

Some Thoughts on the Horizontal Society

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1. – *Introduction*

I wrote my book, *The Horizontal Society*, because I was curious about some aspects of modern life – at least life in the developed societies – which seemed new, interesting, important, and yet in some ways puzzling and problematic; and I wanted to explore these aspects and try to understand them. Among other things, I felt that modern society was, relatively speaking, different from traditional society in a way I described as more horizontal. Traditional society, older society, less developed society, tended to be strongly vertical. There were clear lines of authority and influence from the top to the bottom. Power and influence ran from parents to children, from elites to commoners, from men to women, from elders to youths, from priests to laity, from kings to vassals. A person's place in the social order tended to be fixed by accidents of birth or hereditary social position; or by stage of life. There was little or no social mobility. You were born a man or a woman, a noble or a commoner; your rights and duties also depended on your age and position in the social order.

None of this is completely gone, of course. Nobody would argue that parents are not important to most people; or that governments are not powerful, or that churches have no influence. Young and old, men and women: the distinctions are still crucial, and make a real difference in people's lives, and in their life-chances. But in modern societies, identity, power, influence, and authority have tended to become more horizontal. This means that these are diffused among people who are more or less on an equal plane (and who are not in immediate, face-to-face contact). A system becomes more horizontal when vertical authority weakens or loses its grip; and when the peer group gains in strength, or, especially, when the *individual* gains more autonomy.

That vertical authority, in our day and age, is much weaker than it was in earlier societies seems crystal clear. Obviously, democratic systems are much less vertical than dictatorships, or kingdoms where the king has absolutely power. Democratic systems eliminate the distinction between nobles and commoners. They tend to get rid of established churches. They do not make legal distinctions between different classes and orders. Of course, there are classes in modern, democratic societies, but they are fluid, porous, and permeable. There is a great deal of mobility – geographic, and also social.

To those of us who are parents, it seems obvious that within the family, father and mother have lost a great deal of their authority and influence. There is nothing today remotely like the patriarchal position of the early Roman father, who had (apparently) even the power of life and death, and even with regard to adult children. There is nothing like the prerogative of families in traditional society, to decide who their children would marry, and where marriages were arranged as a kind of compact between families. In traditional Japanese society, and well into

the 19th century, it was not unusual for a man to see his bride, and a woman to see her husband, for the very first time on their wedding day. Families in traditional society basically governed the lives of their children; and children, even adult children, submitted to the authority of parents until the parents died.

Today, as parents, we still of course have tremendous power over newborn children and very young children. But very soon we begin to have competition. The competition comes from society at large. It enters the home by way of the television set, for example. The family has no monopoly over education and socialization. The child receives images and ideas from outside, almost as soon as it has any consciousness whatsoever. After a few years, they spend most of their day in schools, where they are exposed to other influences. By the time the children are adolescents many people come to feel that they have no power whatsoever over their own children. They seem to wander in packs, or herds, made up of peers. The friends play a larger and larger role in their lives.

Of course, this situation varies from country to country. It is my impression, for example, that family authority survives better in Italy than in, say, Sweden or the United States. But even in Italy, and in all other Western countries, the family system has been changing dramatically, and in a definite direction: toward the loss of coherence and authority. For that matter, even in less developed countries, the family system has been changing along the same lines, certainly among the Westernized elites, but even to a degree among villagers.

The same story of relative decline can be told about other kinds of vertical authority – for example, the authority of religious figures and leaders, the various popes, priests, imams, the Dalai Lama or the archbishop of Canterbury. Religion is of course still a very powerful force. Indeed, fundamentalist forms of religion seem to be growing stronger every day, and not only in Islam. But I think I can show that religion is no exception to the rule that vertical authority is getting weaker. For one thing, fundamentalism is strongest in the third world, and in the least developed parts of the first world (the American deep south, for example). For another thing, religious adherence is more and more felt as a matter of choice. Religion in some Western societies is quite feeble; this is true in Scandinavia, or in England, where only a small proportion of the people go to church or consider church very important. In other places, religion has been reinterpreted as a matter of the individual's search for spiritual comfort and meaning, rather than obedience to constituted authority. The present pope for example is enormously popular in the United States. The majority of American Catholics consider themselves good Catholics, and even devout Catholics. But that does not prevent them from paying no attention whatsoever to what the church teaches about divorce, or contraception, or even abortion. These are matters, they believe, for individual choice. Theologically, of course, they are quite wrong; but that makes no difference. They cannot conceive of the kind of obedience to religious leaders that was expected in the middle ages. Yes, the pope is a genuinely popular figure – but as a celebrity, a role model, and a kind of image of purity and goodness; but not as a source of authority. The Dalai Lama is almost as popular as the pope. He draws enormous crowds, who find him an exciting presence, and who admire his spiritual qualities. But almost none of these people know anything at all about Tibetan Buddhism, and, if they did, would have little or not interest in following its precepts.

The authority of the state is a complex issue, which I will not go into in this talk. It is enough to say that, while people may be proud to be French, or Finnish, and have great affection for their country, its landscape, and so on, and while many people feel they ought to obey the law, their attachment to the state is hardly a matter of deep, traditional attachment to

authority. One small sign of this is the increasing popularity of dual citizenship. The very concept at one time would have seemed absurd. How could a person be a citizen of more than one country? Here, too, I believe Europe is a special case. The European Union dilutes national feelings, perhaps deliberately. A single currency is not just a fiscal and financial device; it is a device to break down borders. Of course, it is possible that Italian nationalism or Austrian nationalism will be replaced by an equally strong European nationalism; but this has not yet happened, and perhaps will never happen.

If authority has weakened, in the family, the state, the church, then what has replaced it? Voluntary affiliation. People in modern societies feel free to choose who they are. They feel free to form relationships on a plane of horizontal equality. Or perhaps we should say, they feel freer than people in the past, and freer than people in less developed societies. They feel freer to change religions, to meet their personal needs. In many countries in Latin America, for example, it is the more emotional, lively Protestant sects which are gaining new converts. Conversion may or may not be more common than in the past; I have no figures on this point. But it would have been at one time unheard of for a person of European heritage to become a Muslim or a Buddhist. Today, it happens.

The horizontal society is held together by the media, by radio, newspapers, television and, more recently, by the internet. The visual media are particularly powerful. This is why the figure of the celebrity is so important – a celebrity is a famous person who is also a familiar person, familiar because we see him or her every day on television, or read about them in the daily press. Surviving political and religious authority has to respond to the demands of a celebrity society. When Queen Victoria was queen of England, she was a remote figure, whose face was on postage stamps; but not one out of ten thousand of her subjects had ever seen her in person, or heard her voice. The present queen, of course, is a celebrity, and her voice, looks, way of dressing and walking, is familiar to millions and millions of people. The Dalai Lama travels all over the world, and his face and his image are more familiar to many people than their local priest or minister. Authority seeks publicity, needs publicity, because in a horizontal society, a society of open choices, image and celebrity are central to success, in elections, for example

Family ties are of course a more complicated issue. It is not possible, literally, to get yourself a new mother and father. But you can in an important sense get rid of the ones you have; and this is exactly what many people in modern societies do. Millions leave home and never return. They have only dim connections with their families of origin – perhaps a phone call once in a while, or a post-card. They have only dim connections, too, with brothers and sisters, in many cases. They have, in effect, formed new families for themselves; and discarded the old ones. In traditional societies, kinship is very important – it means something even to be somebody's distant cousin. In modern, developed countries, this is less and less the case; distant cousins barely count for anything. We have no sense of tribe or clan. For many people, the strongest ties are with friends or members of some group they have joined.

Family cohesion, again, is one of those matters which varies a good deal from country to country. In Europe, there is a strong north-south divide. Young Italians are much more likely to stay close to home or even live at home than young Swedes.

2. – *Identity Politics: Individuals and Groups*

It seems paradoxical that the age of the horizontal society is also the age of identity politics. This phenomenon seems pervasive in developed countries. Racial groups, womens' groups, ethnic groups, and others, are critical to political life. Perhaps this is more true in the United States than elsewhere, but I think I see signs of this situation throughout the developed world. The paradox, I believe, is only apparent. The two factors can, in fact, be reconciled. The roots of both of them lie in modernization; and in the decisive role of modern technology – the technology of communication and transportation. There is a lot of controversy, to be sure, over the exact meaning of modernization; there is no general agreement on what “modern” consists of, or what makes a society “modern”. Whatever definition one adopts, it is clear that the modern society is that society which has been completely transformed by modern science and technology. A modern society is a society with television, automobiles, computers, and jet airplanes; it is a society, too, of banks and universities and gleaming hospitals with fancy machines. It is the opposite of the society of primitive tools, thatched huts, illiteracy, and medicine men instead of doctors. The modern society is also a society with a particular form of culture; and that culture is tied tightly to the technology. Modern people, for example, have a very precise sense of time. They are constantly measuring time, and gearing their lives to the relentless ticking of the clock. Societies without clocks and watches have a different conception of time, one which responds chiefly to natural rhythms of day and night, hot and cold, and rain and shine. A modern time concept is only one small aspect of a culture of modernity; we can all think of many other examples.

Technology drastically changes everything in our lives. An automobile is not simply a fast carriage. It is a tool which has transformed the cities, transformed patterns of travel and ways of life. Modern societies are societies that have reduced the importance of distance through the transportation revolution and the communication revolution. And these are what make possible the horizontal society. There are of course face-to-face peer groups (a juvenile gang, for example); or the people who work together in an office, or groups of neighbors. But the larger and more significant identity groups – racial groups, for example, or feminist organizations – depend on the ability to reach people who do not live next door to each other or in the same village or town. The identity groups that are so obvious a feature of modern social life, and modern politics, could not be formed in a traditional society, where people lived in small, isolated villages.

Yet in a horizontal society, the individual is more important than the family or the group; in modern society, in general, there is a profound individualism. Everything that weakens traditional society, makes individualism stronger. And yet, at the same time, identity politics flourishes. In traditional society, a person was loyal to his face-to-face group. There was also the king, the pope, and other distant authorities, but they hardly figured in the life of the average person; they were remote, almost God-like figures. Technology broke down the isolation of the traditional village. It allowed people to connect with each other. This was, in part, nothing more than a matter of road-building. Universal education, and service in the Army, were also powerful weapons that broke down village isolation. They helped forge a national sense of identity. This is the message of Eugen Weber's powerful book, *Peasants into Frenchmen*, on the formation of French national identity.

Weber described the process of nation-formation. His subject was France. He argued that, basically, there was no real sense of French national identity until deep into the 19th century. It was something constructed, imposed. A similar story could be told about every other European nation – about the formation of a Germany, an Italy, a Spain, an England. Of course, in each case, there is a special story to be told. The historical texts often describe the process as if it was inevitable, or the product of some benign and wonderful evolutionary process. But it was never certain that an “Italy” or a “France” or a “Russia” would emerge from the process of nation-building. All nations are in a sense constructs; they are all artificial; patched together in a series of steps, their boundaries are the result of wars, dynastic marriages, and the work of politicians and elites trying to cement their powers. It is only through a knowledge of particular history that we can come to understand why Inner Mongolia is part of China, and not part of the Mongolian Republic, or why there is a Mongolian Republic at all; why Uruguay is not part of Argentina, and why Norway and Sweden are separate countries; or why the United States stretches from coast to coast, instead of stopping somewhere in between.

It is also true that the formation of a “nation” was possible only when transport and communication began to create the conditions that underlie the horizontal society. The central state had an interest in promoting a feeling of national identity. It worked hard at this job – in France, for example. But the process of inclusion was also a process of exclusion. Making French nationality led to a definition of French-ness, which was also a definition of what it meant not to be truly French. For example, French people spoke French. They did not speak Basque or Provençal or Gascon or Breton or Flemish or German or Italian. They spoke, indeed, Parisian French. In Spain, they spoke Castilian, in Germany, Luther’s High German, in England, the dialect of London. But in all these countries there were dozens of speechways and dialects. The horizontal society threatens all the local dialects and customs. People go in the army, or they go to school, or they migrate from the village to the city. In each case they have to learn the “proper” language, in order to talk to other people. Television and the mass media accentuate the process. The very concept of “French” as a modern language, and as an official language to be spoken by everybody (and not just a court-centered elite), is itself a construct; a product of nationalism, and thus in turn a product of the horizontal society.

Let me explain this in a bit more detail. In traditional societies, languages fragment and break into a thousand pieces. Each village, in its isolation, speaks its own dialect. In countries like New Guinea, or the tropical New World, among indigenous peoples, there are literally hundreds of languages. When the Roman Empire collapsed, its language Latin, dissolved into dozens and dozens of dialects; and as time went by, they grew further and further apart. Each section of the former empire had its own patois. The process of creating a standard language is a highly artificial process. All of the so-called major “languages” were once collections of dialects, which were somehow forged into a unity, then force-fed on children in schools. Why one particular form wins out over another is a historical accident. When Queen Elizabeth I of England died, without children, the King of Scotland, her closest male relative, became King of England. Had Scotland and England remained separate, there would undoubtedly today be a Scottish language, as different from English as Swedish is from Danish. If Norway had remained joined to Denmark, there would be no Norwegian language.

Language formation levels out and kills the local dialects, though in some places – Italy is a prime example – they die very slowly. The process is a horizontal one: destruction of village isolation, and creation of a nation-state, then the dissemination of the standard language

through schools, TV, newspapers, and other media. Mobility is also a factor, as we have already mentioned. When people move to Paris from the provinces, they have to speak French.

As we said, too, the process also generates minorities. And this may lead, in turn, to separatist movements. The Basques never revolted against Spain until the horizontal society infused the concept of Spain with a special meaning. Now the Basques had become a minority; and there were elements in Basque society which rejected this status. They also believed – correctly – that Basque language and culture can survive if the Basques had independence or at the very least autonomy. Icelandic, a language spoken by about 300,000 people, has a secure future, because Iceland is an independent country; it has its own newspapers, schools, and television stations. Whether Welsh or Basque or Breton or Friulian can survive is a more difficult question.

Of course not all Basques are passionate nationalists; most of the people who live in the Basque country, and who consider themselves ethnically Basque, do not even speak Basque. The decision to be a Basque nationalist is a personal decision. It is also a personal decision not to be a Basque nationalist; but instead to be a feminist, or an expert on Spanish verbs, or a gay activist, or a Catholic missionary. All of these imply membership in groups, and they make politics in modern nations a melange of group interests and identity interests; but this should not mask the essential choice behind the creation of groups.

There is another point worth making about groups and identity politics. It is often said that the aim of these organizations is group rights. It certainly seems that way – in the vigorous demands of feminist groups, or ethnic minorities, or black people, or gay people, or even deaf people. They seem to be asking for privileges and rights defined by and limited to the members of their group. But this is not strictly speaking accurate. Let us take, for example, feminism. This is a movement which is virtually world wide. There are even stirrings in such places as Iran and Saudi Arabia. To be sure, feminism has made more progress in Sweden than in Japan; but the urge to increase the rights and power of women is a factor in almost every country.

But what does it mean to seek rights for women? It means to give women, as individuals, the same range of choices that men have or have had. It means the right of women to hold jobs, to run for public office, to earn the same amount that men do in a similar job, the right to head a corporation or, for that matter, the right to stay home with the children. And this is true of all other so-called “group rights”. They all seek, essentially, a level playing field; they seek an end to discrimination. They seek the right to choose. Take the case of the rights of the handicapped – people, for example, in wheelchairs. They want the right to a job, they want to be able to ride the bus, they want access to tall buildings, the same as everybody else. In this case, levelling the playing field may require some changes – special devices on buses, elevators or ramps in buildings; but the point is to give the same range of choices that all other members of society may have.

This is even true of so-called “immutable” characteristics. From birth a person is a man or a woman, black or white. But what a person makes of this, in his or her own life, is in fact, dependent on choice. It is possible, though rare, to change yourself from a man to a woman, or a woman to a man, through a series of operations. What is much more common, however, is to change yourself *socially*; that is, to adopt traits that are normally associated with the other sex. A man can become a care-giver, a woman can become a strident chief executive of a corporation.

The identities seem very strong; but they are actually weaker than the traditional identities in a number of regards. They are powerful politically in an open, democratic society, but they are shifting and shiftable. People can move from one to another. Most people, for example, stay

with the religion they were born with. But some do not; and a small number are constantly looking for a new spiritual path.

The same technology which makes possible an infinite menu of choices also flattens out the choices in another respect. This is also the age of a mass modern culture. The actual cultural differences, between countries in the developed world, have been growing smaller. We can distinguish two general types of situation. In one situation, the countries of the developed world become much more alike, because they converge on a single style or form of behavior. This is true, for example, of the way people dress. Native costumes are virtually extinct. The Dutch bring out their wooden shoes, the Japanese their kimonos, for ceremonial occasions. But otherwise, everybody dresses alike – suits, shirts, ties for men; skirts, dresses, and blouses for women, with minor variations, for the office or for more formal occasions; blue jeans for more informal ones. Modern architecture is international. Skyscrapers in Tokyo look much the same as skyscrapers in New York. Young people seem to like the same kinds of music; and to enjoy the same loud, action-packed movies (mostly from Hollywood) all over the world.

In other cases, there remains a great deal of variety, but the different national styles are no longer confined to a single place. This is what we might call the sushi phenomenon. At one time, only the Japanese ate raw fish wrapped in rice and seaweed. People in other countries considered this either very exotic or very disgusting. In general, people ate their own national foods; and nothing else. Germans ate German food, Italians ate Italian food. Now sushi is everywhere, and so is pizza, southern Italy's gift to the world; and the hamburger, too, is truly international. Is there a major city in the world without Chinese restaurants? Are there major cities in the world without Italian restaurants? The national styles remain, but they are no longer confined to their nation. Yet at one time, for example, Americans considered Chinese food nauseating – the smell, the taste, the mixture of ingredients. Today, in California, where I live, many small children are even adept at eating with chopsticks. The Italians, by the way, seem considerably more conservative in this regard than most nationalities. They prefer their own style of cooking. The rest of the world, of course, likes it too.

In fact, globalization – which everybody talks about – is a process that is often misunderstood. People think of it in primarily economic and political terms. But the economic and the political depend heavily on *cultural* globalization. Take world trade, for example. At one time, it was highly asymmetrical. The West bought spices, coconuts, bananas, and raw materials. Now the West imports clothes from China, and China makes or imports computers. World trade now depends not on asymmetry of desires and wants, but a total symmetry. The same products are in demand everywhere. Finland makes cell phones which it exports to Thailand. Coca-Cola, an American product, is sold everywhere. Call this imperialism if you wish; but the fact is that people like it in Paraguay and Slovenia and Korea, just as they do in New York or Chicago. Multinational corporations do business everywhere, buy everywhere, sell everywhere. We have already mentioned global mass culture. Movies and music are products, which can be exported and imported, and indeed movies are one of the most consistent and reliable American exports. It is the hunger for the same sort of goods that fuels modern international trade.

Before we go any further, I want to clarify one point. I have been talking about choice, about individualism, about free and voluntary decisions. What I am really talking about is the perception of choice. Perception and reality are not the same. People are very acutely aware of their choices; what they are not aware of are the social norms, patterns, habits, and pressures that push their choices in this or that direction. When a person buys a car, she is sure that it is

entirely her decision. She chooses the brand, the color, the style. She never asks why only certain colors and styles are on the market. Nor does she question the processes which lead her to think that a car is something she must have. The same thing is true of the choice of clothes; or even the names we select for our children. They are of course choices in a real sense. Nobody compels us to buy this product, or to choose this name. But invisible forces determine the range of options; what styles are fashionable, and which are not; which names sound beautiful, which ones sound old-fashioned, and so on. The subterranean influence of culture, habit, fashion, social norms, molds behavior more than most people recognize.

The range of options in modern society are clear enough; and they are wider and more significant than in the past. But I am certainly not blind to the real restraints on choice. Nor am I unaware of the impact of power, the manipulating of desires by the media, the flood of propaganda, subtle and not so subtle, the way in which governments can make use of media to shape and mold public opinion; and to some extent, the power of large institutions to do the same. All of those forces have an impact on what we otherwise consider “choice”. But even dictatorships, in contemporary times, have to make use of the instruments of the horizontal society. A feudal monarch governed by indirection, through layers and strata of vassals. A modern dictator must mobilize the masses, must harangue; and dictators realize that they have to control the media, television, must use censorship, in order to maintain their grip. Power has to reckon with the instruments and the facts of the horizontal and technological society.

To sum up: the basic core of the horizontal society is a profound individualism. This, nevertheless, manifests itself in allegiances, identities, both on the national level, and below this – it is the source, culturally and practically, of identity politics.

3. – *Human Rights*

The consequences of the horizontal society are profound. They can be seen in every aspect of life, and in every aspect of the legal order. We will focus here on one or two issues.

The first of these is the issue of human rights. Nothing is more characteristic of modern society than the concept of human rights – rights that belong to everyone, regardless of race or gender. I am not talking here about political philosophy, or about philosophy at all. I am talking about social norms and attitudes: what people actually think, and feel, and believe – ordinary people, and not so ordinary people, all over the world.

People, of course, have been discussing human rights for a long time. It is not a topic which appeared suddenly on the agenda. But the human rights of the enlightenment period were not the same as the human rights of today. For one thing, they lacked the universality that is so prominent a feature of human rights today. The philosophers and thinkers who wrote about human rights, in the 18th century, did not for a moment think that human rights meant equality between men and women, to take one obvious example. “All men are created equal”, was a slogan at the foundation of the American republic. But women did not vote or hold power; and there were millions of African slaves.

Perhaps a word is in order about that much discussed term, the rule of law. There are dozens of definitions and understandings of this concept. I think, however, that there are basically two approaches to the idea of the rule of law. The first is the approach, say, of economists and those interested in economic development, including such institutions as the World Bank. To them, a

country has the rule of law, if it has a court system that functions efficiently, without corruption; if it enforces contracts, protects property rights, fosters trade and foreign investment, and does not allow the state to seize property or make arbitrary decisions. This notion of the rule of law has ancient roots. It is also not inconsistent with forms of government that are quite authoritarian. Bismarck's Germany, which was hardly a democracy, prided itself on adherence to the rule of law; Germany considered itself a genuine *Rechtsstaat*. The Chinese government today talks endlessly about the rule of law, the need to institute the rule of law, strengthening the rule of law, and so on; while at the same time, that government shows no signs at all of allowing freedom of the press or criticism of the one-party state. There is, to be sure, a certain element of hypocrisy here; but what the Chinese government is really thinking about is improving the climate for foreign investment and foreign business.

The second meaning the more popular meaning: to ordinary people, the rule of law means democracy. It means protection for human rights. A state has the rule of law if people cannot be arrested without cause, if the police must obey the rules, and if courts enforce human rights. The rule of law means freedom of speech, it means freedom to travel, to choose a way of life, to form affiliations and connections. This view of the rule of law, of course, is totally inconsistent with authoritarian government.

The human rights movement, in our times, implies the rule of law in this second sense. They are also deeply colored by what has been called expressive individualism. This is the notion that the main task or a main task of a person's life, is to craft a unique personality, to develop the self, to realize one's potential. This is a powerful popular philosophy, that has spread throughout the entire developed world. There is a myth, spread by many scholars and political leaders, that the current package of human rights is specifically Western; that these rights do not fit the east – countries like China, Japan, Korea, or Singapore, which have their own, very different values. I am deeply skeptical of this claim. For one thing, it provides a convenient excuse for authoritarian governments. Their people, they claim, are either “not ready” for human rights; or are following a different path more suited to their society. But the package of human rights we are familiar with is not so much Western as it is *modern*; it is a product of the values of the horizontal society and of contemporary society in general. If you go back a few hundred years, you see no trace of these so-called western values in the same Western countries where the flourish today. The countries of Europe were monarchies, with little respect for freedom of speech or religion. Nobles had more rights than common people. Men and women had very different places in society. Even as late as the 19th century – and even later in some countries, such as Switzerland – women did not vote or hold office. If you go back far enough in history, in Western Europe, you find that such devices as torture, universally now condemned, were a prominent part of the procedures of courts in many countries. Heretics and apostates were burned at the stake. The Spain of today, a vibrant, raucous, feisty democracy, was once the Spain of Francisco Franco – and the Spain of the Spanish Inquisition.

The new ideas of human rights tend to be embedded in modern constitutions. These constitutions speak the language of expressive individualism. The German *Grundgesetz*, for example, talks about a right to the “free development of personality”. Modern constitutions also provide for judicial review – the right of courts to monitor, and correct, acts of other branches of government which violate the constitution. This right is either given over to the highest court, as in the United States, or to a special constitutional court, as it is in Germany.

Judicial review is sometimes considered an American import. Certainly, in Germany at the end of the second World War, the Americans who occupied the country had a strong influence on the formation of German democratic institutions. This was even more true in Japan, where

the Constitution was more or less drafted by Americans, and forced down the throat of the Japanese. But this does not explain such countries as Spain or Hungary; or why the German model is more popular than the American model. In fact, judicial review is popular because of the popular notion of human rights. People think of human rights as inherent, inborn, inalienable. They think of them as beyond the reach of Parliaments. They do not think of them as subject to majority rule. They do not believe in legislative supremacy, where basic rights are concerned. But these rights can be properly enforced only by institutions which are independent of elected bodies. This can only mean, in most countries, some institution like the courts. Hence the incredible increase in the power of the judiciary, in country after country.

4. – *Immigration*

The concept of universal human rights blurs the concept of citizenship. If rights are universal then they do not just belong to citizens. They belong to everybody. But this does not mean that people have a right to decide what country they want to live in. There is a right to be a tourist almost everywhere; but not a right to stay. Indeed, the developed countries see the threat of immigration as a major problem. Rich countries are desperately trying to close their doors to people from poor countries.

For Europe, this is a new development. Throughout the 19th century, Europe did not import people; rather, it exported them. Millions of Europeans went to the new world. Italians went to New York or Buenos Aires. About 40% of the people who live in Argentina have an Italian background. Germans, Scots, Swedes poured in to the United States. There are more Irish in the United States than in Ireland. These Europeans went to the immigrant countries – countries like the United States, Canada, Australia, and Argentina – in search of a job, a piece of land, a better life.

Today, Western Europe no longer exports people, except in very small numbers. It imports people instead. In the period right after the second World War, when the economies of Western Europe were booming, and labor was in short supply, it was popular to import labor from less well-off countries. Germany for example imported tens of thousands of Turks. They are still there – and their children and grandchildren, too. Today, with relatively high unemployment, the demand for *Gastarbeiter* has declined almost to zero. Yet the attraction of rich, free Europe remains enormous. Europe is afraid of the millions who are potentially knocking on its doors. They come from everywhere: from Somalia, from Sri Lanka, from the Philippines. Some of them come seeking asylum; most of them come simply looking for work and a decent standard of living. Once inside the borders, legally or illegally, these people have certain rights. That makes it all the more important to keep them out in the first place.

In a horizontal society, people are eternally on the move. There has been, in Western society, an incredible amount of *internal* migration, as people leave farms and small towns, for the big city. The villages no longer can support their growing populations; and the spread of technology, the media, and all the trappings of the horizontal society unsettle the traditional life they had been used. Thus everywhere in the world, there is incredible urban growth – including the formation of monstrous mega-cities, like Tokyo, New York, Beijing, Seoul, Mexico City.

But it is the migration that crosses borders that has been the subject of debate and controversy. This wave of migration has many causes. Cheap travel is certainly one factor. This was one of the spurs to immigration across the Atlantic in the 19th century. Mexican

immigration into the United States increased, when roads and railroads were built that led to the border. Still, the *cultural* element has also been of enormous importance. Immigrants have to *want* to leave their homes. Traditional people do not emigrate. The most traditional people do not even know of the existence of a world outside their village. The main barrier to immigration, from most countries, in the past, has been cultural. The Chinese who came to the United States, or to other countries, were mainly coastal Chinese, who had some contact with the outside world, and who were willing to look for opportunities outside of their home communities. Indeed, the very concept of “opportunity” is culturally specific to relatively fluid, open societies.

In the 20th century, and now in the beginning of the 21st, the cultural barriers to immigration have crumbled. The decline of traditional society has removed the most important of these barriers. A brief sketch of the history of immigration law in the United States may be instructive. Essentially, in the 19th century, there were no restrictions on immigration. This was an open door country. In fact, immigrants were welcome. They helped fill out the empty spaces, they were an important engine of economic growth. But there was always the assumption that the right sort of people were coming – Protestants from northern Europe. This was in fact generally true. Irish Catholics were the chief exception; and they met with a great deal of hostility. At the end of the 19th century came the first significant change in immigration policy. Chinese exclusion laws slammed the door shut on Chinese immigrants. Nor could Chinese people living in the United States become naturalized citizens. The Chinese were concentrated on the West coast, particularly in California. White Americans feared and despised them. The Chinese, it was said, were so alien, so different from the rest of the population, that they could never assimilate. They could never become Americans in any meaningful sense.

During this period, too, millions of new immigrants began to pour into the country, from southern and eastern Europe, from Italy, Greece, Russia, and other Slavic countries. These immigrants were Catholics, Jews, and Eastern Orthodox. Many of the old-line American Protestants were alarmed and dismayed to see the demographic changes in the population; they resented the newcomers. Immigration policy became the subject of feverish debate. In 1924, the American Congress passed an extremely restrictive immigration law. It discriminated against Italians, Greeks, Jews, and Slavs; they were given immigration quotas much smaller than the quotas for the English or the Germans. A country’s quota depended on its share of the population of the United States. But the base year for figuring this quota was moved back more than 30 years, to a period before the heaviest influx of Italians, Greeks, and others.

But this very racist law of 1924 had a very curious omission. There was no quota at all, no restrictions at all, on immigrants from the Western hemisphere. In theory, the entire population of Bolivia could come into the United States. What accounts for this curious fact? It was certainly not because the rather bigoted men who were behind the 1924 law had some special affection for Bolivians, Haitians, or Panamanians. Rather, these people were not seen as a danger. They were not in fact crossing the border. And why not? Because they were still far too poor and traditional to want to immigrate.

The restrictions – on the Chinese, on Catholic Europe – have long since been abandoned. The United States has become much more multi-cultural. Assimilation is no longer an official goal of policy. Native religions and customs win a certain amount of respect. Of course, assimilation is a fact – the children of primitive hill people from Vietnam look, talk, dress, and act like everybody else in America. The horizontal society homogenizes as much as it spreads

diversity. But the point here is simply that the key barrier to immigration was cultural. In the modern, horizontal society, this barrier no longer exists. Millions of people in Sri Lanka, or Indonesia, or Somalia, have some contact with the outside world; they are no longer isolated in villages, and they feel free to leave their society, in search of a better life. Moreover, the system feeds on itself. As soon as there are considerable numbers of Algerians in France, or Samoans in California, it becomes easier for newcomers to join them. Now there is a community, an enclave, to welcome them, perhaps a cousin with ideas on where to find work, a familiar church, people who speak the language. The cultural barriers on the side of the receiving country have also broken down. This is what is meant when we say that a society is multi-cultural, and that it has abandoned assimilation as an official goal.

On the whole, the breakdown of traditional society has created the immigration crisis. This and a certain minimal amount of affluence. If a family from China can scrape up enough money from passage, or a Haitian family, or a Tunisian family, they will try to reach the havens of the west. This leads to a rather odd situation: countries proclaim themselves interested in globalization, they embrace free trade, they welcome tourists, they preach a one-world philosophy; but at the same time, they erect walls to prevent strangers from entering, except under very limited conditions. They feel – probably correctly – that it would be disastrous to open the doors. There is simply too great a gap between rich countries and poor countries. Yet once a person is inside the gates, even if she is there illegally, she is entitled to certain protections, to certain rights, and to certain benefits.

Perhaps I should add a word about transnational law in the horizontal society. There are various forms of transnational law. The law of the EU is transnational; it is a form of law that transcends and supercedes the laws of the individual countries – unless you consider the EU a kind of nation, or as a group of countries groping toward nationhood. There are also the beginnings of genuine global institutions, like the World Trade Organization, and regional organizations, like NAFTA. Many of these institutions have a kind of legal system. They have institutions that are empowered to decide controversies. There is a European Court of Human Rights. There is also a new international criminal court, which the United States, notoriously, refuses to join. One might also mention here the actions of national courts that reach across borders, like the famous case of the Spanish prosecution, or attempted prosecution, of the former Chilean dictator, Pinochet. What will develop from all this activity, it is still too early to tell.

One point, however, may be worth making. There cannot be truly international law unless there is international consensus, or enough consensus to support international law and international law-making and law-enforcing bodies. There does seem to be a growing consensus with regard to norms of international trade; and a growing body of transnational custom, if not law. With regard to human rights, conditions do exist for such a consensus, in the global culture of rights. But the institutional basis is still weak. How all this will develop in the future is difficult to say.