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THE IMPORTANCE OF EQUALITY

Francis Fukuyama

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Jørgen Møller's article opens up an important historical debate concerning the sequence by which the institutions of the state, rule of law, and democratic accountability were introduced in Europe. He acknowledges the relatively late arrival of modern state-building there, agreeing with the scholarly consensus that this did not really begin until the final decades of the sixteenth century. And he agrees with the argument that I made in *The Origins of Political Order*¹ that rule of law was much older in Europe, originating in the early-medieval period and rooted in the independence of the Catholic Church.

He takes issue with me, however, by arguing that democracy was not a late arrival (meaning the product of the eighteenth to twentieth centuries); instead, he contends that modern democratic institutions, like rule of law, had their origins in much earlier medieval institutions, in particular the "representative" assemblies of certain European cities and the estates that existed in different forms and under different names (sovereign court, cortes, diet, zemsky sobor, parlement, parliament) in many European societies. Kings were legally bound to get the permission of these estates to raise taxes, which in turn gave certain assemblies—notably, the English Parliament—the ability to hold the monarch accountable. What began as accountability to a small and wealthy elite eventually evolved into accountability to a democratically elected legislature based on universal adult suffrage.

Therefore, democracy, according to Møller, was not a latecomer on the European scene; it emerged in parallel with rule of law in a way that makes European development very different from that of Russia or China, but also from the vast majority of contemporary developing countries.

As the very term “parliamentary democracy” indicates, Møller is quite correct that there is a deep institutional precedent for modern democracy in the omnipresent medieval assemblies that characterized European feudalism. The modern British Parliament was the lineal descendent of the medieval English institution of the same name. Such bodies simply did not exist in ancient China or the Middle East, and were present only in a highly attenuated form in Russia. The fact that these estates constituted a formal institutional counterweight to kingly and later state power was certainly one reason why democracy could flourish in modern Europe. In a certain way, Møller’s disagreement with me can be viewed as simply a definitional one—should the medieval estates and city councils be considered representative, and are they better understood as a manifestation of rule of law or of accountability? There was a long debate among historians, including the great Frederick Maitland, as to whether parliaments, and in particular the English Parliament, were judicial or representative institutions. During the seventeenth century, the royalist side emphasized the former, and the Whigs the latter; it is clear that the English Parliament played an important judicial role throughout much of the early-medieval period.² But there is also a substantive issue having to do with the *idea* of equality that makes the later dating of the onset of democracy necessary, and we must keep this in mind when thinking about the likelihood that democracy will spread in non-Western countries today.

The rule of law and democratic accountability are two different ways of constraining power. The rule of law should ideally bind all members of the political community to the same set of general rules. In its constitutional form, it should also specify how power is legally allocated among a competing set of bodies or political actors, so that no one actor has the ability to make decisions for the whole community without the consent of at least some of the others. Democratic accountability, by contrast, binds sovereigns to respect the wishes of as broad a number of their citizens as possible, usually through elections. Historically, the advancement of law and of democratic accountability often went hand in hand. The English Parliament under the early Stuarts demanded accountability from the king in part because he was seen as encroaching on the Common Law through practices like the use of the Star Chamber. In the nineteenth and twentieth centuries, on the other hand, courts protected and advanced the right of citizens to political participation. Today, we regard legal rights and elections as part of a single package labeled democracy, but the two are conceptually separable and emerged historically at different points.

Legal limits on power had deep roots in European history. A number of Greek city-states had constitutionally separated powers, but the most important precedent for such a system was the Roman Republic, which had an incredibly complex system of divided powers by which a host of different political bodies could check one another. The Roman system was highly oligarchic: Real power lay in the aristocratic Senate, and while “the people” were represented by tribunes, the latter only had limited veto powers over Senate decisions. The collapse of the Republic and the establishment of the Empire under Augustus theoretically unified sovereignty under a single ruler,

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though a highly developed system of law continued to specify rights for different classes of subjects and citizens.

Such a system of divided powers is more typically referred to as a feature of republicanism than of democracy because it did not accept the fundamental principle of human equality. Whether the interests of non-elite subjects were better protected under the Republic or the Empire is a matter of some controversy; the republican “freedom” celebrated by ancient writers was limited to a highly select minority of inhabitants.

European feudalism evolved as a similar set of legally defined rights held both by individuals and by corporate bodies. Feudalism was a more “modern” form of political institution than the kin relationships that prevailed among the Germanic tribes from which many modern Europeans are descended. It was based on a voluntary legal contract between a superior and an inferior rather than on blood ties. The estates were simply corporate bodies of elite subjects whose legally defined rights sovereigns had to respect. In English history, the Magna Carta is rightly celebrated as a foundation of the rule of law insofar as the barons were able to impose limits on the king’s power over them. Møller and I agree that various legal bodies limited monarchical power; in a sense, the only disagreement is whether to understand them as an aspect of the rule of law or as an incipient form of democracy.

I would argue that the “democratic” character of medieval assemblies is something that is visible only *ex post facto*. At the time, they were seen as legal embodiments of elite privileges that had little to do with democracy, as Møller himself concedes. Whether a society is ruled by one king or a few lords does not tell you much about the treatment of the great mass of the population; Hungary had a constitution limiting kingly power and yet remained a highly repressive oligarchy that imposed serfdom on much of its population. The medieval estates could evolve into modern parliamentary institutions only because of an intellectual revolution that took place in the course of the seventeenth century.

This revolution can be seen in the nature of the political rhetoric that accompanied the fight between the English king and Parliament at the beginning and at the end of the century. The struggle against the centralizing efforts of the first two Stuart monarchs, leading to the execution of Charles I in 1649, was undertaken in the name of the “rights of Englishmen”—that is, the inherited feudal rights of Parliament and other bodies that were being encroached upon by the state. At the end of the century, by contrast, the conflict that led to the abdication of James II and his replacement by William of Orange during the Glorious Revolution of 1688–89 was waged in the name of the “rights of man”—that is, universal rights that inhered in human beings by the very fact of their humanity.

This change in the concept of the nature of rights was begun by a number of writers, most notably Thomas Hobbes, but also including Hugo Grotius, Jean Bodin, and Samuel von Pufendorf. All of them justified a concept of a unified or absolutist sovereignty. At the same time, however, all of them argued that such sovereignty existed only to the extent that the sovereign “represented,” under an implicit social contract, the whole community and not just the interests of his particular house or dynasty. For Hobbes, this representation was based on the king’s ability to protect the right to life of his subjects, which was the most fundamental right of all human beings. As Harvey C. Mansfield has shown, prior to Hobbes there was no abstract concept of a state representing the whole community rather than the partial interests of some social group within it.³ The public interest was thus redefined as the collective interest of the inherently equal citizens who made up the community.

Once this fundamental break with feudal concepts of law and rights had been made, it was not a long distance to the Lockean position that the king could rule legitimately only with the consent of the governed. The Glorious Revolution and the constitutional settlement that followed were carried out under the banner of Lockean principles. John Locke himself accompanied William’s wife Mary from Leiden back to London and became the principal exponent of the new concept of government based on protection of the natural and universal rights of man. Thus even though the English Parliament that now emerged as the true sovereign was chosen by only a tiny minority of citizens, the principle that rights were natural and not inherited had been established.

This crucial intellectual revolution meant that all subsequent political arguments—over the rights of people who did not own property, over slavery, over the rights of women—revolved around who qualified as a human being with natural rights, and not over the protection of inherited privileges. The Glorious Revolution thus did not simply represent the replacement of one elite group by another, as did the various struggles during the Roman Republic or among the Italian city-states; rather, it was to lay the foundation for the steady expansion of the franchise that

would, by the early twentieth century, lead to the emergence of universal suffrage in many European countries.

It is true that modern representative government evolved, almost accidentally, out of the feudal institution of the estates. These institutions were the legal expression, as Møller suggests, of the fact that social power was more broadly distributed among autonomous groups in Europe than in other parts of the world. This in turn explains why democracy evolved there first, rather than in Russia or China. These institutions, however, were a permissive rather than a sufficient or necessary cause of the rise of democracy. The ingredient that permitted their evolution into representative democracy was the spread of the idea of human equality.

This has important implications for how democracy might further expand today. Strong states like China and Russia have been able to head off the formation of institutionalized and autonomous social groups that might challenge their power—witness the Chinese government's efforts to suppress Falun Gong and control Chinese Christianity. This suggests that the sequencing that puts modern state-building ahead of either law or democracy is not an ideal route to liberal democracy either. Møller is quite right to argue that we should not regard it as somehow a necessary or proper sequence.

But the *idea* of equality, as Alexis de Tocqueville suggested, has become pervasive throughout the world. It has legitimated social resistance to power and encouraged the formation of independent civil society. Many non-Western societies have no history of divided powers, republican government, or organized social resistance to centralized authority. At the same time, they have no traditions of centralized state power either, so state and society must grow stronger and become institutionalized in parallel. A well-functioning liberal democracy requires state and society to be strong at the same time; in many developing societies, however, they are not complementary but serve to keep each other weak. In this respect, the European sequence in which rule of law preceded both state and democracy may still serve as a guidepost, since state modernization under law both legitimates state power and permits the simultaneous emergence of a protected and stable sphere of independent social action. I doubt that Jørgen Møller would disagree with any of this.

NOTES

1. Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (New York: Farrar, Straus and Giroux, 2011).

2. On this point, see Deborah Boucoyannis, *Strong Rulers, Land, and Courts: The Origins of Representative Institutions* (forthcoming), appendix.

2. See Harvey C. Mansfield, Jr., *Machiavelli's Virtue* (Chicago: University of Chicago Press, 1996), 281–94.