracy.” At its core is the thesis that neoliberalism’s invocation and treatment of the ideal of democracy is representative of a much broader phenomenon in neoliberal methodology: a tendency to convert ideals into dogmas. The approach is one that is not uncommon to successful religions, especially those grounded in monotheism and a Manichean world

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places more so than ever.” THE DESECULARIZATION OF THE WORLD: RESURGENT RELIGION AND WORLD POLITICS 2 (Peter L. Berger ed., 1999).

13. Among International Relations specialists, it is common to date the modern age of the state to the 1648 treaty of Westphalia. No similar precision exists in the dating of the concept of liberalism, but its rudimentary roots may be traced back to the same time period. It stumbled and flowered over the next century and a half, so that by the time of the French and American Revolutions, it was an identifiably coherent set of thoughts that, among other things, put the fate of the person in the hands of the individual rather than in a supernatural deity or an all-powerful divine monarch.

14. See, e.g., the entry on “Confucianism” in Wikipedia which points out that meritocracy had originally been a bureaucratic response to the demands of a fast-growing and centralizing state in the early Han Dynasty but in time became ritualized as an imperial religion and became embedded in the legal structures of the state. Wikipedia, *Confucianism: Meritocracy*, <http://en.wikipedia.org/wiki/Confucianism#Meritocracy> (as of Sept. 8, 2006, 23:23 GMT).

view. It identifies an admittedly desirable ideal, insists on its acceptance as necessary to human salvation, and discriminatorily excommunicates some who appear unwilling to subjugate their views to the decreed norm, while exempting others from its rigors. This essay contends that this neoliberal transformation represents a move from the status of the outsider uncomfortable with the exercise of political power and seeking to constrain its abuse to that of the insider thoroughly comfortable in its use and certainly unexercised about its abuse. Comprehending this transformation demands an understanding of the two very distinct ways in which the ideas of the liberal state and the ideas of fundamentalist religions engage each other. In the first, the state is viewed as a dispassionate peacemaker or an “honest broker” among competing religious interests. It takes no position on the substantive merit of religious claims, and indeed it expressly attempts to distance itself from being viewed as engaged in the perennial struggles of believers. The defense of this stance is rooted in the fact and appearance of procedural rectitude. In the second, the state partakes of the practices of religiosity, clothing itself in the aura of sociological exceptionalism that is central to religious faith. The state does not embrace any of the standard religions, but rather presents a potentially competing dogma of its own, a dogma that is rooted in a secular conception of substantive justice.

The essay first presents some vignettes that convey the contemporary conventional accounts of the conflicts between religious dogma and the mediating role of the liberal state. The vignettes suggest the strengths and limitations of the standard portraiture. Next, the essay describes the evolution of liberalism from the interaction of religion and state. This description in part explains the partial myth of the state as an honest and independent broker among competing religious impulses. But it also suggests why the liberal state has always had a direct and conflicting interest with the claims of religion. The essay goes on to introduce one of the cardinal dogmas of contemporary neoliberalism, “democracy.” It explores the ideological and institutional biases of the dogma and locates its entrenchment within the power politics of the post-Cold War neoliberal order. The final part of the essay seeks an explanation of the dogmatization of democracy by comparing the contemporary socio-political environment with the enlightenment age that spawned classical liberalism and launched the modern democratic era. Here, the focus of the essay is on demonstrating how unarbitrable faith proceeds from a flexible formula of dissent and experimentation. This essay suggests

that agnosticism can metamorphose into dogma when the agnostic obtains sufficient power to impose her views on others. “Fundamentalism” turns out to be less an alien attribute of outliers than a mainstay of a culture of comfort and certitude in received wisdom that is validated by the success that is found in the singularity of power. Neoliberalism now endows democracy with that mantle.

## II. CONTEMPORARY LIBERAL THOUGHT AND RELIGION: SOME VIGNETTES

To say that religion has presented significant challenges to liberalism as a mode of governance is to state the obvious. Yet, articulating the nature and scope of the challenge is not always easy. Much of what has been written about the intersection of religion and contemporary secular life focuses on the challenge that the former supposedly poses for the institutions of liberal democracy. There is no denying that conflict, but the excessive focus on it has shielded and obscured the changes in liberal theory that has made it increasingly more like the religion with which it ostensibly was at war. Because demonstrating this proposition comes up against a near unanimous conventional wisdom, it might be helpful to begin with what loosely can be called a “thought experiment.” Below, I present nine vignettes that, on their face, typify the conflicts in which liberalism supposedly stands out as a mediating and moderating influence on combative and fundamentalist religion. In reviewing these vignettes, I ask that you first record your instinctual preferences among the contending interests, then reflect on the nature of the conflicts and consider whether the conclusions that you arrive at mirror your instinctual reactions.

1. A familiar catechism found in the First Amendment of the United States Constitution at once prohibits the United States Congress—and by interpretive extension, all governments in the United States—from restricting the rights of individuals to freely express and practice their religious beliefs, and from extending support for any particular religious belief or practice.<sup>15</sup> As with all catechisms, some of its most interesting aspects deal less with its core prohibitions (mortal sins) than with symbolic violations (venial sins). Is the inclusion of the phrase “under God” in a routinized and pro forma

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15. U.S. CONST. amend. I.

incantation of the “Pledge of Allegiance” consistent with the prohibition on the establishment of religion?<sup>16</sup> Should it be allowed because it is an insignificant “nothing burger,” or denounced precisely because it trivializes religion?<sup>17</sup>

2. Islam requires that women be attired modestly.<sup>18</sup> Among orthodox practitioners of Islam, this has been construed as requiring that women cover themselves as completely as possible.<sup>19</sup> The wearing of the hijab, a distinctive head covering by Muslims, was outlawed recently in French primary and secondary schools on the ground that it conveyed a message of inferiority that is inconsistent with the secular personality of the state. But what is the “secular personality” of the state, and is it so fragile that the mere wearing of the hijab overthrows it, or is that personality so domineering that it must necessarily extinguish all competing allegiances including that of the religious believer in the Islamic faith?<sup>20</sup>

16. See *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1 (2004) (avoiding on grounds of lack of standing to decide whether the inclusion of the phrase “under God” in the Pledge of Allegiance recited by public school children interferes with the religious rights of child and parent). Compare *Lee v. Weisman*, 505 U.S. 577 (1992) (holding as unconstitutional the offering of “non-sectarian prayer” in an assembly of public school children).

17. A similar ambiguity is posed by challenges to the constitutionality of the placement of religious symbols in public places. Compare *McCreary County v. American Civil Liberties Union of Ky.*, 125 S. Ct. 2722 (2005) (striking down as constitutionally impermissible the display in county courthouse of the Ten Commandments because purpose of display was to “emphasize and celebrate the Commandments’ religious message”) with *Van Orden v. Perry*, 125 S. Ct. 2854 (2005) (finding that placement of monument inscribed with Ten Commandments on state ground was constitutionally permissible because while the Ten Commandments were undoubtedly religious, they also had undeniable historical meaning).

18. See HOLY QUR’AN 24:31, 33:59 (Muhammad M. Pickthall trans., Muslim World League 1977) (c. 1537-1538).

19. For an accessible discussion of the interpretive difficulties presented by this Qur’anic injunction, see the Wikipedia entry:

These injunctions may have been clear to the earliest Muslims, but their exact meaning is less clear to later Muslims. We do not know precisely what seventh century CE Arab men and women wore or what was then considered modest or immodest. How do these rules apply to Muslims in later times, in different societies, wearing different clothing?

Wikipedia, *Hijab*, <http://en.wikipedia.org/wiki/Hijab> (as of Sept. 7, 2006, 06:05 GMT).

20. See, e.g., Pierre Tevastian, *Banning the Hijab: Say No to Racial Discrimination*, LE MONDE DIPLOMATIQUE (Eng. Ed.), Feb. 2004 (arguing against the exclusion of Muslim girls from French schools for their wearing of the hijab); Henri Pena-Ruiz, *Banning the Hijab: Say Yes to a Secular France*, LE MONDE DIPLOMATIQUE (Eng. Ed.), Feb. 2004 (arguing that the prohibition of the wearing of the hijab is central to French secularism, which in turn is essential to the functioning of law and freedom in French society). The debate in France is not unlike that which attends issues of the “free exercise” of religion in the United States. While the “school prayer” cases question the capacity of the state to enfranchise the practice of religion in public places, the free exercise cases challenge the authority of the state to disenfranchise the private practice of religion. But since both involve essentially symbolic

3. In the immediate aftermath of the September 11, 2001 attacks on buildings in the United States by airplane hijackers, President Bush declared that the country would wage a “crusade” against those responsible for the attacks.<sup>21</sup> The choice of the term (assuming there was a choice)<sup>22</sup> has been roundly criticized for evoking a history of religious conflict between Islam and Christianity. On the other hand, the use of the term “jihad” in describing activities by Muslims is commonplace and generally unremarked about, even though its consequences may be just as pernicious.<sup>23</sup> Does this differential treatment symbolically express differences in the role of the state and of public officials in the treatment of Christian liberalism and Islamic fundamentalism, and if so, precisely what are the differences thus being expressed?

4. The widespread violence and bloodshed precipitated by the publication and dissemination in the mass media of lampoons of the founder of the Islamic faith have given rise to much commentary about the virtues and limits of symbolic speech within societies and across cultures.<sup>24</sup> It has generated extensive reflections about the

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public acts, no bright line can exist between the two claims. *Compare* Employment Div., Dept. of Human Res. of Or. v. Smith, 494 U.S. 872 (1990) (holding that practitioners of religion cannot be exempted from a general law that prohibits the use of a classified narcotic) *with* Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal, 126 S. Ct. 1211 (2006) (holding that practitioners of a religion validly may be exempted from laws that otherwise restrict the availability of a classified narcotic to the general public).

21. See President George W. Bush, Remarks upon Arrival at the White House South Lawn (Sept. 16, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010916-2.html>.

22. It is at least as probable that President Bush employed the term “crusade” without intending to express any particularized religious animus towards Islam. The term had been used in the context of the “war against communism” which had been at its apogee during President Bush’s formative years, and it is hardly inconceivable that the phrase may have sprung to his lips in a fleeting moment of attempted erudition as he got off his presidential helicopter.

23. See, e.g., Rone Tempest, *In Lodi Terror Case, Intent was the Clincher*, L.A. TIMES, May 1, 2006, at B1.

The government had no direct evidence. The confession was vague and even contradictory. And the statements about attacking American targets came only after heavy prompting from FBI interrogators. . . . In his closing comments to the jury, Assistant U.S. Atty. Robert Tice-Raskin summed it up: “Hamid Hayat had a jihadi heart and a jihadi mind.” That was the clincher for the jury, . . . [h]e now faces up to 39 years in prison.

*Id. Cf. Sentenced for Speaking*, WASH. POST, July 17, 2005, at B6 (editorializing, with regard to the imposition of a life sentence on a Muslim preacher charged solely with having preached a “jihad” against the United States and with no evidence of any one having acted on his suggestions that “life in prison for inciting a jihad that never got waged is excessive”).

24. See, e.g., Gerard Alexander, *Illiberal Europe: The Long and Growing List of Things You Can’t Legally Say*, THE WEEKLY STANDARD, Apr. 10, 2006, available at <http://www.weeklystandard.com/Content/Public/Articles/000/000/012/055sbhvq.asp?pg=1>;

appropriateness of “self-censorship” and “press responsibility” in handling “sensitive issues,” and “respect and tolerance” for the beliefs of others.<sup>25</sup> While for some the issue is simply the “democratic” right of the press to publish freely, and for others, the obligation of the majority to respect the religious preferences of minorities within their societies, it is fair to say that for a significant segment of the population, the question is why any state should bother to intrude into matters involving the caricatures of a long-dead male, religious or otherwise.

A classical liberal who disputes that there are foundational truths would be perfectly comfortable taking and defending any of the seemingly conflicting positions presented by these vignettes.<sup>26</sup> The issues that they raise, while symbolically important for the individual believer or non-believer, are not central to the liberal conflict between state and religion. The liberal state can hospitably provide a forum in which the various positions are aired, and as between these positions it can in fact maintain studied neutrality. This is so even with regard to the Pledge of Allegiance or the wearing of the hijab. Neither the permitting nor the denial of either practice essentially challenges the concept of the state as a political community. In short, while debaters may genuinely disagree about what value to assign to the words in the Pledge of Allegiance, to the term “crusade,” or even to the propriety of publishing derogatory cartoons of a revered Prophet, traversing the other side’s position should be no cause for social upheaval. For

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Jane Kramer, *The Dutch Model: Multiculturalism and Moslem Immigrants*, THE NEW YORKER, Apr. 3, 2006, at 6.

25. See, e.g., Flemming Rose, *Why I Published Those Cartoons*, WASH. POST, Feb. 19, 2006, at B1; Stanley Fish, *Our Faith in Letting It All Hang Out*, N.Y. TIMES, Feb. 12, 2006, at 15.

26. Two cases involving the use of chaplains to give benedictions to local legislative assemblies nicely illustrate the point. Here, the issue is not whether to compel immature juveniles to pray to an allegedly omniscient deity, but whether in offering prayers on behalf of full grown adults, the state can in fact circumscribe the religious identity of the person who may give the benediction and the content of the benediction. In *Simpson v. Chesterfield County Bd. of Supervisors*, 404 F.3d 276 (4th Cir. 2005), the appellate court rejected a complainant’s constitutional challenge of her exclusion from a list of persons who may offer “non-sectarian prayer” at meetings of the County Board of Supervisors. The list apparently was limited to ministers of the “Judaean-Christian” or other “monotheistic” faith. The complainant practiced the “Wiccan religion” or “witchcraft.” In seeming contrast, the District Court in *Hinrichs v. Bosma*, 400 F. Supp. 2d 1103 (S.D. Ind. 2005), enjoined the Indiana State House of Representatives from opening its sessions with prayer because the text of the prayers frequently were “too Christian.” These decisions clearly have symbolic value, but it is difficult to argue seriously that the fate of the republic in any way rides on which of the competing positions ultimately wins out—slippery slope and parade of horrible arguments notwithstanding.

believers and non-believers alike, the value of prevailing in these debates lies less in the recomposition of substantive social norms that might follow, and more in the symbolic social power that would be conveyed through the acceptance or rejection of their preferred position.<sup>27</sup> The state can maintain detachment from conflicts over the symbolic speech at stake, intruding only when necessary to assure that particular conduct does not threaten the peace and physical security of the members of the community. Put another way, the democratic process, coupled with whatever constitutional safeguards exist for protecting the interests of minorities within the community are sufficient to address the issues presented by these four vignettes. Contrast these situations with five others.

5. The United States (as indeed virtually all modern states) promises every child within its jurisdiction free primary education.<sup>28</sup> Its laws make this promise especially salient for children with “special needs.”<sup>29</sup> The First Amendment of its Constitution, as already alluded to, however, prohibits it from engaging in any actions that would interfere with either the “free exercise” of religion, or its “establishment.”<sup>30</sup> Which one of these prohibitions trumps where a disabled child seeks to obtain free education adapted to her needs in a parochial school? Is the state precluded from providing necessary supplemental assistance within this setting?<sup>31</sup>

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27. This is not to deny substantive consequences for specific individuals, nor to challenge—let alone demean—the depth and sincerity with which symbolic positions may be held. Thus one can grant that Mr. Newdow, like Mr. Fleming Rose of the *Jyllands-Posten*, and Mr. Mohammed Asaadi of the *Yemen Observer*, have experienced real and tangible hurt in taking and maintaining their positions on the Pledge of Allegiance or the right to publish cartoons of the Prophet Mohammed.

28. See, e.g., No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. 1425 (2002) (codified at 20 U.S.C. § 6301 *et seq.* (2005)). Cf. *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that the Equal Protection provision of the United States Constitution obligates states to provide to children who may have been brought into the country illegally public education on the same terms as it provides it to citizens and legal residents of the country).

29. See, e.g., Individuals With Disabilities Education Act, Pub. L. Nos. 91-230, Pub. L. No. 108-446, 118 Stat. 2647 (2004) (codified as amended at 20 U.S.C. § 1400 *et seq.* (2005)).

30. See, e.g., *Lemon v. Kurtzman*, 411 U.S. 192 (1973).

31. United States Supreme Court decisions have not been entirely unequivocal, but consistent with the arguments advanced here, the more recent decisions indicate a recognition of the special place that education has in the affairs of the polity, and a corresponding willingness to permit state funding assistance to and direction of educational services to the entire population regardless of the venue in which they are provided—public or parochial. See, e.g., *Zobrest v. Catalina Foothills Sch. Dist.* 509 U.S. 1 (1993) (holding that a public school district may be required, consistently with the United States Constitution, to provide an interpreter to a deaf student attending a church-sponsored school); *Agostini v. Felton*, 521 U.S. 203 (1997) (reversing its earlier position that had invalidated precisely such governmental assistance to disabled students in the parochial setting); *Mitchell v. Helms*, 530

6. To encourage private philanthropy, the United States exempts from taxation income derived by religious institutions.<sup>32</sup> In the wake of its “global war on terrorism,” the United States has adopted a policy of freezing financial transactions by institutions that it deems to be affiliated with “terrorists.”<sup>33</sup> The determination as to who constitutes a terrorist, and the evidence of affiliation, is shrouded in impenetrable secrecy.<sup>34</sup> What is to be said of this policy when all available evidence indicates that it has been applied solely to organizations affiliated with the Islamic faith?

7. The Islamic Resistance Movement—colloquially referred to as Hamas—recently won the right to form the government of the Palestinian territories on the West bank of the Jordan River and Gaza. It did so by obtaining the majority of seats in a duly organized election process that uniformly has been deemed to be “free and fair.”<sup>35</sup> In response, the so-called “quartet” of international persons—the European Union, Russia, the United Nations and the United States—has sought to deny it political and economic legitimation. They have thus insisted as the prelude to any possible dealings with a Hamas-led Palestinian Government that Hamas cease being a “terrorist organization,” renounce its subscription to the use of violence and revoke provisions in its charter that deny the “right” of Israel to exist as a state.<sup>36</sup> Among other arguments, this position has been supported in part by an argument that is of particular interest for the purpose of this essay. That argument, which has been advanced in other settings

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U.S. 793 (2000) (finding as constitutional government provision to parochial school of textbooks, and in the process overruling prior holdings to the contrary); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (holding that a state may, consistent with the United States Constitution, provide publicly funded vouchers to children attending religiously sponsored schools). Cf. *Bd. Ed. Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687 (1994) (striking down as unconstitutional state statute creating special school district for religious enclave for practitioners of strict form of Judaism).

32. See 26 U.S.C. § 501(c)(3) (2006).

33. See, e.g., 50 U.S.C.A. § 1702(a)(1)(C) (2006). Compare 18 U.S.C. § 2339B(a)(1) (2006) (criminalizing the making of contributions to a “foreign terrorist organization”).

34. See generally *People's Mojahedin Org. of Iran v. Dep't of State*, 327 F.3d 1238 (D.C. Cir. 2003). Cf. *How Not to Treat Friends*, WASH. POST, Apr. 28, 2006, at A18. (decrying the elasticity of the concept of “terrorism,” and pointing out that the “[m]isguided law now prevents the admission of a member or backer of any group of ‘two or more individuals’ that ‘engages in, or has a subgroup which engages in,’ activities as commonplace as using an ‘explosive, firearm or other weapon or dangerous device’”).

35. See, e.g., *So Sorry*, BALTIMORE SUN, Feb. 27, 2006, at 8 (“[t]he fact that Hamas came to power in a democratic election that the Bush administration pronounced free and fair undercut Ms. Rice’s pitch against funding a sponsor of terrorism”).

36. See, e.g., Herb Keinon, *Straw Softens Hamas Benchmarks*, JERUSALEM POST, Apr. 11, 2006, at 1.

that involve the possible accession to state power by so-called Islamic fundamentalists, contends that Islamic-based parties are by definition “theocratic,” and hence both illiberal and anti-democratic.<sup>37</sup> Even where such parties have permitted elections, as in Iran, such elections are dismissed as not being “democratic.”<sup>38</sup> But does liberalism permit—or, in fact, does it entail—this sort of religiously-grounded distinction within an otherwise acceptable practice?

8. Israel, self-referentially, is a “Jewish State,” and constantly wrestles with what is termed the “demographic problem,” that is, the possibility that the Jewish composition of the state falls below that necessary for the effective monopolization of power by the Jewish citizens of the state.<sup>39</sup> A polity whose ideals and institutions find expression within the ethos of classical liberalism, Israel nonetheless therefore discriminates explicitly among applicants for citizenship on the basis of their professed faith.<sup>40</sup> Jews, under the “Law of Return,”<sup>41</sup> regardless of their temporal or spatial connection to the state are entitled to citizenship on demand, while others are evaluated on criteria that are more restrictive of the grant of

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37. See, e.g., Gregory Fox & Georg Nolte, *Intolerant Democracies*, 35 HARV. INT’L L.J. 1 (1995); FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* (2003). Cf. Christian Pippan and Emile Noel Fellow, *Book Reviews*, 15 EUR. J. INT’L L. 213 (2004).

[T]he Constitutional Court of Turkey—a country whose population is overwhelmingly Muslim—has unequivocally declared . . . that the separation of state and religion was an indispensable condition of democracy and that the rules of Sharia were incompatible with a democratic regime. This view was shared by the European Court of Human Rights, which, in upholding the judgment of the Turkish Constitutional Court, noted that ‘it is difficult to declare one’s respect for democracy and human rights while at the same time supporting a regime based on Sharia,’ not least because ‘principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it.’

*Id.* (references omitted).

38. The assertion that because Iran is a “theocracy,” it cannot also be a “democracy” is commonplace, but virtually never explained. Underlying the claim appears to be the view that notwithstanding periodic elections for its political leadership, ultimate effective power resides in the country’s religious leadership. Compare Ali Khan, *A Theory of Universal Democracy*, 16 WISC. INT’L L. J. 61, 63-64 (1997).

39. See, e.g., Ilan Pappé, *Ingathering: On the Israeli Election and the ‘Demographic Problem’*, LONDON REVIEW OF BOOKS, Apr. 20, 2006, available at [http://www.lrb.co.uk/v28/n08/print/papp01\\_.html](http://www.lrb.co.uk/v28/n08/print/papp01_.html).

40. For a sympathetic account of the “moral conundrum” posed by the competing claims of Israel’s “democratic institutions” and the perceived need for ethno-religious identification, see Roger I. Zakheim, *Israel in the Human Rights Era: Finding a Moral Justification for the Jewish State*, 36 NYU J. INT’L L. & POL. 1005 (2004).

41. The Law of Return, <http://www.knesset.gov.il/laws/special/eng/return.htm>.

citizenship.<sup>42</sup> Can such religion-based discrimination be reconciled with liberalism?

9. In response to the events of September 11, 2001, the United States invaded Afghanistan and overthrew the theocratically-based Taliban government of the country. Together with its West European allies, it organized and installed an ostensibly liberal democratic constitution that demarcated power between the legislative, executive and judicial branches of government. The Constitution purports to guarantee to Afghans all of the usual panoply of human rights, including freedom of religion. At the same time, it provides that it shall not be interpreted in a manner that renders it inconsistent with principles of Islam. In a storybook challenge to this liberal reordering of a religious society, an Afghan convert to Christianity, in apparent consistency with the Afghan Constitution and laws, was put on trial for apostasy. The American president, himself an avowed born-again Christian whose basic mantra is that he would do anything to defend the American people, has been asked by his constituents to get the Afghan government to drop the charge. Do liberal virtues require deference to the Afghan Constitutional order, or is that order vitiated by its basis in religion?

These five examples pose a different kind of challenge to liberal thought than did the first four. The agnosticism of classical liberalism cannot be maintained in evaluating any of these latter situations. For, implicated in these later five cases is not the neutrality of liberal thought in evaluating and giving effect to the choices of citizens, but the identity of the state itself. In these situations, that identity is juxtaposed against religion. Liberalism may facilitate the negotiation that goes on between the state and religious institutions, but it is not itself a neutral participant. It is anchored squarely on the side of the state.

Thus, in a dispute between the authority of the state to assure the civil education of the citizen and its obligation to avoid discriminating among religious faiths, the state cannot take a neutral stance. Similarly, the type of citizens that ought to be preferred by Israel or the right of Palestinians to choose their own government cannot be subjugated to concerns over religious equity. In short, in these instances, what is at issue is nothing less than the identity of the

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42. See, e.g., Albert K. Wan, *Israel's Conflicted Existence as a Jewish Democratic State: Striking the Proper Balance Under the Citizenship and Entry Into Israel Law*, 29 BROOK. J. INT'L L. 1345 (2004).

state itself, not its capacity to act as an honest broker among competing intrastate interests.

Religious matters thus generate varied forms of state involvement. The liberal state can afford to maintain detached neutrality in some instances, and not in others. A liberal may well be able to maintain agnosticism when the state is called upon to arbitrate religiously-based disputes among its citizens, or even in conflict as to ideology between a religion and some aspect of state politics. But in matters involving the authority of the state to organize itself or to create its own identity, an agnostic stance is not available to the liberal thinker. Consider then the basis for your own personal reactions to the cases just presented. It is more likely, I think, that they were patterned after such criteria as your religious background, national origin or ancestry, or citizenship. If you are an American, you might find that vignettes one, five and six are more analogous than different, and that vignette three shares more in common with seven than it does with one. Similarly, a Christian or Muslim might find it easier to analogize vignettes one or two with six than the latter with five or seven; and many Palestinians and Israelis will probably disagree strongly that vignettes seven and eight share similarities worth embracing in the same discussion, and certainly not alongside vignette nine. But to what extent are your positions in fact driven by empirical evidence? How likely is it that those conclusions have been based on received biases which you are reluctant to subject to scrutiny, and equally reluctant to abandon even in the face of overwhelming evidence undercutting them? It is a measure of your acceptance of the claims of liberalism if you find yourself able to suppress some of these instinctual reactions in the face of contradictions generated by a reasoned evaluation of empirical evidence.

There is of course one sense in which the liberal viewpoint itself has always been a matter of faith. It is in its claim of the state as the organizing hierarchy of political life. For liberalism, belief in the state is fundamental. In that sense, all liberals are fundamentalists with regard to the state, even if they are agnostic about the supernatural and religious deism. In all of the examples presented above, the articulated problems arise only against a backdrop in which the state functions as the source of legitimating authority. As a pragmatist and a lawyer, I can find justification for this position in the raw material of my profession—legal decisions and academic articles—but the vast majority of humanity are not lawyers, and as difficult as it may be to imagine, most of humanity function with little

explicit realization of the overwhelming influence that the state has on their lives. But they are willing to accept (that is to say, in the parlance of academic disciplines, “legitimize”) the state as long as it functions effectively to provide and secure their needs for safety and happiness.<sup>43</sup> While it is therefore possible to justify the belief in the state as part of a utilitarian calculus, for the vast majority of humanity, “patriotism” and “nationalism” have often been demonstrations of faith rather than logic. In contemporary liberal societies, another idea increasingly is being presented as a dogma. Hitherto a second-order principle—“democracy”—is now being trumpeted as a right of humanity, the objective legitimacy of which must be deemed beyond cavil. It is this rise of “democracy” to the pantheon of an infallible deity that this essay examines. And in discussing the issue, I invite you to examine the extent to which your belief in it is in any meaningful sense different from the reactions that you had to the thought experiments just presented.

### III. POLITICS AND RELIGION

Political power and religion have always been closely related, and understandably so. The former consists in the capacity of a handful of persons to command obedience from the populace. Wealth, might, and charisma have been essential assets for the acquisition of political power, but maintaining such power on the bases of these assets alone can be remarkably costly. Of vital importance, therefore, also has been the need that the obedience to political power be seen as natural or preordained. In contemporary parlance, the obedience must flow instinctively from a felt sense of the legitimacy of the source of the power.<sup>44</sup> Until the enlightenment period, religion typically furnished the authoritative basis for such legitimation of state power. Rulers who otherwise possessed the other sources of power supplicated to those in possession of religious authority, while those in religious authority often used their capacity to confer legitimation to obtain some or all of the other sources of political power.

From Sumeria to Egypt to Rome and Byzantium, and the middling kingdoms and empires in-between, human history, and

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43. Compare THOMAS HOBBS, *LEVIATHAN* (J.C.A. Gaskin ed., Oxford Univ. Press 1996) (1652).

44. See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L L. 46 (1992).

certainly that part of it we now call Western civilization, the close intertwining of the struggles for political power and for religious authority, was the essence of socio-political history. One of the seminal achievements of European enlightenment, to which liberalism is an offspring, was the successful delinking of the spheres of political and religious power. This does not mean that the struggle for both were no longer related, but Europe's enlightenment assured that victory in the one, however complete, did not automatically result in domination over the other. In place of religion, the sanctification of state political power was to be grounded on human agency. Popular sovereignty was the quintessence of such grounding, but it was not unique: legal positivism, the dictatorship of the proletariat, national fascism, and democracy all derive from this basic core.

Liberalism was a primary tool in the enlightenment's creation of an effective disjuncture between power over the sacred and power over the mundane life of individuals. The emergence of liberalism in Europe was contingent on the prolonged conflict between the church and the numerous suzerains and princes that dotted the European political landscape. This conflict became especially pronounced following the end of the fourth crusade, and the fall of Constantinople. In the Reformation, the divisions within church doctrine could no longer be patched up, and the essential benediction of the church for the exercise of power became all too obviously dispensable. The ability of princes and merchants to acquire wealth through conquest of and commercial intercourse with lands and peoples outside of the established territories of Christendom—primarily in the Americas and East Asia—provided them an independent source of power that was not automatically associated with legitimation through the church. It was in this environment that liberalism emerged to offer an alternative basis for the legitimation of the authority of the state. And this alternative took about three centuries to gain anything approximating ascendancy.

Liberalism, and particularly its separation from the religious dogma of rulership as a right conferred by a sacred divinity, did not of course emerge as a full-blown theory of politics. In the work of Jean Bodin, a French political thinker of the sixteenth century, its rudiments are evident. Where orthodox religion sought to regulate all aspects of human life, state (or sovereign) power was to be limited to the public sphere. But if state power is not coextensive with religious power, and if it thus can no longer be legitimated solely through the processes of confirmation by religious edicts, from where does the authority of the

ruler flow? Bodin was not precisely clear, but he did lock onto the idea of sovereignty as power whose exercise is limited to the public sphere, even if absolute within that sphere. Individuals in their private life thus were not subject to sovereign authority, even if that authority emanated from divinity.<sup>45</sup> This mystical conception of sovereignty was clarified three quarters of a century later in the work of Thomas Hobbes. For Hobbes, sovereignty flowed from the voluntary giving up by individuals of their natural rights in exchange for protection by the sovereign.<sup>46</sup> This contractarian view of the concept of the relationship between the population and their rulers rapidly gained ascendancy in Europe. It is at the heart of the work of the so-called social contract theorists ranging from Locke to Rousseau to Rawls. Alongside them were those who built its structural edifices, notably Montesquieu, Bentham and Austin. This latter group focused less on theorizing the sources and justifications of the exercise of legitimate authority, than on fashioning those institutions that, whatever the source of sovereignty, effectively confined it within its legitimate bounds. But whether one focuses on the ideas of sovereignty or on the institutions that check sovereignty, we find in both the essence of “popular sovereignty”: a concept that is in its own right as mystical and based on religious faith as are the notions of trinity and arianism.

The idea of “popular sovereignty” has given rise to a legion of offspring. Concepts as readily distinguishable—and indeed frequently in conflict—as the amorphous and freewheeling chants of “liberté, égalité et fraternité” of the French Revolution, the “unalienable rights” and “ordered liberty” of the American Constitution, A.V. Dicey’s “English rule of law,” Marxist-Leninist concept of the proletarian revolution, Wilsonian “self-determination,” Mussolini’s and Hitler’s “national socialism,” and post-World War II decolonization and national liberation movements all have significant credible bases for claiming descent from liberalism’s notion of popular sovereignty, as does, of course, “democracy.” What distinguishes these from each other is less their ideological pedigree than the institutions through which the ideology is to be achieved. Moreover, all of these concepts were second-order products of the liberal principle. They were each subject to the overweening influence, indeed power, of the state, which remained supreme and stood above them all. In fact, they engaged in conflict with each other over control of the institutions with which the

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45. See generally JEAN BODIN, *SIX BOOKS OF THE COMMONWEALTH* (M.J. Tooley ed., Blackwell 1955) (1576).

46. See generally HOBBS, *supra* note 43.

state exercised its power. What distinguishes neoliberalism from classical liberalism may well be the success of the former in enshrining “democracy” as a singular principle that is at least on par with the idea of the state itself. That success, I shall explain, flows less from the inherent virtue of the idea than the possession of military and economic might by those who preach it. And not surprisingly, the idea in turn has been subverted to reinforce the entrenchment and perpetuation of that military might and economic wealth: a reinforcing relationship of dogma and power that should be familiar to the sociologist of power.

I shall shortly explore in some depth this contemporary infatuation with “democracy” not only as an ideal form of governance, but also as its sole legitimate incarnation. But before addressing the merits of that argument, a collateral claim is worth considering, however briefly, for it has some resonance for the contemporary debate on the place of “Islamic fundamentalism” and “Christian liberalism.” The collateral issue is why “secular liberalism” succeeded in overthrowing “orthodox religion” as the legitimating principle of the “modern” (that is to say “Western”) state. The commonplace wisdom that underlies the current insistence on the universalization of liberal ideals is that the philosophical underpinnings of liberalism, and therefore the primacy of value that it places on the autonomy and freedom of the individual and of tolerance for divergent perspectives and personalities,<sup>47</sup> make it morally superior to religious ideals. In its flexibility, liberalism permits those with religious ideals to realize them within the framework of the state, while religion does not. Like any commonplace wisdom, the claim is not lacking in some factual basis, but it is overstated and reverses the causal order. Besides, it understates the instrumental relationship between the material efficacy of a governing order and its legitimation.

As a demonstrable historical matter, liberalism did not create the modern state; rather, if a complex relationship is to be simplified, the modern state (including its opponents) created liberalism. The modern state was (and indeed continues to be) as much the product of technological advances—in agriculture, communication and transportation—as it was the instantiation of any normative order, religious or secular. That the modern state first arrived in Europe and grew along with European expansion reflected Europe’s strengths in mastering the science and technologies of these basic human activities.

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47. These arguments most recently have been powerfully developed by KWAME ANTHONY APPIAH, *THE ETHICS OF IDENTITY* (2005).

Europe's capabilities may have been influenced by its religious norms, but these preceded the emergence of liberalism. And, indeed, it is doubtful that the particular climate of religiosity in Europe itself was decisive in giving Europe its preeminent place in science and technology. What is clear is that the roots of the modern state and, with it, Europe's ascendancy as the most powerful aggregation of economic, commercial and political interests, derive from its scientific prowess, and that the cultural hegemony symbolized in "liberalism" and "democracy" is the product rather than the cause of that ascendancy.<sup>48</sup>

In one of those wonderful confluences of history, much of the contemporary discussions about Islam and Christianity, the European and Muslim worlds, the state and religion, American might and Arab weakness, harkens to a symbolic moment of encounter in the past: the year 1492. The so-called "expulsion" of the Moors from Western Europe coincided with the "discovery" of America, an event that was the fruition of advances in maritime technologies and sciences. The "discovery" and the economic returns that it engendered unleashed fierce competition among European powers: Spain and Portugal, the United Provinces of Holland and the United Kingdom, The United Kingdom and France. Some of the competition, such as those between Holland and Portugal in South East Asia, or between France and England in North America, were cast in religious terms – Catholic Portugal against Protestant Holland, for example – but religion was hardly dispositive. After all, Protestant Britain and Holland were just as likely to be in competition with each other as with Catholic France and Spain. What is indisputable is that this pervasive sense of competition among the subjects and on behalf of territorial sovereigns and lieges spurred the emergence of the modern state alongside quantum leaps in scientific knowledge. The fiercest of the competition, however, took place within continental Europe. Competition among the city states of the Italian peninsular and the Germanic duchies and principalities of the disintegrating Holy Roman Empire greatly influenced advances in the political and physical sciences. It was this cauldron that gave birth to the modern state. As Hobbes aptly put it, the state or "leviathan" was necessary to counter

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48. I have developed these ideas elsewhere, and those interested in more than the barebones presentation that I sketch here will find them detailed in Maxwell O. Chibundu, *The Other in International Law: 'Community' and International Legal Order* (Univ. of Md. Sch. of Law Pub. Law and Legal Theory Working Paper, No. 2004-03, 2004), available at <http://ssrn.com/abstract=504782>.

and order a life that otherwise would be “solitary, poore, nasty, brutish, and short.”<sup>49</sup>

The “enlightenment” produced prototypes of liberal political thought, but it was also the age of science, industry and commerce. Although not unrelated, these latter were demonstrably more instrumental in shaping the nature and character of the state and society than was liberal political thought. Commerce led to the emergence of a middle-class that in turn invested heavily in science and industry. As this class grew to be influential, it found its voice in the publications of newspapers and pamphlets, which the ruling monarchs, aristocrats and their clerical supporters then sought to suppress. Freedom of speech and of the press, two liberal philosophical icons, instrumentally emerged to support the nascent bourgeois class. But liberalism remained an obscure philosophy espoused by a small group of highly educated persons.

The refrains of “liberty” and “equality,” mimed in the French revolution and its anticlerical bias and worship of reason, may have suggested the arrival of liberalism at the epitome of political power, but the excesses of the Terror and Imperial Wars of Napoleon Bonaparte produced counterforces that continued the marginalization of liberalism as the legitimate source of political power in Europe over the next century. Indeed, it took two world wars and the total defeat of fascism on the one hand, and the Cold War and the collapse of communism on the other, for liberalism to assert itself as the unchallenged ruling political doctrine that it has become. Liberalism has thus prevailed as much through the military might of those governments that espouse it as by the inherent internal logic of its underpinning norms. It is of course quite possible that in these armed conflicts, the liberal governments owed their successes to the internal strengths of liberalism, but this is at least a debatable proposition, and one that is not commonly put forward as support for the spread of liberalism. Secular liberalism has thus triumphed over fundamentalist religion not because of any intrinsic superior worth, but because those who have sought legitimation through it have been on the ascendancy in military and economic power.

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49. See HOBBS, *supra* note 43, at ch. 8.

## IV. THE DEMOCRATIC IDEAL AND THE TRIUMPH OF NEOLIBERALISM

The term “democracy” is now bandied around with the same deceptive self-assurance of its unproblematic meaning that was once the lot of such other cultural icons as “progressive,” “modern,” “civilized,” and even “liberal.” And like those terms, its use is more often than not intended to obfuscate rather than to clarify—to put beyond discussion rather than to explain.<sup>50</sup> To the extent that the term is intended to embrace the rule of the people that is connoted by its Greek root, it shares the pedigree of numerous other political ideals based on the concept of “popular sovereignty.” But to the extent that democracy is intended to idealize the accountability of rulers to the governed, it has no greater claim to legitimacy than Jacobinism or Marxist-Leninism.

The legitimacy conferred by “democracy” flows not from its recognition of the ideal of the embodiment of supreme and ultimate authority in “the people,” as it does from the legitimation of the particular institutions that it has fashioned to shape and direct the participation of the people in assuring that accountability.<sup>51</sup> In particular, “democracy” relies on periodic elections that are grounded on rational deliberative processes rather than on haphazard assertions of power by the general populace, whether the latter be through mass mobilizations, street demonstrations or union strikes.<sup>52</sup> Although it is now common to layer democracy with such additional baggage as

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50. The rhetorical usage amounts to little more than that we, our friends and those for whom we have some admiration, are considered “democratic.” They, the other, and those for whom we have no respect, are not “democracies.”

51. To say that democracy embodies accountability is not to say that democratic leaders necessarily take personal responsibility for their conduct. Indeed, there is a pronounced difference among democratic societies on the willingness of their leaders to accept such accountability. Presidential or executive systems with fixed terms of office such as those of the United States are notoriously adept at evading the taxing of the leaders with responsibility for flawed policies, even as they tout their authorship of successful ones. Parliamentary systems with collective and shared leadership such as those of the Westminster style are more likely to accept responsibility for failed policies, but the consequences of accountability in such cases tend to be personal rather than systemic.

52. Here, I use the term “deliberative democracy” in a more expansive sense than that in which it is employed by contemporary political scientists. For my purposes, all that is intended by the term is that a voter acts on the basis of considered information that is communicated expressly for the purpose of influencing the voter’s decision. For this perspective, the reader may substitute “consideration” for “deliberation.” Compare e.g., Joshua Cohen, *Deliberation and Democratic Legitimacy*, in *THE GOOD POLITY* 17 (A. Hamelin and P. Pettit eds., 1989) (“By a deliberative democracy, I shall mean, roughly, an association whose affairs are governed by the public deliberation of its members.”). This has been read by some to require active face-to-face conversations that mimic essentially the New England town meetings of old.

“rule of law,” and “human rights,” these are neither intrinsic to democracy, nor are they necessarily exclusive to “democratic societies.” They are as much post hoc rationalizations for claiming the superiority of democracy as they are foundations for democracy. That they are seen to be integral to democracy merely reveals the dogmatism that now attends the concept. All that is genuinely distinctive about democracy is that rulers and policies periodically must be submitted to the general public for their sanction or disapprobation.<sup>53</sup> Beyond this feature much of what is now taken for granted as integral to democracies—e.g., “judicial review,” “separation of powers,” “human rights,” and “the free market,” to name some of the most conspicuously touted—are no more than encrustations that may or may not improve upon the system.

However, even if democracy is narrowly and properly understood for what it genuinely is, a means for periodically asserting and for reaffirming the control of the population over their governance, it remains a powerful legitimating tool. It assures that rulers are made accountable for their past conduct, and it gives to the ruled the opportunity to shape their future. The importance of these features of government can be overstated only by ignoring the vast history of cruelty and exploitation that preceded the emergence of democratic rule. Indeed, the history of democracy itself shows how grudgingly rulers acceded to being held accountable and to have those whom they rule set the course for the future. Even after the recognition and acceptance of the moral and legal grounding for democratic participation in governance, the extension of that participation was frequently confined to the most powerful members of society. “Universal suffrage” became a more or less accepted norm only well into the twentieth century, and even within this sphere, many societies, including those that most vociferously trumpet their democratic credentials, continue to find grounds for excluding substantial swaths of their population from exercising the franchise.<sup>54</sup>

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53. It should be noted here that this definition only requires periodic submission of persons and/or policies for popular approval. Participation rates by the population in the approbation or disapprobation process is not a factor in deciding whether a society is or is not “democratic,” although it may say a good deal about the health of the “democracy”—as is the fact that in many contemporary “democratic societies”—including the United States—family dynasties and other aristocratic and oligarchic structures are quite prevalent.

54. Differences on account of the criteria reflected in the title to this journal—race/color, religion, gender, citizenship/ethnicity/nationality, have been standard bearers of such exclusion. Cf. U.S. CONST. amend. XV. In numerous societies, blood—rather than place of birth or residence continue to dictate membership within the political community. See, e.g., Amartya Sen, *Democracy and Its Global Roots*, NEW REPUBLIC, Oct. 6, 2003, at 28.

In the United States, for example, significant members of the society, especially black males, are prevented from having a say in how they are governed because prisoners and ex-convicts are denied the franchise.<sup>55</sup> Similarly, residents of the United States, regardless of how long they have resided here, are given no say in their governance, or how their tax money is spent, simply because they are not “citizens.”<sup>56</sup>

An equally substantial practical challenge to the ideal of democracy is embedded in its theme as a deliberative or discursive process. Precisely because democracy, if it is to function as a reliable instrument for assuring accountability, demands intelligent communication among participants, the necessary canvassing that it entails can only be satisfied through large expenditures of capital and time. The availability of capital, or at least the capacity to raise it, creates a substantial barrier to the intelligent exercise of the franchise. The point here is that regardless of the merits of an argument, the intensity with which viewpoints are held, or the nature of the community values at stake, the capacity of individuals to meaningfully dictate their future frequently hinges on their access to capital. Despite the frequently invoked incantation of “one man one vote,” and the egalitarian impulses of contemporary political societies, there is in fact no necessary correlation between democracy as an abstract proposition, and the material equality of all participants. It is hardly surprising then that access to finance is the most influential factor in deciding outcomes in democratic elections. Its importance is highlighted by the pervasiveness of financially-related misfeasance—indeed outright corruption—that has characterized the electoral process in the much-vaunted democracies. From the United States to the United Kingdom, France and Italy, questionable practices in the raising and use of financial capital to obtain political power and

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55. See, e.g., Pamela S. Karlan, *Convictions and Doubts: Retribution, Representation and the Debate over Felon Disenfranchisement*, 56 STAN. L. REV. 1147 (2004).

56. But it should be noted here that this defect is not intrinsic in the concept of democratic rule. The decisions of a polity have as much direct bearings on resident non-citizens as they do on non-resident citizens; yet, polities differ significantly on whether to extend the suffrage to either or both of these classes. My primary interest, however, is in the complete exclusion of non-citizens from the suffrage, even though there are very few policies whose effects are in fact coextensive with the political jurisdiction taking the decision. Thus, American voters have had a good deal more to say about the lives of Iraqis in the last three years than have Iraqis about their own lives.

influence are firmly embedded in the structures of the “democratic process.”<sup>57</sup>

Nor do the pedigrees of modern democracies bear out the norm of peaceably negotiated political arrangements among pluralist groupings. Far from it. The United Kingdom House of Commons which, by any measure, genuinely deserves its sobriquet as “the mother of parliaments” gained ascendancy over the governance of the United Kingdom only after prolonged civil wars that resulted in, among other things, the beheading of a king and the punishment of many of those who had been involved in that “regicide.” French democracy may have its wellspring in the Revolution of 1789, but it took the humiliation of France by Prussia in 1871 to enshrine in practice the norms of the Revolution. And the 1789 revolution itself was characterized less by the practice of democracy than by that of the reign of terror, and the imposition over much of Europe of imperial Bonapartism. Americans, of course, like to believe that theirs is the complete and authentic democratic society with two centuries of occasionally polluted but otherwise progressive politics behind it. But while the country may have avoided the extreme form of the English practice of conditioning participation in the democratic process on the basis of property holdings, it engaged in the disenfranchisement of significant sections of the population on other grounds, notably race and alienage. It took a bloody civil war, and the passage of a Voting Rights Act a full century after the end of that war, for the democratic process in the country to approach anything that approximated fair representation of the general population in its democratic processes and institutions. In short, democratic participation in all of these societies was the product of prolonged and always bloody conflict, not the sublime enactment of moral preferences.

If the paths to democracy by these three societies were strewn with violence and retreats, those for other societies were even less predictable. The German experience has been in fits and starts, and like Japan and Italy, its current form is as much the product of the exigencies of defeat in warfare as it is of belief in the intrinsic virtues of the democratic system. As for former colonial societies in Africa and Asia, these states, cobbled together for the convenience of European powers, have been expected to adopt and implement overnight systems of governance that it took Europeans centuries of experimentation, failure and bloodshed to fashion. Not surprisingly,

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57. To invoke such names as Jack Abramoff, Peter Mandelson, Roland Dumas and Silvio Berlusconi is only to hint at the systemic sweep of the phenomenon.

many of them have not lived up to this expectation.<sup>58</sup> But rather than empathize with their difficulties, academics, mass media pundits and politicians, comfortably ensconced in the cocoons and redoubts of their tenured positions or gerrymandered dynastic electoral districts, sermonize about the inhumanities of the rulers of these societies, proclaim democracy as the unfailing panacea for their ills, and bluntly urge that military and economic might be deployed to bring about democratic revolutions in those non-democratic societies. But even the most cursory of reflections on the democratization process readily discloses that democratic institutions emerge as an integral part of the process by which societies create and replicate themselves. In no society have the institutions of democratic rule emerged overnight and independently of other social forces within that society.

These histories notwithstanding, rule by democracy is now presented as a moral absolute. We are often asked to take entirely on faith that democracy is a universal human right that should be imposed through external intervention and by tanks and tomahawk missiles, if necessary.<sup>59</sup> Its propagation has become a necessary fall-back justification when the original rationale for what would otherwise be wars of aggression falters.<sup>60</sup> Liberal international society has

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58. See, e.g., Maxwell O. Chibundu, *Law in Development: On Tapping, Gourding and Serving Palm-Wine*, 29 CASE W. RES. J. INT'L L. 167 (1997).

59. For early academic musings on "democracy as a human right," see e.g., Franck, *supra* note 44. See also Anne-Marie Burley, *Law among Liberal States: Liberal Internationalism and the Act of State Doctrine*, 92 COLUM. L. REV. 1907 (1992); Jose E. Alvarez, *Do Liberal States Behave Better? A Critique of Slaughter's Liberal Theory*, 12 EUR. J. INT'L L. 183, 194 (2001) (noting that "we do not know for sure [whether liberal States behave better] but there is plenty of reason to be skeptical."). See generally Fareed Zakaria, *The Rise of Illiberal Democracy*, FOREIGN AFF., Nov.-Dec. 1997, at 22; SUSAN MARKS, THE RIDDLE OF ALL CONSTITUTIONS: INTERNATIONAL LAW, DEMOCRACY, AND THE CRITIQUE OF IDEOLOGY 59 (2000). However, academic musings have ways of becoming policies when they sanction activities that politicians find in their interest to pursue.

60. The United States now routinely offers up bringing democracy to the Arab world as justification for its invasion of Iraq, even though this was not one of the numerous reasons initially given for the war. Officially, those reasons had been: (i) to compel Iraqi compliance with Security Council Resolutions; (ii) to force the destruction of "weapons of mass destruction"; (iii) to eliminate Iraq as a source of terrorism. See, e.g., Press Release, Office of the Press Secretary, President Bush Addresses the Nation (Mar. 19, 2003), available at <http://www.whitehouse.gov/news/releases/2003/03/20030319-17.html>.

The people of the United States and our friends and allies will not live at the mercy of an outlaw regime that threatens the peace with weapons of mass murder. We will meet that threat now, with our Army, Air Force, Navy, Coast Guard and Marines, so that we do not have to meet it later with armies of fire fighters and police and doctors on the streets of our cities.

*Id.* Unofficial but otherwise acknowledged reasons included (iv) to remove the Saddam Hussein Government as punishment for its alleged plot to kill a former President of the United

arrogated to itself the mission of installing democratic regimes prior to withdrawing from so-called “failed states” that it has undertaken to reconfigure. And it maintains this position even as the history of such interventions shows at best a poor record for effectively restructuring such societies.<sup>61</sup> It is now a hallmark of acceptance to be certified to have held “free and fair elections,” and institutions now exist to give or withhold this seal of approval. Receipt of the appellation of being a “democracy” has become akin to receiving a religious sacrament. To be declared “a democracy” is to be absolved from responsibility for past sins, and to receive an indulgence from prospective ones. It opens for the recipient doors into the inner sanctums of power. It assures the flow of financial capital and preferential trade arrangements. A country declared to be “democratic” becomes a full-fledged member of the “international community,” meaning that it can do virtually no wrong. And so, a democratic state cannot wage unlawful wars,<sup>62</sup> its leaders do not lie, and its people do not go hungry.<sup>63</sup> A dogma thus has evolved that democratic societies irrefutably are just societies in much the same way that religionists deem their cohorts to be good. And the flipside equally applies. A society declared to be non-democratic is subject to being ostracized from the so-called “international community.” Its citizens are deemed to have forfeited the right to live in peace. Economic sanctions may be imposed on it at

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States; (v) to reshape the politics of the Middle-East by removing a dangerous foe to Israel; (vi) to guarantee and secure access to an important source of crude oil. All of these focused on the interests of external actors; unlike the now-touted promotion of “democracy,” none had at its core the promotion of the interests of ordinary Iraqis. Indeed, as President Bush frequently reminds his listeners:

After September the 11th, I made a commitment to the American people: This nation will not wait to be attacked again. We will defend our freedom. We will take the fight to the enemy. . . . There is only one course of action against them: to defeat them abroad before they attack us at home.

Press Release, Office of the Press Secretary, President Addresses Nation, Discusses Iraq, War on Terror (June 28, 2005), *available at* <http://www.whitehouse.gov/news/releases/2005/06/print/20050628-7.html>.

61. This is not the forum for developing this point, but those interested in fleshing it out may consult the now extensive library of material on United Nations missions in Cambodia, Somalia, Bosnia-Herzegovina, Kosovo, East Timor, the Democratic Republic of the Congo, Sierra Leone, Liberia, Afghanistan, and of course Iraq. For the articulate views of a writer ordinarily sympathetic to so-called humanitarian intervention, see DAVID RIEFF, *A BED FOR THE NIGHT: HUMANITARIANISM IN CRISIS* (2002).

62. *See, e.g.*, BRUCE RUSSETT, *GRASPING THE DEMOCRATIC PEACE: PRINCIPLES FOR A POST-COLD WAR WORLD* (1993). *Compare* John Norton Moore, *Solving the War Puzzle*, 97 *AM. J. INT’L L.* 282, 287-88 (2003) (arguing that “incentive theory” may provide a better explanatory fit for the proclivity of societies to go to war).

63. *See, e.g.*, AMARTYA SEN, *DEVELOPMENT AS FREEDOM* (1999).

will, and the sufferings of the citizens can blithely be dismissed as the fault of their “rogue” government. Similarly, such countries may be denied rights that they otherwise have under international law by the simple expediency of them being declared “threats to international peace and security.” Indeed, for a weak state to be portrayed as a pariah by a powerful state has come to mean that the state in practice forfeits any expectation that other states will protest the deprivation of rights or privileges to which it may otherwise be entitled. Following the Greek practice of *atimia*, a pariah state, thus having been ostracized, loses the protection of the community, and may lawfully be preyed upon by any state capable of doing so.<sup>64</sup>

Since the consequence of being affirmed or denied as a democracy is increasingly central to the status that a state possesses within international society, it is hardly surprising that significant disagreements exist as to whether a particular state is or is not democratic. Thus, is Iran—a country that periodically holds elections—democratic? Is Vladimir Putin the representative of a “Democratic Russia,” or is he but an ex-KGB apparatchik returning Russia to the despotism of the Soviet Union? Like any fundamentalist religion, the answer that is given typically is founded less on rigorous analysis than in the dictates of feelings and sentiments anchored, if at all, in the pronouncements of revered leaders.<sup>65</sup>

But, it might be asked, why focus on the relative shortcomings of democracy? They surely pale in contrast with those of other possible competing political systems. And what difference does it in fact make whether the path to democracy in the past has been strewn with rocks? It is obviously the obligation of each generation to do the best that it can with the resources available to it, and if the modern contemporary “international community” has the wherewithal to impose the democratic process on backward societies, it should do so, should it not? And certainly, hardly anyone can, with seriousness, claim that a non-democratic society is preferable to a democratic one; and even in their imperfections, democratic states do a good deal more

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64. On the practice of *atimia*, see RAPHAEL SEALEY, *THE JUSTICE OF THE GREEKS* 123 (1994). Within the realm of the sacred, excommunication from a church effectively serves the same purpose. A shunned ex-member of a church loses the spiritual intercourse and succor of the group, and may indeed be “cursed” and condemned to eternal damnation by the group. *Id.*

65. And so, if President Bush declares that Iraq is now a democracy by virtue of her citizens having cast ballots under the guardianship of American tanks and armored personnel carriers, then it surely is, while it is equally evident that Ukrainians who vote in a Kremlin-sponsored apparatchik must have engaged in a fraudulent election, except when they vote in a “pro-Western” president, even if the latter himself formerly had been prime minister in the undemocratic ruling clique.

in promoting such liberal ideals as free expression—whether of speech, press or religion—than non-democratic ones. The remainder of this essay is intended to confront the mind-set evident in this form of argumentation. In what follows, I seek to demonstrate that the close-mindedness with which the concept of democracy is now touted is dangerously flawed for two fundamental reasons that are antithetical to the liberal ideal. First, its origins lie in the unfortunate conflation of power and reason. Where classical liberalism saw democracy as the power to persuade, the idolatrous view of democracy held by neoliberalism endorses its imposition through force and insulates its results from rational scrutiny. Second, because the democratic process has as its base national political communities, imbuing it with religious iconography promotes national chauvinism that is effectively immunized from ethical and legal scrutiny. Taken together, these flaws undercut the indigenous creation and perpetuation of democratic norms, and guarantee pseudo-democratic institutions for only as long as their alien progenitors maintain the brute power on which much of the recent attempted diffusions of democratic institutions have been based.

## V. THE DOGMATIZATION OF DEMOCRACY

The sanctification of democracy as a moral absolute and universal creed is of remarkably recent vintage. Prior to the collapse of the Soviet Union, democracy was but one of multiple political ideologies that claimed to show the way for human happiness. Its most vigorous rival was “Soviet style” Communism, but it was also in competition with such regional ideologies as “Maoism,” “Euro-Communism,” “third world nationalism,” “Latin American corporatism,” “Arab nationalism,” “African socialism,” and “revolutionary (or intellectual) nihilism,” to name a few others. All of these ideologies proclaimed, as their primary interest, providing in material terms for the welfare of the general population, and only secondarily, that of ensuring the accountability of government to the governed. Economic welfare, rather than the purity of political ideology or practice, provided the yardstick for measuring success.<sup>66</sup>

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66. This driving thesis of political thought prior to 1989 was forcefully argued in CHARLES E. LINDBLOM, *POLITICS AND MARKETS: THE WORLD'S POLITICAL ECONOMIC SYSTEMS* (1977).

This state of competition among ideologies changed within a decade. By 2000, no one seemed to doubt that there was but one path to human happiness, and that lay through democratic governance. In the academic world, democracy was offered as the only legitimate philosophical offspring of the enlightenment era.<sup>67</sup> The argument was buttressed by at best dubious claims of democratic determinism in which we were assured that democratic societies were by nature pacifists, and certainly did not wage war against each other.<sup>68</sup> It was also clearly the case that democratic societies had proved themselves much better at delivering economic wealth to their citizens. The European Union was specimen “A” on this point, and the mass abandonment of communism for democratic institutions by East

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67. See, e.g., FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992). In his more recent writing, Prof. Fukuyama has qualified this conviction, asserting that, “‘The End of History,’ . . . presented a kind of Marxist argument for the existence of a long-term process of social evolution, but one that terminates in liberal democracy rather than communism,” while complaining that

interpret[ing] my book “The End of History and the Last Man” (1992) as a neoconservative tract, one that argued in favor of the view that there is a universal hunger for liberty in all people that will inevitably lead them to liberal democracy, and that we are living in the midst of an accelerating, transnational movement in favor of that liberal democracy . . . [is a] misreading of the argument.

Francis Fukuyama, *After Neoconservatism*, N.Y. TIMES, Feb. 19, 2006, at 62. The distinction between the accepted thesis and the qualification is at best metaphysical, seemingly depending on the connection between individualized yearning at a given time and place and the inevitability of the product of the yearning. Can one really have the latter without the former?

68. See RUSSETT, *supra* note 62; Moore, *supra* note 62. Prof. Moore would limit the claim to “wars” involving more than 1000 dead. *Id.* at 282. This qualification conveniently eliminates the numerous “landings of marines” by the United States in Latin America and elsewhere. See MAX BOOT, *THE SAVAGE WARS OF PEACE: SMALL WARS AND THE RISE OF AMERICAN POWER* (2002). However, even this arbitrary qualification falls in the face of the invasion and occupation of Iraq. Indeed, as Stephen Kinzer has amply documented, unprovoked war and regime change in support of U.S. domestic interests has been the rule rather than the exception in U.S. foreign policy over the last century, and this policy of belligerence may well receive support precisely because United States politicians have internalized democratic norms as rendering them answerable solely to their domestic constituencies. See STEPHEN KINZER, *OVERTHROW: AMERICA’S CENTURY OF REGIME CHANGE FROM HAWAII TO IRAQ* (2006). See also ANDREW J. BACEVICH, *THE NEW AMERICAN MILITARISM* (2004). A much more plausible argument is that democracies are less likely to wage prolonged wars because the costs of such wars sooner or later must be borne by the population. What distinguishes democracies from non-democratic societies is thus less their propensity to go to war, as their relative incapacity to engage in protracted wars or wars of attrition. The consequence may well be that democracies are more likely to engage in “total” war, that is warfare that permits the use of all available means in order to terminate the war as promptly as possible. Indeed, in the United States, this has come to be called the “Powell Doctrine.” See generally Michiko Kakutani, *Tracing Colin Powell’s Journey, Both In and Out of Step With Those Around Him*, NY TIMES, Oct. 10, 2006, at E9 (reviewing KAREN DEYOUNG, *SOLDIER: THE LIFE OF COLIN POWELL* (2006)).

European societies was further evidence. The value of voluntary choice, its seemingly counterintuitive capacity for accommodation of competing interests and their effective coordination through the availability of exit mechanisms were readily analogized to the equally counterintuitive effectiveness of the market mechanism operating through the “invisible hand.”<sup>69</sup> Ostensibly depoliticized international civil servants such as the Secretary-General of the United Nations have joined the parade, thereby giving it a nonideological conventional cast.<sup>70</sup>

Had the preference for democracy been restricted to arguments among scholars and politicians about its efficacy, one could hardly complain. There are indeed good reasons for believing in the superiority of the democratic process over competing possibilities. On its face, democracy is a flexible instrument of governance that, at least in the abstract, subjects rulers to account to the ruled. It is certainly consistent with classical liberalism’s ideal of governance through consent. But classical liberalism’s privileging of consent entails a belief in the efficacy of persuasion rather than its entrenchment through coercion. It assumes that a worthwhile ideology is one that individuals and societies come to embrace through reason rather than because they are compelled to do so through force. That has not been the history for the spread of democracy over the last decade and-a-half. Democracy has been promoted as a dogma primarily through economic and military coercion. The process occurs in three stages. In the first, a benign formulation of the dogma is decreed by fiat. Next, the dogma is enforced through a mixture of coercive measures and appeal to the enlightened interest of the party against whom enforcement takes place. Finally, the elements of the dogma are gradually redefined to accord with the particularized interests of its

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69. The seminal reflection on the analogy of the mechanisms of choice in the economic and political arenas, and which continue to inform contemporary thinking is ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY: RESPONSES TO DECLINE IN FIRMS, ORGANIZATIONS, AND STATES* (1970).

70. See, e.g., Kofi A. Annan, *Democracy as an International Issue*, 8 *GLOBAL GOVERNANCE* 135 (2002). As he said while accepting the 2001 Nobel Peace prize:

[T]he lesson of the past century has been that where the dignity of the individual has been trampled or threatened, where citizens have not enjoyed the basic right to choose their government or the right to change it regularly, conflict has too often followed, with innocent civilians paying the price in lives cut short and communities destroyed.

Kofi Annan, Secretary-Gen. of the U.N., *Remember This Girl*, Nobel Lecture at the Presentation of the Award of the Centennial Nobel Peace Prize (Dec. 10, 2001), in 39 *U.N. CHRON.* 4, Mar. 1, 2002, available at <http://www.un.org/Pubs/chronicle/2002/issue1/0102p4.html>.

promulgators. By the third stage, the legitimation process is complete, and the cost of questioning whether the dogma should in fact be a norm has been put beyond discussion.

The purported lessons that were to be learned from the collapse of the Soviet Union initiated the first stage in the transformation of democracy from a preferred ideal to an entrenched dogma. In a seminal work, Francis Fukuyama argued that with that collapse, human society had arrived at the end of its prolonged quest for the perfect society.<sup>71</sup> Taking a cue from the Marxist methodology of material determinism (itself, in the not-too-distant past an example of a philosophical dogma that in its zeal and faith paralleled those of any religion), Fukuyama, speaking for many, contended that the democratic ethos sweeping through Central and Eastern Europe represented the culmination of civilization's inexorable drift to liberal individualism.<sup>72</sup>

The move from the embrace of a philosophical ideal to its forceful imposition on a society is almost always facilitated by the existence on the ground of chaotic conditions, with the ideal offered up as a practical alternative. In a Panglossian world, a communal spirit would reign supreme and the members of the community acting for the benefit of the whole would collaboratively work to transform an ideal or vision into an ordered society.<sup>73</sup> History however suggests that the more common reality is that the ideal typically is made real either by a self-confident activist minority, or by external intervention.<sup>74</sup> The disintegration of the Soviet empire and the withdrawal of Soviet Russia's Cold War support to several weak governments in the third world created chaotic conditions in many of these societies. In the resulting civil strife in the Balkans and much of Africa, liberal democracy offered a way out. In some instances, internal groups were able to effectively generate the institutions of liberal democracy. But this entailed plodding messy politics that operated in fits and starts,

71. See FUKUYAMA, *THE LAST MAN AND THE END OF HISTORY*, *supra* note 67.

72. See *id.* Anchoring his analysis in less deterministic terms, Samuel P. Huntington nonetheless observed a similar drift in much of the rest of the non-Western world, what he termed the "third wave" of democratization. See SAMUEL P. HUNTINGTON, *THE THIRD WAVE* (1991).

73. The American Revolution, which, although born in bloodshed, went on to develop strong institutional democratic foundations in a revered federal Constitution, is often presented as an illustration of this possibility, and especially so in the sharp contrast that it presents to the reign of terror and the emergence of Napoleonic despotism that followed the contemporaneous French Revolution.

74. The 1917 Bolshevik revolution is perhaps the best known example of the former, while the effort to spread the French Revolution between 1794-1801 best represents the latter.

and sometimes resulted in bloodshed. For societies that were large, reasonably well-endowed in material resources, or that commenced the process prior to 1992, these internal forces were allowed to play themselves out.<sup>75</sup> By 1992, however, this was no longer a tenable path.

The successful ejection of Iraq from Kuwait by a United States-led transcontinental coalition of forces in 1991, a newly-found assertiveness of the Security Council acting under Chapter VII of the United Nations Charter, and the transformation of the hitherto European Economic Community into a forceful political institution, brought into play what was popularly referred to as a “new world order.”<sup>76</sup> “Liberal democracy” under the banner of “humanitarian intervention” was the creed of the order, but more importantly, the creed could be enforced by societies and institutions with the commitment to do so. Somalia presented the first opportunity, but its ignominious failure was seen not as challenging the basic policy, but the means of its implementation. This view was reinforced by the horrendous consequences of the failure of any of these international institutions to avert the genocidal catastrophe in Rwanda. When United Nations action in Bosnia-Herzegovina in 1995 led to a peace accord, the new doctrine empowering external actors to restructure the internal politics of societies seemed to have received its practical confirmation. In short order, the “international community” discovered it had an obligation to intervene and bring peace to societies as diverse in their internal geopolitics as Haiti, East Timor/Indonesia, Iraq/Kurdistan, Kosovo, Liberia, Sierra Leone, and the Democratic Republic of the Congo, to name a few others. There was no longer any issue beyond the capacity of the United Nations Security Council to declare a “threat to international peace and security.” And local populations were no longer considered capable of resolving their own conflicts. Thus, driven by a few outrageous demonstrations of humanity’s capacity to engage in barbaric behavior towards even the closest of kin, “humanitarian intervention” was deployed to legitimize the selective intervention of big powers in the processes of state disintegration and reformation across the globe. In

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75. The primary examples of this phenomenon were the large Central and East European states that had been part of the Soviet sphere, notably Poland, Hungary, the former Czechoslovakia and Rumania. Outside of this bloc, the Philippines, Brazil, Argentina and Chile illustrate the point. The Republic of South Africa, although *sui generis*, in many ways can be made to fit within this pattern.

76. The zeitgeist is captured well in ROBERT KAGAN, *OF PARADISE AND POWER: AMERICA AND EUROPE IN THE NEW WORLD ORDER* (2003).

all of these, creating democracy (or perhaps more accurately, imposing it) was asserted as an unimpeachable goal.

Routinely employing economic sanctions and military force, the new order jettisoned the post World War I conventional wisdom that national polities should be given substantial leeway in the framing of their national societies.<sup>77</sup> The new sacred text would be secure only by overthrowing the old, which had explicitly abjured external intervention as amounting to interference with the political independence and territorial integrity of a state.<sup>78</sup> Between 1995-2001, the intellectual history of international relations was primarily that of demonstrating the claimed incoherence of a political, philosophical or legal regime grounded on “sovereignty.”<sup>79</sup> Proponents of the new test glamorized the new-found universal solidarity of democracies in such disparate fields as human rights, gender equality, and the environment. This universal solidarity existed primarily for the purpose of legitimizing the right of those in liberal democracies to chastise the laggards. Academics, journalists and politicians were all too willing to demonstrate how certain non-democratic societies were far short of these norms. For these critiques, what counted was some universal standard, which as it often turned out amounted to little more than what they thought ought to be the standard. Thus, flogging or other corporal punishment was a violation of the standard, but the death penalty was not. Customary International Law, which allegedly spelled out the do’s and don’ts of the new religion of democracy, turned out to be little more than what publicists asserted it to be, or succeeded in persuading a municipal court judge that it was.<sup>80</sup>

International economic arrangements were even more telling refutations of the existence of a universal solidarity. The creation of the World Trade Organization in 1994 on its face paralleled the universalization phenomenon of the “New World Order,” and there is little doubt that many of the same political conditions that fomented that order contributed to the structure of the organization. In particular, the effort to judicialize the process of dispute resolution

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77. This conventional wisdom, which was seen as the cornerstone of the doctrine of “sovereignty,” had been enshrined in U.N. Charter art. 2, para. 4.

78. U.N. Charter art. 2, paras. 4 & 7.

79. See, e.g., MICHAEL ROSS FOWLER & JULIE M. BUNCK, *LAW, POWER, AND THE SOVEREIGN STATE: THE EVOLUTION AND APPLICATION OF THE CONCEPT OF SOVEREIGNTY* (1995); STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (1999); *PROBLEMATIC SOVEREIGNTY: CONTESTED RULES AND POLITICAL POSSIBILITIES* (Stephen D. Krasner ed., 2001).

80. See, e.g., Maxwell O. Chibundu, *Making Customary International Law through Municipal Adjudication: A Structural Inquiry*, 39 VA. J. INT’L L. 1069 (1999).

through binding arrangements reflected the dominant roles that the European Economic Community and the United States place on this mechanism.<sup>81</sup> But the selection of the economic arenas that were to be regulated under the new regime, and the specifications of the terms of the regulation, reflected the reality that, however valid the intellectual arguments for a liberal and universal free trade arrangement, the politics of trade remained firmly rooted in domestic pressure groups and interests.<sup>82</sup> The “rights” of the holders of intellectual property were given universal recognition, but agricultural producers were left to fend for themselves, with the result being that farmers in the industrialized countries received a good deal of benefit from the noninterference of the international system with the substantial subsidies they received from their governments, while farmers in export-oriented poor countries continued to be significantly disadvantaged under the system.<sup>83</sup> Beyond the WTO, the concept of a “universal” commercial system was turned on its head. Regional arrangements proliferated and by far the most common commercial arrangement among societies is “bilateral”: an arrangement that far from enshrining international solidarity, typically permitted the stronger state to exploit its strength to the disadvantage of the weaker state. In short, in the economic arena—as in the political—the idea of democracy as a norm of solidarity proved to be predominantly notional.

But the most striking element in the elevation of democracy to a universal norm has been an omission: the complete failure to define the criteria for individual membership and participation in the political community that is envisioned. The apostles of universalism trumpeted the rights that states owed to individuals within the political

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81. See, e.g., Joost Pauwelyn, *The Limits of Litigation: Americanization and Negotiation in the Settlement of WTO Disputes*, 19 OH. ST. J. ON DISP. RES. 121 (2003); Scott McBride, *Dispute Settlement in the WTO: Backbone of the Global trading System or Delegation of Awesome Power?*, 32 L. & POL’Y INT’L BUS. 643 (2001).

82. See, e.g., SUSAN K. SELL, *PRIVATE POWER, PUBLIC LAW: THE GLOBALIZATION OF INTELLECTUAL PROPERTY RIGHTS* (2003); CARLOS MARIA CORREA, *INTELLECTUAL PROPERTY RIGHTS: THE WTO AND DEVELOPING COUNTRIES: THE TRIPS AGREEMENT AND POLICY OPTIONS* (2000).

83. For a comprehensive discussion of the regulation of agriculture under international trade law, see MELAKU G. DESTA, *THE LAW OF INTERNATIONAL TRADE IN AGRICULTURAL PRODUCTS: FROM GATT 1947 TO THE WTO AGREEMENT ON AGRICULTURE* (2002). For scrutiny on the WTO and the claims of developing countries for more equitable treatment in the regulation of the trade in agricultural products, see, e.g., Karen H. Cross, *King Cotton, Developing Countries and the ‘Peace Clause’: WTO’s US Cotton Subsidy Decision*, 9 J. INT’L ECON. L. 149 (2006); Carmen G. Gonzalez, *Institutionalizing Inequality: The WTO Agreement on Agriculture, Food Security and Developing Countries*, 27 COLUM. J. ENVTL. L. 433 (2002).

community, but have been entirely silent about the right of the individual to shape the new-fangled universal society. The right of the individual has remained essentially that which she had by virtue of being the citizen of a state. Democracy assured her the right to shape the affairs of her state, but her capacity to influence the affairs of the universal community depended completely on the place of her state within the international system. The shortcomings of this incomplete theorizing of the universal democratic order have been most evident in the failure to confront the issue of migrant labor. The European Union recognized the problem and partially confronted it, but even its own framework has remained firmly within the concept of national citizenship.<sup>84</sup> Elsewhere, even as the concept of “civil society” is touted as a unifying transnational movement, the rights of the migrant in her daily life remains totally embedded in the much-maligned institution of state sovereignty. This is what can fairly be termed the “citizenship deficit,” and the extent of its ramifications for a world order based on democracy was laid bare with the responses of the United States to the September 11, 2001 attacks on the symbols of its military and economic might.

Prior to the September 11, 2001 attacks on the Pentagon and the World Trade Center, proponents of democracy as a universal norm could, at least with some plausibility, argue that the claim was motivated by a desire for the equal treatment of all individuals according to the Aristotelian maxim of each according to her desert.<sup>85</sup> States within the international system may not be uniformly endowed, but the operation of the democratic norm does not depend on equality of results as long as each similarly situated individual within each society was subjected to the same procedural treatment, and given the same opportunity to express her individuality. In such an environment, the democratic norm functioned to accord the respect of dignity to which each and every individual is naturally entitled. This argument loses much of its force in the wake of the responses of several liberal democratic societies to the September 11 events. These societies and their governments have demonstrated a propensity to employ force and minimal resort to legality in waging a so-called global war on terrorism. Practices that not too long ago were deemed

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84. Thus, although citizens of nation-states of the European Union ordinarily may seek employment in any territory within the Union, participation in the political life of member states continues to be determined on grounds of national citizenship. See generally JEFF KENNER, *EU EMPLOYMENT LAW: FROM ROME TO AMSTERDAM AND BEYOND* 12 (2003).

85. See generally Aristotle, *Nicomachian Ethics*, in *THE BASIC WORKS OF ARISTOTLE* (Richard McKeon ed., 1941).

to be taboo, and which were almost uniformly condemned, are now routinely employed and sometimes defended as essential to winning the war. Government-sanctioned assassinations,<sup>86</sup> other forms of extrajudicial killings,<sup>87</sup> torture and inhumane treatment,<sup>88</sup> the unreviewable rounding up and indefinite detentions of whole groups of persons,<sup>89</sup> and the outright disappearance of persons into untraceable black holes of the administrative state have become accepted tools of the war.<sup>90</sup> Even where democratic governments resort to law as a tool in this war, the applicable legal regime at best has been corrupted to achieve desired results. Mere affiliation with undesirable groups, speech that is deemed as “inciting” or “glorifying” terrorism, is routinely outlawed and punished.<sup>91</sup> The administrative freezing of personal assets, if governed at all, is at best under the most Kafkaesque of rules. And where judicial proceedings have been made available to those charged with crime, they have been substantially curtailed.<sup>92</sup>

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86. See, e.g., David Johnston & David E. Sanger, *Threats and Responses: Hunt for Suspects; Fatal Strike in Yemen Was Based on Rules Set Out by Bush*, N.Y. TIMES, Nov. 6, 2002, at A16; James Risen & David Johnston, *Threats and Responses: Hunt for Al Qaeda; Bush Has Widened Authority of C.I.A. to Kill Terrorists*, N.Y. TIMES, Dec. 15, 2002, at 1.

87. A common refrain is to “kill” or “capture” an alleged terrorist, with the “capture” almost always added as an afterthought. The killings may be contracted out to private bounty hunters. President Bush could thus offer 25 million dollars for Osama bin Laden “dead or alive.” Not surprisingly, executing the foreign head of state is simply another tool of war. The United States government began the 2003 war with Iraq by blowing up a building where, erroneously as is more often the case than not, its intelligence indicated Mr. Saddam Hussein was present. The result was the killing of many unintended victims, so-called “collateral damage.”

88. Visual images of the treatment of persons detained at the Abu Ghraib prison in Iraq, while the most notorious examples, are far from being unique. Entire bookshelves can now be filled with reports and debates over the use of torture and allied treatments in connection with the war on terrorism. See, e.g., MARK DANNER, *TORTURE AND TRUTH: AMERICA, ABU GHRAIB, AND THE WAR ON TERROR* (2004); *THE TORTURE DEBATE IN AMERICA* (Karen Greenberg ed., 2006); SANFORD LEVINSON, *TORTURE: A COLLECTION* (2004); ANTONIO TAGUBA, *TAGUBA REPORT ON TREATMENT OF ABU GHRAIB PRISONERS IN IRAQ* (2004).

89. The detentions of persons on Guantanamo Bay are, of course, the best known but by no means only example of this phenomenon. Other democracies, including the United Kingdom and France have explicitly adopted policies of prolonged and secretive detentions of non-citizens. *Compare A and Others v. Secretary of State for the Home Department*, 2004 UKHL 56 (H.L. 2004).

90. See, e.g., Craig Whitlock, *Europeans Investigate CIA Role in Abductions: Suspects Possibly Taken to Nations that Torture*, WASH. POST, Mar. 13, 2005, at A1; Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1.

91. See, e.g., S.C. Res. 1456, U.N. Doc. S/RES/1456 (Jan. 20, 2003). In the United States, a life imprisonment sentence has been imposed on a Muslim preacher for “making a series of speeches that prosecutors contended—and a jury found—incited his followers to train for war against the United States.” See *Sentenced for Speaking*, WASH. POST, Jul. 17, 2005, at B6.

92. In the United States, for example, the use of so-called “Military Commissions” to “try” alleged “enemy combatants” for being members of a “terrorist” outfit stands as a glaring

And in all of these cases, citizenship has been the decisive determinant of the treatment the individual is given.<sup>93</sup> Aside from the quite predictable stance of the executive branch, courts and legislatures have determined that citizenship should determine the process available to those caught up in the dragnet of the “war” on terrorism.<sup>94</sup>

## VI. CITIZENSHIP, DEMOCRACY AND THE UNIVERSAL IDEAL

The claim of universal brotherhood (and sisterhood) is common to virtually all major religions, and in a genuine sense, most of them do in fact draw their membership from across the globe. The two largest, Christianity and Islam, not only engage extensively in proselytization, but also go out of their way to portray themselves as denationalized communities. Both membership and leadership in Islam are highly decentralized, and no hierarchy within Islam claims ultimate authority to decide eligibility of membership, let alone leadership over other Muslim groups. The Roman Catholic and Anglican churches, the two most hierarchically organized of the Christian denominations, while retaining much of the vestiges of their anchor in the state culture of Western Europe, nonetheless increasingly draw not simply their membership, but also their leadership, transnationally. In claiming universal representativeness, these

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illustration of the travesty of judicial process. But the perversion of the process goes further. As an element of the so-called “global war on terrorism,” persons are routinely “lawfully” arrested as “material witnesses”—the basic right of an accused person to “confront” a witness has been greatly vitiated in the name of “national security.” See, e.g., *U.S. v. Moussaoui*, 365 F.3d 292 (4th Cir. 2004) *amended by* 382 F.3d 453 (4th Cir. 2004). Moreover, the government views the game as a “heads I win tails you lose” proposition. Thus, it accepted as vindication the willingness of a Virginia jury to convict solely on the basis of reported speech the association of an imam with terrorism, but in response to the acquittal of a Palestinian-born professor from similar charges, again proffered solely on the basis of speech, it has threatened to deport this stateless academic to any country that would accept him. See *Sentenced for Speaking*, *supra* note 23; Jerry Markon, *Muslim Anger Burns over Lingering Probe of Charities*, WASH. POST, Oct. 11, 2006, at B1.

93. See, e.g., Katrin Bennhold, *Europe, Too, Takes Harder Line in Handling Terrorism Suspects*, N.Y. TIMES, Apr. 17, 2006, at A1.

94. Justice Scalia’s contrasting positions in *Hamdi v. Rumsfeld*, 542 U.S. 507, 554 (2004), and *Rasul v. Bush*, 542 U.S. 466, 488-489 (2004) illustrate the point. While asserting that the outcome in both cases should be controlled by a textual interpretation of the Constitution of the United States, and while seemingly acknowledging that the Constitution on its face does not differentiate between the “citizen” and “non-citizen” with regard to the right of habeas corpus, he nonetheless finds that a non-citizen may be denied such a right even where the citizen would not. The United States Congress has followed up on this suggestion, and in the Detainees’ Detention Act, it has explicitly limited the right of non-citizens held on Guantanamo Bay to challenge their detention. See 28 U.S.C. § 2241(e) (2005).

institutions can demonstrate that the ties that bind derive from spiritual affinity rather than the fortuity of birth.

The same can hardly be said of the universalism of contemporary neoliberals. The state remains the cornerstone for individual identity, and membership in the so-called “international community” is distinctly different for a citizen of Uganda than it is for a citizen of the United States. The latter is guaranteed the possibility of being President of the World Bank, the former absolutely need not apply.<sup>95</sup> Other leadership positions within the international system, such as those of Secretary-General of the United Nations, Director-General of the International Monetary Fund, and Supreme Commander of the Armed Forces of the North Atlantic Treaty Organization, are determined by nationality. And, of course, who gets to be the most powerful man (and, sometime in the future, perhaps woman as well) is solely the prerogative of possessing a United States passport.

As noninstinctual as it may appear, liberalism does not compel awarding national citizenship the trump card that it currently has in the international arena. That such familiar concepts in national discourse as “merit” and “multiculturalism” have not become part of the vocabulary of neoliberalism is a testimonial to the undertheorized nature of the claim for democracy as a universal norm. It also highlights the contingent basis for the claim, rooted as it is in the material wealth and military might of the societies that seek to propagate it. But if the hypocrisy or, as some would rather have it, “judicious double standard,” of preaching universality while actively discriminating on account of citizenship involved only what Isaiah Berlin termed “positive liberties,”<sup>96</sup> one might simply dismiss it as hard luck.<sup>97</sup> Material resources are indeed finite, and to the extent that a state must discriminate among beneficiaries of its resources, its

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95. This permanent disability from participation in the national life of a country on account of the assigned citizenship of the individual should be contrasted with the recent elevation of a Ugandan born Anglican to the second most-influential bishopric in the Anglican Church, putting him potentially in line to become the spiritual leader of the Church of England. See *Profile: Archbishop John Sentamu*, BBC NEWS, Nov. 30, 2005, [http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk\\_news/4102960.stm](http://news.bbc.co.uk/go/pr/fr/-/2/hi/uk_news/4102960.stm). As the election of a Polish pope and his German successor indicate, the hierarchy of the Roman Catholic Church meaningfully has become denationalized.

96. See ISAJAH BERLIN, *Two Concepts of Liberty*, in *LIBERTY: INCORPORATING FOUR ESSAYS ON LIBERTY* 166 (Henry Hardy ed., 2nd ed. 2003).

97. For a defense of conduct that might appear to some as “hypocritical,” but to others as “judicious double standards,” see, e.g., Richard Cohen, *Judicious Double Standards*, WASH. POST, Mar. 17, 2006, at A17 (“The cry of ‘double standard’ is a bit silly. It asks us not to recognize certain realities—the difference between friends and enemies, for instance, or good and bad democracies, to give another example.”).

choice of national citizenship is certainly owed deference if not applause. But citizenship has come to be decisive not only in the award of licenses, or entitlement to employment positions, but in the distribution of “negative liberties” as well. It is here that democracy even in its idealized form is subject to severe criticism.

The mystique of the democratic process rests on the “sovereignty of the people.” But who are the people that are sovereign? The standard answer today is the “citizen.” And who is a citizen? History suggests three possible conceptual answers that are grounded on the relationship of the individual to the state, each is in its own way mystical.

In the pre-industrial or feudal age, the “citizen” (or more accurately, “subject”) was one who paid obeisance to her lord. The relationship was primarily one of certifying identity. The inhabitant of a territory existed in a spiritual or quasi-spiritual relationship to the territory and its ruler. The feudal liege used that certification as the basis for compelling service to the lord. In dethroning feudalism, classical liberalism converted territorial certification to territorial participation. Citizenship now represented not mere membership within a fixed geographical space, but participation in the governance of the territory. Thus, in both the French and American revolutions, the concept of the citizen was based on the contribution of the individual to self-governance rather than on loyalty to a sovereign, or benefits to be derived from the state. This harkened back to the Greek concept of citizenship.

In the “rights” (or “postmodern”) age, citizenship has taken on an additional characteristic: the moral and legal grounding for the assertion of claims against the state. This additional function is related to the emergence of the state as more than a spiritual and an administrative entity. Even more substantially, the state has come to be the provider of social and economic welfare. The ensuing concentration of economic and regulatory powers within the institution of the state has given it a central distributive role, and with it, the need to classify and to apply rigidly the distinction between the “citizen” and the non-citizen. Were the force of this classification to be limited to those instances in which it matters—that is, for administrative purposes, for the distribution of economic goods or even for quasi-sanctification reasons such as flag-waving—the discrimination would not only be comprehensible but perhaps morally justifiable as well. But the Neoliberal treatment of the dichotomy has gone a good deal further. As already explained, it now also embraces criteria for

determining who may legally be detained indefinitely without judicial process, or indeed whose life may be snuffed out without accountability.

In reposing the legitimation of the contemporary state in democratic participation by citizens, and in continuing to anchor the concept of citizenship in territorial affiliation and subjection (or, if you prefer “loyalty”) to the state or “*pater*,” neoliberalism has in fact returned to the feudal conception of the relationship of the individual to society. But for the non-citizen, the consequence may be worse than it was for the feudal serf. The feudal lord had a religiously infused moral obligation to extend protection to the powerless serf. In the rights-driven modern environment where positive law now defines the boundaries of the relationship between the individual and society, the non-citizen may well be in a worse position. Not being a citizen has become tantamount to not being a being.

## VII. CONCLUSION

The liberal political perspective is often seen as a counterpoint to religious belief. Where the latter is typically portrayed as reflexively dogmatic, the former generally is presented as the paragon of dynamic reasoning and compromise. Contemporary political order and thought do not justify these contrasting images. “Democracy” has become as barren an invocation of unexamined faith as any religious dogma. There are good practical reasons for promoting democratic societies, but it is dangerous to sanctify any ideology on the basis of the potential good that it may harbor. Political institutions are always forged in the exigencies of human experience, and this is no less the case with democracy than it is with other political ideologies. This demands commitment to a vigilance underpinned by constant inquiries and modifications, not a smug worshipful incantation of the blessings of democracy. In deifying democracy, contemporary liberal societies run the risk of insulating the practice from the scrutiny that it deserves. When a practice is vested with divine goodness, it is bound to turn into a dictatorship. That is neither in the interest of liberalism, nor of the billions of people for whom the search for the optimal means of governance remains a vital challenge.

