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Are Human Rights Universal?

Thomas M. Franck

THE RISE OF CULTURAL EXCEPTIONALISM

IN MAY 2000, the Taliban, who rule most of Afghanistan, ordered a mother of seven to be stoned to death for adultery in front of an ecstatic stadium of men and children. The year before, the House of Lords—Britain's highest court—had allowed two Pakistani women accused of adultery to claim refugee status in the United Kingdom, since they risked public flogging and death by stoning at home. Women today are denied the vote and the right to drive cars in several Arab states, and harsh versions of shari`a (Islamic law) punishment are spreading to Sudan, Nigeria, and Pakistan.

Still, the Taliban's repression remains in a class by itself: denying women the right to leave home except when accompanied by a brother or husband and forbidding them all access to public education. Not only do the Taliban seek to spread their militant vision to other states, they also demand to be left alone to implement their own religious and cultural values at home without foreign interference. Leaders in Kabul insist that they not be judged by the norms of others—especially in the West.

Of course the Taliban are not the only ones to reject outside scrutiny. Florida's government, after frying several prisoners in a faulty electric chair, has only reluctantly turned to other methods of execution

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to conform to the U.S. Constitution's prohibition of "cruel and unusual punishment." Yet when America's Western allies tell it that the U.S. system of capital punishment is barbaric, local politicians and courts reply that it is their way and no one else's business. Which is precisely what the Taliban say.

This is not to indulge in what Jeane Kirkpatrick, a former U.S. permanent representative to the U.N., has called the "sin of moral equivalence." The United States is not Afghanistan. What the Islamic fundamentalist regime is doing there violates well-established global law. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) echoes the U.S. Constitution in proclaiming that "no one shall be subject to cruel, inhuman, or degrading treatment or punishment," which certainly covers stoning and flogging—but not execution by lethal injection or (functioning) electric chair. And the 1980 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits almost everything the Taliban have done to subordinate women.

The difference has been widely recognized. In October 1999, the U.N. Security Council duly censured the Taliban by a unanimous resolution. The General Assembly, too, has shown its disapproval by refusing to accept the credentials of the Taliban's delegation. But Taliban leaders and other radical fundamentalists in Pakistan, Sudan, and elsewhere reply to such condemnation by arguing that their codes have reintroduced social cohesion, decency, and family values into societies corrupted by colonialism and globalization. They point scornfully to the degradation of Western women through pornography, prostitution, and other forms of exploitation, and argue that their wives and daughters have been liberated from public obligations to focus instead on home and family.

Although huge differences in degree do exist between repression in Afghanistan and executions in Florida, the point is that the arguments of Islamic extremists parallel those used by U.S. courts and politicians: namely, that states have a sovereign right to be let alone and not be judged by international human rights standards. The United States insists, for example, on the right to execute persons who committed crimes as minors. Never mind that this violates U.S. obligations under the ICCPR. It is the American way, representing American values and ethics.

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Such assertions are made nowadays by many varieties of cultural exceptionalists. For most of the 55 years since the collapse of Hitler's own extravagant form of cultural exceptionalism, this sort of claim tended to be suppressed, or at least muted. The Universal Declaration of Human Rights and the several ensuing legal treaties setting out civil, political, cultural, and economic rights as well as the rights of children, women, ethnic groups, and religions, were meant to create a global safety net of rights applicable to all persons, everywhere. Although these legal instruments allow some restrictions in time of national emergency, they brook no cultural exceptionalism.

But more and more, such universalist claims are being challenged. And so the argument must be joined: are human rights truly universal, or are they a product of the decadent West that has no relevance in other societies?

COMMON CAUSE

THE POSTWAR FLOURISHING of human rights has featured two dynamic elements: globalization and individualization. Against both a backlash has emerged.

Globalization has been achieved by drafting basic codes of protection and, to the extent possible in a decentralized world, by monitoring and promoting compliance. Inevitably, this scrutiny has come into conflict with notions of state sovereignty. When the Commission of Experts overseeing compliance with the ICCPR found Jamaica to have violated the treaty through its administration of the death penalty, Jamaica responded by withdrawing from the ICCPR provision that allows individuals to make complaints to the commission. Jamaica's defense in that case was typical: respect our culture, our unique problems. When it comes to the treatment of our own people, we want sovereignty, not globalism.

Sovereignty, however, is not what it used to be. Beginning in the mid-1950s, the global system began to take humanitarian crimes more seriously. The U.N. barely hesitated before telling even quite seriously sovereign states—Belgium, the United Kingdom, France, the Netherlands, and the United States—to emancipate their colonies. And they did. By 1965, the Security Council was imposing mandatory sanctions on a white racist regime in Rhodesia and, in 1977, on South



AP/WIDE WORLD PHOTOS

Afghan family values? Women waiting in line at a Red Cross distribution center, Kabul, November 1996

Africa—although they, too, had asked in vain to be let alone to pursue the cultural exceptionalism of apartheid.

By last fall, the secretary-general of the U.N., Kofi Annan, felt emboldened enough to tell the General Assembly that their core challenge was

to forge unity behind the principle that massive and systematic violations of human rights—wherever they may take place—should not be allowed to stand. . . . If states bent on criminal behavior know that frontiers are not the absolute defense; if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign immunity.

Annan called for a redefinition of national interests that will “induce states to find far greater unity in the pursuit of such basic [U.N.] Charter values as democracy, pluralism, human rights, and the rule of law.”

This bold call drew quite a hostile reaction from member states. Governments seeking to preserve their sovereignty, however, are not the only ones offended by this most recent call for the enforcement of global values. Some cultures perceive the global human rights

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canon as a threat to their very identity. The Taliban may brandish national sovereignty as a shield, but they also see themselves as militant guardians of a religion and culture that should be exempted from a “Western” system of human rights that is inimical to Islam as they practice it. Other governments, notably Singapore’s, have similarly advanced their claim of exceptionalism by referring to “Asian values” that are supposedly antithetical to universal or Western norms.

In taking a stand against global human rights, the Taliban have made common cause not with the tired nationalist defenders of state sovereignty, but with a powerful and growing subset of cultural exceptionalists. These include some traditional indigenous tribes, theocratic national regimes, fundamentalists of many religions, and surprisingly, a mixed bag of Western intellectuals who deplore the emphasis placed by modern human rights rhetoric on individual autonomy. Although these exceptionalists have little else in common, they share an antipathy for the whole human rights system: the treaties, intergovernmental assemblies, councils, committees, commissions, rapporteurs of the secretary-general, and the supporting coterie of nongovernmental organizations (NGOs), each seeking to advance the cause of personal self-determination and individual rights. The exceptionalists view this system as corrosive of social cohesion and a solvent of community, eroding the social customs and traditions that become unsustainable once the individual ceases to be subordinate to the group.

RIGHTS OR RESPONSIBILITIES?

ALTHOUGH THE STRUGGLE for human rights as seen through the prism of, say, Amnesty International or Human Rights Watch looks like a tug of war between governments and individual dissidents, the real action has moved elsewhere: to the battle lines between the forces of communitarian conformity and the growing network of free-thinking, autonomy-asserting individualists everywhere. And although a physical struggle is undoubtedly occurring for control of Chechnya’s hills, the Khyber Pass, and the White Nile, a crucial intellectual struggle is also being waged between the forces of Lockian individual liberty and those championing communitarian values.

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The communitarian argument is well paraphrased by professor Adeno Addis of Tulane University: "One cannot have a right as an abstract individual. Rather, one has a right as a member of a particular group and tradition within a given context." To this Princeton's Michael Walzer adds that the recent emphasis on individual rights has fostered a "concept of self that is normatively undesirable" because it "generates a radical individualism and then a radical competition among self-seeking individuals." This, Addis asserts, "breeds social dislocation and social pathology among members of the group."

Harvard professor Michael Sandel, in his recent book *Democracy's Discontent*, criticizes the accommodations made by U.S. law—judge-made law, in particular—to an ethos of individual rights that, he claims, undermines the civic virtues that sustain Americans' sense of communal responsibility. Sandel complains that the emphasis placed on individualism in recent years has neutered the state and elevated personal rights above the common good. At the international level, Malaysian Prime Minister Mahathir bin Mohamad espouses a variation on the same theme. In 1997, he urged the U.N. to mark the fiftieth anniversary of the Declaration of Human Rights by revising or, better, repealing it, because its human rights norms focus excessively on individual rights while neglecting the rights of society and the common good. Meanwhile, Australia's former prime minister Malcolm Fraser has dismissed the declaration as reflecting only the views of the Northern and Eurocentric states that, when the declaration was adopted in 1948, dominated the General Assembly. Former German Chancellor Helmut Schmidt, too, says that the declaration reflects "the philosophical and cultural background of its Western drafters" and has called for a new "balance" between "the notions of freedom and of responsibility" because the "concept of rights can itself be abused and lead to anarchy."

BUILDING NEW BONDS

THE ARGUMENT against this cultural relativism weaves together three strands. The first demonstrates that those advancing the exceptionalist claim do not genuinely and legitimately represent those on whose behalf that claim is made. The second shows that human rights are grounded not in a regional culture but in modern transcultural

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social, economic, and scientific developments. And the third maintains that individual rights are not the enemy of the common good, social responsibility, and community but rather contribute to the emergence of new, multilayered, and voluntary affiliations that can supplement those long imposed by tradition, territory, and genetics.

First, the matter of exceptionalist legitimacy—or the lack thereof. Many prominent voices in non-Western societies reject the claims of exceptionalists who supposedly speak for them. Sri Lanka's president, Chandrika Kumaratunga, points out that "the free market has become universal, and it implies democracy and human rights." She dismisses talk about "a conflict of values" as "an excuse that can be used to cover a multitude of sins." Dato' Param Cumaraswamy, the former chair of the Malaysian Bar Council and a U.N. special rapporteur on the independence of judges, points to widespread non-Western ratification of human rights treaties as proof of their "universal acceptance." Former U.N. Secretary-General Boutros Boutros-Ghali bluntly states that there "is no one set of European rights, and another of African rights. . . . They belong inherently to each person, each individual."

How, then, does one explain the increasing frequency and vehemence of exceptionalist claims made on behalf of culturally specific "values?" It often turns out that oppressive practices defended by leaders of a culture, far from being pedigreed, are little more than the current self-interested preferences of a power elite. If Afghan women were given a chance at equality, would they freely choose subordination as an expression of unique community values? We are unlikely to find out.

Some guidance can be drawn, however, from the parallel case of Sandra Lovelace, a Maliseet Indian from New Brunswick. Under Canadian law, which incorporates Indian customary law, she lost her right to live on tribal land when she "married out" of the tribe. When Lovelace took her complaint to the ICCPR's Human Rights Committee, she pointed out that no similar penalty applied to men. The global group of experts upheld her claim. Pushed to conform to its international human rights obligations, the Canadian government then repealed the gender-discriminatory Indian law. Although that change disturbed some traditionalist leaders, they were soon repudiated in monitored tribal elections. As with much that passes for authentic custom, the rules turned out to have been imposed, quite recently, by those who stood

to benefit. Discrimination against women by the Maliseet, far from being a traditional requisite of group survival, was shown by recent anthropological research to have been copied from male-dominated Victorian society.

In a similar fashion, many of the exceptionalist claims made in the name of cultural diversity have been challenged by others in the non-Western world. Radhika Coomaraswami, the U.N. special rapporteur on violence against women, says that practices such as female genital mutilation, flogging, stoning, and amputation of limbs, as well as laws restricting women's rights to marriage, divorce, maintenance, and custody, are all inauthentic perversions of various religious dogmas. Moreover, she insists that "cultural diversity should be celebrated only if those enjoying their cultural attributes are doing so voluntarily." In her landmark study of Islam and human rights, Professor Ann Elizabeth Mayer concludes that much of the pedigree claimed by fundamentalists does "not represent the result of rigorous, scholarly analysis of Islamic sources or a coherent approach to Islamic jurisprudence." The Egyptian art historian Professor Nasr Abu-Zaid puts it simply: "It is the militants who are ... hijacking Islam."

Just as many of the idiosyncratic customs that alienate non-Western traditionalists from the human rights system are inauthentic, so too are the attempts to portray these rights as aspects of Western cultural imperialism. The human rights canon is full of rules that, far from being deeply rooted in Western culture, are actually the products of recent developments—industrialization, urbanization, the communications and information revolutions—that are replicable anywhere, even if they have not occurred everywhere at once. They are hardly Western; if examined historically, traditional Western culture comes to look more like everyone else's zealous fundamentalism. Look closely through this lens, and even the Taliban begin to seem "Western" in their practices. Alcibiades, a commander of the Athenian army, was condemned to death for impiety in 415 B.C., as was Socrates years later. And remember that stoning for blasphemy is recommended by the Old Testament (Leviticus 24: 16).

As this suggests, there is nothing remotely Western about religious freedom and tolerance. Islamic fundamentalists insist that tolerance is not for them, that non-Muslims must not be allowed to proselytize in their societies, that Islam's followers may not exit the "true" religion,

and that blasphemy is to be punished severely. As it happens, Western Christian civilization insisted on much the same for most of its first two millennia. St. Augustine, citing his favorite text (“Compel them to come in,” Luke 14: 16–23), advocated death for heretics. According to St. Thomas Aquinas, heretics “by right ... can be put to death and despoiled of their possessions ... even if they do not corrupt others, for they are blasphemers against God” and thus commit “high treason.” There was certainly no trace of religious toleration in Tudor England, where, during the first hundred years after the establishment of the Church of England, hundreds were executed by zealots. During the brief restoration of Catholicism under Queen Mary (1553–58), 273 subjects, including 4 bishops and an archbishop, were burned for heresy. Meanwhile, in Geneva, the reformer John Calvin was executing the anti-Trinitarian Michael Servetus. Back in Britain, under Cromwell’s Protectorate, dissenting Protestants were jailed, whipped, hanged, or had their tongues bored through with hot irons at the insistence of the Presbyterian establishment. And in the 1729 case of *Rex v. Woolston*, Sir William Blackstone, the great jurist of the common law, declared blasphemy a criminal libel, a “public affront to religion and morality, on which all government must depend for support.”

Nor are such events limited to ancient history. The last blasphemy prosecution to have succeeded in England was brought in 1979 against James Kirkup, a poet teaching at Amherst who depicted Jesus as homosexual. In the House of Lords, his conviction was sustained by Lord Scarman, who thought it essential to protect “religious beliefs ... from scurrility, vilification, ridicule, and contempt.”

In the United States, criminal blasphemy convictions resulting in imprisonment, with solitary confinement and large fines, were imposed throughout the nineteenth century under state or common law. In New York in 1811, Chief Justice James Kent admonished a convicted blasphemer “that we are a Christian people, and the morality of the country is deeply ingrafted upon Christianity and not upon the doctrines of worship of those impostors Mahomet and the Grand Lama.” Kent himself was a Unitarian, nowadays a rather liberal faith,

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but he believed that religion was the bulwark of social order and that expressions of irreligiosity had to be punished because they “strike at the roots of moral obligation, and weaken the security of the social ties.” Ayatollah Khomeini could not have said it better.

Other parts of the human rights canon have little more claim to being “Western” than does freedom of religion. France did not extend the franchise to women until the end of World War II. Harvard Law School began admitting women only in the 1950s. The first American female candidate for a medical degree was Elizabeth Blackwell, who graduated from a rural medical college in Geneva, New York, in 1849 but had to complete her training in Paris. Slavery, sanctioned by the Old Testament (Exodus 21: 2, 26, 27, 32), was abolished in the United States only in 1865, and the Supreme Court ruled in 1897 that sailors could be compelled, on pain of criminal penalties, to perform indentured labor because, as a class, they were “deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults” and should thus be recommitted to ship-owners as their putative “parents and guardians.”

What brought about the transformation to personal autonomy in religion, speech, and employment as well as equal legal rights for the races and sexes? Although these recent developments occurred first in the West, they were caused not by some inherent cultural factor but by changes occurring, at different rates, everywhere: universal education, industrialization, urbanization, the rise of a middle class, advances in transportation and communications, and the spread of new information technology. These changes were driven by scientific developments capable of affecting equally any society. It is these trends, and not some historical or social determinant, that—almost as a byproduct—generated the move to global human rights.

In the United Kingdom, it was the growth of a capitalist middle class in the eighteenth-century Industrial Revolution that fueled the demand for quality children’s education and thereby compelled the admission of women to the teaching profession. In the United States, the demographic consequences of the Civil War gradually forced an opening for women in medicine and law. After World War II, veterans’ benefits and the need for a large peacetime army profoundly affected the opportunities of African Americans. Improved and cheaper trans-

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portation loosened the ties that long bound people to the place where they were born and generated a demand for the right to travel and emigrate. The advent of information globalization through CNN and the Internet has profoundly affected individual participation in discourses on foreign and domestic politics, just as the invention of the printing press and Gutenberg's vulgate Bible unleashed the social forces leading to the Reformation.

These changes, wherever they have occurred, have boosted the capacity for individual autonomy and, in consequence, fueled the demand for more personal liberty. Does this trend, as the cultural exceptionalists warn, presage the unraveling of community and social responsibility? Elites in authoritarian societies have always professed to think so. When, in 1867, the Boston School Committee rejected a petition signed by, among others, Harvard President Thomas Hill and the poet Henry Wadsworth Longfellow calling for abolition of corporal punishment, the committee, employing the common Benthamite communitarian litany, defended beatings as advancing "the greatest good of the greatest number." Modern individualists, however, believe that the good of the greatest number should not be achieved by sacrificing the human rights of even the smallest number. They also believe that, set free of unnecessary communal constraints, individuals will not retreat into social anomie but, on the contrary, will freely choose multilayered affinities and complex, variegated interpersonal loyalties that redefine community without the loss of social responsibility.

Modern human rights-based claims to individual autonomy arise primarily not out of opposition to community, but from the desires of modern persons to use intellectual and technological innovations to supplement their continued traditional ties with genetically and geographically based communities. Liberated from predetermined definitions of racial, religious, and national identities, people still tend to choose to belong to groups. This threatens the state and the traditional group only to the extent that traditional communities are no longer able, alone, to resolve some of the most difficult global problems facing humanity: epidemics, trade flows, environmental degradation, or global warming. Few quarrel with Aristotle's observation that "he who is unable to live in society, or who has no need because he is sufficient for himself, must be either a beast or a God." But many,

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freed to do so, now define themselves, at least in part, as “new communitarians,” seeking additional transnational forums of association.

According to policy analyst Hazel Henderson, “Citizen movements and people’s associations of all kinds cover the whole range of human concerns. ... The rise of such organizations [is] one of the most striking phenomena of the twentieth century.” For example, whereas there were 5 international NGOs in 1850 and 176 in 1909, now more than 18,000 are listed by the U.N., which reports that “people’s participation is becoming the central issue of our time.” Most of these NGOs, from Médecins Sans Frontières to the International Confederation of Free Trade Unions, are engaged globally in socially responsible activities that promote the well-being of others.

JOINING THE BATTLE

IT APPEARS, then, that the globalization of human rights and personal freedoms is rarely an affront to any legitimate interest in cultural self-preservation. Nor do human rights represent Western cultural imperialism; instead, they are the consequence of modernizing forces that are not culturally specific. And the social consequences of expanding human rights have been far more benign than traditional communitarians have feared. To the Taliban’s claim of cultural exceptionalism one might more specifically reply, first, that the Taliban’s interpretation of the culture they claim to defend is considered incorrect by most Islamic historians and theologians; second, that their claim to speak on behalf of Afghan culture is undermined by their silencing of half the population; third, that the force of individual rights is becoming irresistible in a world of globalizing fiscal, commercial, cultural, and informational forces; and fourth, that many persons freed to choose their own identities will still decide to affiliate along religious, cultural, and national lines.

These arguments are unlikely to carry weight, however, with those whose claim of cultural exceptionalism is only a flimsy disguise for totalitarian tendencies. To some, the problem with freedom is not cultural or social, but political. After the recent victory of reformists in the Iranian parliamentary elections, for example, Ayatollah Mesbah-Yazdi reportedly said that the victorious reformers were

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more dangerous to the system than a military coup because they promote greater freedom for Iranians to write, read, and behave as they wish. Such an argument is hard to refute. It will be overcome, eventually, by the irresistible forces of modernization and the demands for personal freedom those forces unleash. Meanwhile, however, it is essential to defend the universality of human rights and expose and oppose cultural exceptionalism's self-serving fallacies.

But why bother? If the global triumph of human rights truly is predestined, encoded in the genome of scientific and technological progress, why not simply await the inevitable? One answer is that waiting is immoral. In the short run, scientific and technological progress may actually strengthen the hand of oppression. For women in Afghanistan, Kurds in Iraq, Indians in Fiji, and others, their inevitable liberation is still far away and provides scant comfort.

In harder strategic terms, too, waiting is a flawed approach. Autocratic elites have learned to fight historical inevitability by destroying the engines of social progress. The cultural Luddites of the Taliban, by disempowering women and dismantling their society's educational and health infrastructure, hope to delay their own eventual overthrow. Idi Amin had that in mind when he demolished Uganda's Indian mercantile community in the 1970s. Pol Pot almost succeeded with a similar project in Cambodia. And George Speight recently pursued the same goal in Fiji. Each sought to catapult society back to a premodern age when race or class purification justified everything.

Waiting for the inevitable globalization of personal freedoms is also made untenable by the reviving militance of cultural exceptionalism. From the Balkans to the Horn of Africa, from the southern tier of the former Soviet Union to western China, from Indonesia to Mindanao in the Philippines, extremist tribalism is on the rise. To the extent that this is a political problem—the use of terrorism and the export of guns and money—it must be countered by political and economic support for the governments and societies that firmly oppose it.

When such measures fail, international, regional, governmental, and nongovernmental means must be mobilized to carry on the fight against the more egregious forms of cultural oppression. There is no one-size-fits-all solution. In the instance of the Taliban, the U.N. has wielded the stick of nonrecognition and the carrot of food relief. It

withdrew relief agencies when Afghan women were arrested for working with its field offices, and it sent them back when those measures were revoked. When a racist government comes to power—such as Speight's recent junta in Fiji—the international community has many sanctions that can be deployed to protect universal values. These range from diplomatic nonrecognition to the suspension of air traffic and the withholding of World Bank loans, International Monetary Fund credits, and bilateral trading privileges. They should be used.

Such steps could, for a time, harden the resolve of the cultural extremists. The principal objective of a concerted strategy against cultural extremism, however, must not be the quick reversal of any one outbreak of racism or intolerance, but the forging of a unified global stance against radical cultural exceptionalism in general.

This process will not be easy, for when it comes to global human rights norms, even some U.S. politicians, judges, and intellectuals are quite skeptical of universalism. And a superficial but subtly effective nexus joins the cause of cultural exceptionalism and other forms of resentment against globalization and its alleged parent: Western, or U.S., hegemony. For example, it is not always readily apparent to people why, if France claims the right to protect its culturally unique movie industry, Afghanistan should not protect its policy on women. Leaders of liberal societies everywhere—political, intellectual, industrial—are being challenged to defend values and clarify distinctions they may have assumed were self-evident.

If the fight against cultural exceptionalism is to be made effective, it needs military and fiscal resources. It needs a common strategy involving governments, intergovernmental organizations, NGOs, business, and labor. But let there be no mistake: the fight is essentially one between powerful ideas, the kind that shake the pillars of history. It is a deadly earnest conflict between an imagined world in which each person is free to pursue his or her individual potential and one in which persons must derive their identities and meanings exclusively in accordance with immutable factors: genetics, territoriality, and culture.

This, then, is a wake-up call. Waging this war of ideas successfully—and it cannot be evaded or postponed for long—will require intellectual rearmament for thinkers lulled by the warm, fuzzy triumph of liberalism and the supposed end of ideology. 🌐