

THE EMPOWERED SELF: LAW AND SOCIETY IN THE AGE OF INDIVIDUALISM by THOMAS M. FRANCK

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This is the liberal (in the political theory sense of the term) guide to the future of the planet. Franck sees several major trends that are leading to profound changes in both national societies and the global community. The individual's self is being liberated from imposed values, traditions, and communities of origin. People are increasingly free to form or choose their own communities, whether off- or online. People across the world are recognizing the core value of autonomy and the legitimacy of a regime centered around individual rights. Better yet, important new international laws that protect those rights are being developed and are increasingly widely respected. Still, better, global institutions (for instance the International Convention on Civil and Political Rights Committee of Experts) are being established to enforce these laws. To top it all, states and institutions around the world are gradually being democratized. (One may gain the impression that Franck sees a world evolving to become very much like the United States of America, at least like the United States its admirers see. Note, however, that Franck holds that the primacy of autonomy and the centrality of rights are not American or Western values but universal truths. More about this later.)

If I have given the impression so far that Franck's book is profoundly positive and supremely optimistic, this is certainly the case. On many issues his analysis does point in the right direction, although he does not sufficiently acknowledge the countervailing forces that resist the changes he cherishes, that may slow or even pervert them, and that cannot be as readily reconciled with individualism as he implies. Although Franck does make the all important step of recognizing the systematic need to attend to social order and take into account the moral claims of groups, he does not rank them as highly as individual rights. Hence, his notion of 'balance' between individualism and community is flawed.

According to Franck, societal changes are leading to the liberation of the self from old ties, traditional values, and communities of origin, leaving individuals free to determine their own identity and course. He writes:

What may be on the way out is the monopoly that, together, the state, the socio-cultural group, and certain transnational movements and organizations have had on the shaping and determination of human identity. Insinuating itself amongst these is a new but growing consciousness of individual worth, manifesting itself in the claim to personal autonomy and inherent human rights. Among these new claims, the most fundamental – and most astonishing – is the demand selectively to choose the components of one's personal identity. This new individualism challenges the limits on personal self-determination so long imposed by the traditional objects of allegiance. (p. 39)

For Franck, the loss of community bemoaned by social scientists from Tönnies to Putnam reflects a movement toward profound psychological liberty,

liberty to form an authentic self free from imposed values and identities, which parallels the legal and political recognition of individual rights.

In the process he gives up some of what we have learned, claiming that: '... it is the individual who constitutes society. The group, nation, and state do not constitute the individual, except in the literature of romantic nationalism' (p. 253). This statement does not recognize what even many liberals have come to see, that individuals are formed by communities (families included) and that their preferences and identities are, initially, formed by the community, and continue to be a good part of what the self is.

Although one may argue that the said movement began with the Enlightenment, Franck takes the thesis a giant step forward: he depicts the nation as little more than one more defunct, ascribed source of constraining loyalty. Self-determination, he correctly points out, in earlier, colonial eras was a tool of liberation and hence allowed for some reduction in external imposition. However, today, especially in democratic societies, movements toward ethnic self-determination, such as in Quebec, often lead toward reduction of autonomy. One can garner a feel for his position by Franck's endorsement of John Maynard Keynes's statement that the Wilsonian dogma about the importance of the self-determination of 'a people' in a nation-state 'exalts and dignifies the divisions of race and nationality above the bonds of trade and culture, and guarantees frontiers but not happiness' (p. 42). For Franck, it is not only time to move from national loyalties toward a global civil society composed of free people, but this actually is the march of history we see unfolding before our very eyes.

What will then have been wrought is not necessarily world government – some aspects of which, by necessity, are already in place – but, rather, a liberal global neo-community, a civil society based on socially and legally protected individualism. (p. 100)

All this leads to his governing thesis, which he holds speaks not merely for the West but for the world:

Because more persons now demand liberty in law and social practice to select their own values and loyalties, this is becoming the age of individualism. What distinguishes modern identity formation is that, for the first time, persons demand the right to compose their own, unique self-definitions. (pp. 39–40)

There is, indeed, evidence that such trends exist, and one hopes they survive the end of American triumphalism and hegemony (given that all empires do end).

COMMUNITIES, TOO

One may, at first, presume that, as a champion of liberalism, Franck will make the cardinal mistake of this philosophy and ignore that individuals are not free agents, are socially constituted, and that we yearn for social order

and shared formulations of the good and not just autonomy. However, Franck far from ignores communitarian criticism of atomistic liberalism. He tries to square the circle, to provide for community (and virtues) without making any concessions from his liberal agenda. He performs this move (following here Locke among others) by extolling those communities individuals freely choose, rather than those they are born into, which, in his view, box people in. The communities he extols include voluntary associations as well as virtual communities. As long as people choose communities because they are compatible with their preferences, community does not restrain ego.

Franck does not accept that tradition has anything to offer (ignoring that the commitment to individual rights itself is not ahistorical). He does not take into account that individuals cannot start from a clean slate, that even if they rebel, the direction of their rebellion is affected by their communities and cultures of origin. He also presumes that communities of choice (for example, a marriage) are on the face of it vastly superior to those of origin (for example, the family one is born into) and does not see that a chosen group (for example, a gang) can be as evil or more than an old one.

BALANCE AND TRUMPS

Franck is at his best when he acknowledges that there might be some measure of inevitable tension between individual preferences and the community's needs (or what courts recognize as the public interest). Unfortunately, in the process he ignores the difference between authoritarian communitarians, who view community needs as trumping individual ones and are willing to use the state to impose values, and new (or responsive) communitarians, for whom I occasionally speak, whose core thesis is that individual rights and social responsibilities, autonomy and the common good, are coequal in the moral claims they lay on us. He tosses Sandel (and me) together with Lee Kuan Yew, the tyrant of Singapore and the spokesman of East Asian communitarianism.

Moreover, while Franck leaves behind those liberals who argue that social entities are a construction if not a fiction, he does end up arguing that individualistic claims should trump communal claims, on the face of it. At first, he writes that the 'right to be let alone' ought to be 'weighed alongside (1) the right of the community to protect its cohesion, health and security, and (2) the right of underprivileged individuals to public assistance in overcoming their disadvantages.' So far so good, very good indeed.

But before too long we learn that:

To acknowledge the need for balance and accommodation among the triad of rights – holders the state, the individual, and the group – is not quite the same as recognizing the equivalence of the three claimants. Morally, the claims of individuals are entitled to priority. (p. 252)

The world may indeed be moving, gradually, two steps forward one step back, toward mores, laws, and institutions that respect individual rights. However, as I see it, individualism leaves in its wake a social and moral vacuum that religions of social responsibility (a core value found in Islam, Judaism, and Asian religions, none of which has a central place for rights, despite their vast differences) seek to fill. From Indonesia to Israel, from religious groups in China and Japan to those in Algeria and Turkey, fundamentalism challenges the doctrine of rights. Franck is a bit quick to dismiss the importance of this clash. I agree that the result is likely to be shared global values or a world creed. However, evidence I cannot present in the confines of a book review suggests that this creed will be a coming together of the values of individual rights and social responsibilities and not one of these winning out over the other in a competition, as Franck holds.

AMITAI ETZIONI

The George Washington University, 2130 H Street, NW Suite 703, Washington, DC 20052, United States of America