

THE PROMISE OF DEMOCRACY

THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD. Fareed Zakaria. New York: W.W. Norton & Co., 2003. Pp. 256.

*Reviewed by Bruce Ledewitz**

*There can be no democratic practice without democratic theory.*¹

When a leading figure of the American foreign policy elite writes a serious work criticizing democracy, citizens should take notice. Fareed Zakaria's book, *The Future of Freedom: Illiberal Democracy at Home and Abroad*,² is a signal of a change in our culture. We may be seeing a turn away from the traditional American commitment to democracy at home and abroad. Combining popular dissatisfaction with government domestically, and an uncertain plan for bringing democracy to Iraq, this moment may represent a crisis in our self-identification as the leading voice for democracy in the world.

Fareed Zakaria is a fast-rising star of the international policy establishment. Zakaria has been described as the most influential foreign policy adviser of his generation by *Esquire* magazine.³ Zakaria is editor of *Newsweek International*, with a global audience of 3.5 million, and he writes a column that appears in *Newsweek* and the *Washington Post*.⁴ At 28, he was the youngest managing editor of *Foreign Affairs Magazine*.⁵ He also offers political analysis on ABC.⁶ In other words, people who make American foreign policy and who influence American domestic life are reading, and listening to, Zakaria. This book is not an academic exercise. It is an attempt by Zakaria to convince those who count and thereby to change American

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¹ DICK HOWARD, *THE SPECTER OF DEMOCRACY* xiv (2002) (paraphrasing the slogan popular among Marxists, "no revolutionary practice without revolutionary theory").

² FAREED ZAKARIA, *THE FUTURE OF FREEDOM: ILLIBERAL DEMOCRACY AT HOME AND ABROAD* (2004).

³ Fareed Zakaria Website, at <http://www.fareedzakaria.com/about.html> (last visited Jan. 10, 2003).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

foreign and domestic policy.

For several years, Zakaria has been warning about the rise of what he calls “illiberal democracy” in the developing world. He is not the first to voice this concern. Nor is he the first to ground democracy in the liberal institutions of a market economy and the rule of law.

In *The Future of Freedom*, however, Zakaria goes further than before. Here, he expressly links the failure of democracy abroad to tendencies within people themselves and suggests coercive international steps to limit majoritarian policies. Zakaria also uses the same flaws in human nature and in the essence of democracy to justify rule by elite institutions in the domestic American context, and generally in the West, as well.

In this Review Essay I will first outline Zakaria’s arguments and proposals concerning American foreign policy and domestic practices. In Part II, I will evaluate these proposals. Zakaria’s critique of democracy is more radical and fundamental than he acknowledges, and less convincing. In addition, the link between the problems he does identify and “democracy”—however defined—is not always clear. In Part III, I will suggest why Zakaria’s project is likely to fail. Finally, in Part IV, I will suggest that there are alternative ways to understand democracy that offer much richer possibilities for political life and action than do Zakaria’s very narrow views of government, community, and self-determination.

I. ZAKARIA’S ACCOUNT OF ILLIBERAL DEMOCRACY AT HOME AND ABROAD

A. *Zakaria’s Framework*

It is now generally recognized that governments that have come to power through elections, and sometimes continue to govern through elections, may govern in tyrannical ways. Zakaria pointed this out in a *Foreign Affairs* essay in 1997.⁷ In *The Future of Freedom*, Zakaria sets the phenomenon of elected tyrannies abroad into the fuller framework of the relationship between liberal institutions and democracy and then traces the effects of democratic tendencies in mature democracies like the United States. He has done this in a relatively short, non-technical book plainly intended to influence leading circles and informed public opinion, especially in the United States.

Zakaria begins his introduction, *The Democratic Age*, by noting the dominance of democracy today as the only truly accepted political ideology in the world.⁸ This is why even dictators organize national elections.⁹

Despite the importance of democracy to Zakaria, there is an ambiguity throughout the book about what democracy means. When discussing the

⁷ See Fareed Zakaria, *The Rise of Illiberal Democracy*, 76 FOREIGN AFFAIRS 22 (1997).

⁸ See ZAKARIA, *supra* note 2, at 13.

⁹ See ZAKARIA, *supra* note 2, at 13.

developing world, Zakaria tends to mean simply the holding of open, free, and fair elections.¹⁰ When discussing the mature democracies, specifically the United States, he means something broader—power moving downward or, even more broadly, a way of life.¹¹ When Zakaria refers to growing democracy in the United States, he is not saying that there are now more elections, although in certain contexts that is the case. Rather, he is saying that mass culture is the dominant force in the United States today, from political life to economic life to social life.

Zakaria's formally-stated attitude toward democracy never waivers. He says that while democracy is good, it is not all good. Elections can be, and have been, won by racists, fascists, and separatists who cause miserable conditions for their people. Elected governments in Peru, the Palestinian Authority, Ghana, and Venezuela ignore constitutional limits on their powers and in other ways deprive citizens of basic human rights. There are more important political matters than whether a government is elected: "Despite the limited political choice they offer, countries such as Singapore, Malaysia, Jordan, and Morocco provide a better environment for the life, liberty and happiness of their citizens than do the dictatorships in Iraq and Libya or the illiberal democracies of Venezuela, Russia or Ghana."¹²

The reason that democracy is not all good, or not the most important good, is that democracy does not intrinsically include constitutional liberty. That is, it is possible to have elections without the liberal institutions of the rule of law and a market economy. It is also possible to have liberal institutions without democracy. In the past, liberal government rather than democratic government was the norm. Today, increasingly, it is democracy rather than liberty that exists in the developing world. Often, countries that were better run and more respectful of human rights as autocracies deteriorate when elections are introduced—hence Zakaria's term, illiberal democracy.

In contrast to simply holding elections, the American model of government—our constitutional system—divides government power among competing power centers. The system is liberal in that it protects human and constitutional rights because it puts the rule of law at the center of politics.¹³ In addition to governmental structures, the American system also relies upon the existence of intermediate groups, today usually referred to as "civil society."¹⁴ Although Zakaria discusses the important ways in which the American system of constitutional liberalism is changing to become more democratic—changes he decries—that system has always been more than a democracy.

¹⁰ See ZAKARIA, *supra* note 2, at 17-18.

¹¹ See ZAKARIA, *supra* note 2, at 13-14.

¹² ZAKARIA, *supra* note 2, at 156.

¹³ See ZAKARIA, *supra* note 2, at 19.

¹⁴ See ZAKARIA, *supra* note 2, at 22-23.

One of Zakaria's major complaints is that, despite our system's commitment to constitutional liberalism, American foreign policy has been formulated to encourage elections without regard to liberal institutions and to treat countries as legitimate only to the extent that they have elections. Zakaria hopes to change that policy.

Chapter One, entitled *A Brief History of Human Liberty*, shows the historical link between liberty and the liberal democracy that is enjoyed in the mature democracies of the West.¹⁵ Zakaria concludes that democracy arises out of divided political power and capitalism, specifically legal protections for private property, and not the other way around.¹⁶ Indeed, if democracy is defined as more or less universal adult enfranchisement, democracy was not widespread in the West until after World War II. Yet, by the nineteenth century, before democracy arrived, the West enjoyed liberal society.

Zakaria concludes from history that liberal democracy can arise anywhere—there is no special, pro-democratic Anglo-American culture—that constitutionalism and capitalism are present. He strongly implies that no other basis for stable democracy is possible.

In Chapter Two, *The Twisted Path*, Zakaria traces a different history—the history of the failure of democracy in Europe in the early twentieth century.¹⁷ He reminds his readers that Hitler came to power democratically and that World War I resulted from popular appeals to nationalism.¹⁸ So, democratic trends are not always benign.

At the end of Chapter Two, Zakaria sets forth and explains several factors that favor the growth of stable, liberal democracy.¹⁹ Perhaps the most important factor is capitalism, because it creates a bourgeoisie that is politically and economically independent of state authority. The other advantage of capitalism for democracy is its tendency to produce wealth. Zakaria is very impressed with the research of Seymour Martin Lipset associating certain levels of national per capita income with democracy.²⁰ This becomes almost an iron law of history in the book. The other important factor in producing stable democracy is a well-functioning and legitimate state—one that is able to collect taxes from the populace. Tax collection forces government accountability, which is why the high per capita income associated in the Middle East with income from oil has not led to democracy.

Zakaria concludes that genuinely open, capitalist development strongly

¹⁵ See ZAKARIA, *supra* note 2, at 29-58.

¹⁶ ZAKARIA, *supra* note 2, at 58.

¹⁷ See ZAKARIA, *supra* note 2, at 59-87.

¹⁸ See ZAKARIA, *supra* note 2, at 60-67.

¹⁹ See ZAKARIA, *supra* note 2, at 76-78.

²⁰ See ZAKARIA, *supra* note 2, at 69.

tends to favor democratic political development.²¹ He claims that this trend finally brought true democracy to Mexico in 2001 and is bringing political reform in China.²² Capitalism is the same force that brought democracy to the Asian Tigers and to Chile. So far, Singapore has held out against democracy, but, Zakaria says, “You can’t stop the machine.”²³ Within a generation, Zakaria predicts that Singapore will also be a democracy.²⁴

B. *The Reality of Illiberal Democracy in the Developing World*

The next two chapters in the book describe illiberal democracies—countries that did not develop capitalism and the rule of law before launching elections—and the special case of the Middle East, where Zakaria discusses the role of religion in the development of democracy.

Russia’s Boris Yeltsin is the model of what Zakaria sees as the consequence of an excessive emphasis on holding elections—the elected, “popular autocrat.”²⁵ Yeltsin, though freely elected, produced no independent bourgeoisie (quasi-capitalism in Russia was aligned with the State), no political parties, and no rule of law.²⁶ In contrast, liberal autocrats, though themselves not elected, can in time bring changes that produce a well-grounded and stable liberal democracy. The Russian model—democratic leaders without liberal institutions—is increasingly common in the world. Most of Latin America is democratic, yet a number of countries suffer serious human rights violations. The Yeltsin of Latin America is Venezuelan President Hugo Chavez, who has ruled democratically but dictatorially since 1998.²⁷ Similarly, forty-two out of forty-eight countries in sub-Saharan Africa have held multi-party elections since 1990, resulting mainly in corruption, lawlessness, and chaos.²⁸ In Central Asia, Georgia’s Eduard Shevardnadze is an elected autocrat and generally in the region there are either actual elections of, or at least strong popular support for, tyrannical

²¹ See ZAKARIA, *supra* note 2, at 76-78.

²² See ZAKARIA, *supra* note 2, at 78-87.

²³ ZAKARIA, *supra* note 2, at 81-87.

²⁴ See ZAKARIA, *supra* note 2, at 86.

²⁵ See ZAKARIA, *supra* note 2, at 90.

²⁶ See ZAKARIA, *supra* note 2, at 89-90.

²⁷ See ZAKARIA, *supra* note 2, at 96. On June 10, 2003, Chavez supporters lost a vote in the National Assembly for the first time since the 2000 national elections gave Chavez a two-thirds majority. Associated Press, *Venezuela’s Chavez Suffers first-ever defeat in legislature*, TAIPEI TIMES, Jun. 12, 2003, available at <http://www.taipetimes.com/News/world/archives/2003/06/12/2003054964>. This defeat, while not presaging liberal democracy in Venezuela, does suggest that democratic forms may be more of a drag on illiberal government than Zakaria acknowledges.

²⁸ See ZAKARIA, *supra* note 2, at 97-98.

regimes.²⁹ All in all, Zakaria concludes that half the world's democracies are illiberal democracies.

The reason that illiberal democracy is so potent a force in the world is not solely based on a lack of wealth and an absence of capitalist development. Democracy itself tends to centralization of power. Here Zakaria invokes John Stuart Mill³⁰ and Tocqueville's concern for the tyranny of the majority.³¹ This can lead, as it has in Zakaria's own India, to less tolerance for ethnic and other minorities. Ethnic and religious differences are hard to compromise, compared to issues of the distribution of material goods, and this renders new, ethnically diverse democracies vulnerable to majoritarian tyranny.

The key for Zakaria in terms of American foreign policy is the section entitled *What Is to be Done?* Zakaria uses Indonesia as an example of faulty United States support for immediate democracy.³² In retrospect, Suharto, whom the United States helped force from power, was not so bad. He had achieved order, secularism, and economic liberalization. The United States must get these choices right. Here the reader sees that the book is meant to be a foreign policy primer for the United States.

The achievement by Suharto of "secularism" introduces in Chapter Four, *The Islamic Exception*, what Zakaria sees as a major challenge to his thesis about the factors that bring about democracy.³³ A number of people believe today that Islam is uniquely anti-liberal and that Islamic countries cannot achieve democracy.

Zakaria argues that Islam is not in principle an exception to any of the trends in history to which he has been pointing. First of all, Zakaria denies that Islam as such is an issue. Eight hundred million Muslims now live in democratic countries.³⁴ So the idea that Islam is incompatible with democracy is false. The political problem is not Islam, but the Middle East, or more specifically the Arab world, although the religious radicalization of that world is spreading in Islam.

Within the Arab context, most of the commonly-held explanations for the grossly illiberal societies that currently exist—whether Arab patriarchy or love of honor or any other lifestyle factor—fail to account for the fact that in 1945 the political situation in the Middle East looked very different. Certainly at that moment no one would have predicted that the Arab world would remain among the most politically backward on Earth.

The reason for the current political situation is not economic misery or

²⁹ See ZAKARIA, *supra* note 2, at 99.

³⁰ See ZAKARIA, *supra* note 2, at 101.

³¹ See ZAKARIA, *supra* note 2, at 105-106.

³² See ZAKARIA, *supra* note 2, at 117-18.

³³ See ZAKARIA, *supra* note 2, at 119-59.

³⁴ See ZAKARIA, *supra* note 2, at 127.

envy. The Gini index, which measures the extent of economic inequality in a country, is roughly the same for Egypt and France.³⁵

Zakaria sees the problem in the Arab world as a resurgence of religion brought about by continuing failure in the struggle against Israel and the disruptions brought about by modernity. Islamic fundamentalism has even infected non-Arab societies, so that the rich, pluralistic, easy-going Islam of Zakaria's youth in India has become dour and puritanical, with medieval ideas about the role of women, blasphemy, and modern banking.³⁶

Despite the power of religion, Zakaria says that the key to change is not religious reform, but political and economic reform.³⁷ This is illustrative of Zakaria's basic understanding of the way history works. He is essentially a materialist. Christianity did not evolve theologically in order to accommodate modernity. The Bible is just as anti-modern as ever.³⁸ Instead, society changed and so no one paid attention to the Bible any longer. The same thing will happen in Islam as soon as Arab societies become truly capitalist.³⁹ Zakaria assumes not only that liberal democracy must be secular, but that all religions are destined to adapt to that change.

Again in this chapter Zakaria proffers what United States foreign policy should be. The West should not seek democracy in the Arab world.⁴⁰ In general Zakaria recommends five years of capitalism and the rule of law before multi-party elections are held.⁴¹ This will empower economically-minded people. Instead of the "romance" of ideology, businesspeople seek

³⁵ See ZAKARIA, *supra* note 2, at 137. Both countries' levels are lower than the 40.8 rating of the United States—the higher the rating the greater the economic inequality—although Zakaria inexplicably does not in this instance refer to the United States as an example. See Central Intelligence Agency, THE WORLD FACTBOOK, 2002, available at <http://www.cia.gov/cia/publications/factbook/fields/2172.html>.

³⁶ See ZAKARIA, *supra* note 2, at 145.

³⁷ See ZAKARIA, *supra* note 2, at 150.

³⁸ "The Bible still condemns masturbation, usury, and the wearing of woven cloth . . ." ZAKARIA, *supra* note 2, at 150.

³⁹ Zakaria admits that the Shia tradition in Iran might represent a special case. See ZAKARIA, *supra* note 2, at 147-48. After all, the Shah was attempting to do more or less what Zakaria is suggesting is the future, and, of course, things did not work out the way Zakaria is predicting.

⁴⁰ As I write this, the Bush Administration just announced a timetable that indeed does not seek immediate democracy for Iraq. See Press Release, United States Department of State, *Coalition Ready to Shift Focus to Economic Growth in Iraq* (June 12, 2003), available at 2003 WL 2048575. The Bush Administration appears to agree with Zakaria that the market must come first. As one "senior American official" was quoted in the *New York Times*, "You can't eat the constitution." Patrick E. Tyler, *As Alliances Take Shape, Iraq Balances New Unity on a Fragile Foundation*, N.Y. TIMES, June 13, 2003, at A20.

⁴¹ See ZAKARIA, *supra* note 2, at 155.

the reality of material progress, which is a more promising foundation for government. Finally, in an uncharacteristically illiberal moment himself, Zakaria recommends that Arab governments reign in extremist Islam—“if this offends advocates of pure free speech, so be it.”⁴²

The West must no longer be mesmerized by elections in developing countries. The yardsticks by which to judge a country’s progress are those of constitutional liberalism—economic, civil, and religious liberty. That is where United States foreign policy should be concentrating.

C. *Too Much Democracy at Home*

Zakaria’s fundamental critique of illiberal democracy could not be applied directly to the United States. Obviously this country is liberal according to Zakaria’s major measures. The United States Constitution divides power and establishes a rule of law. The United States economic system is as capitalist as that of any major nation. We are not an illiberal democracy in Zakaria’s terms.

Nevertheless, Zakaria maintains that the United States is suffering from an excess of democracy and that the tension between liberalism and democracy is most prevalent in the West in the United States.⁴³ Zakaria spends the last portion of the book explaining and supporting this assertion while also developing remedies for the problems he describes.

Zakaria begins his description of the situation in the United States with the familiar observation that most Americans think there is something wrong with their political system: “[M]ost Americans have lost faith in their democracy.”⁴⁴ But Zakaria’s explanation for the dissatisfaction differs at least in emphasis from that of others. America has turned from a truly liberal democracy to one that embraces simple-minded populism. Politicians now pander to the American people’s whims because mediating institutions, like political parties, that once could protect politicians when they did something unpopular but beneficial, no longer function.

Zakaria also accepts the widespread complaint that special interests run Washington, which at first would seem to contradict his assertion about populist appeals.⁴⁵ Zakaria argues that the domination of the political system by special interest lobbying and money comes about precisely because of the democratization of politics.⁴⁶ The more open a system is, the easier it is for money and lobbying to penetrate, for only the well-funded and well-organized have the resources to monitor the ongoing activity. Now, in effect, each

⁴² ZAKARIA, *supra* note 2, at 151.

⁴³ See ZAKARIA, *supra* note 2, at 159.

⁴⁴ ZAKARIA, *supra* note 2, at 162.

⁴⁵ See ZAKARIA, *supra* note 2, at 168.

⁴⁶ See ZAKARIA, *supra* note 2, at 168-69.

representative in Congress is an independent entrepreneur doing whatever he or she needs to do to stay in office. That approach, putting popularity before the best interests of the nation, results in poor policy that is, ironically, unpopular. In this dysfunctional atmosphere, even obviously unnecessary programs cannot be repealed, and small, highly-motivated groups like the Cuban-American coalition can achieve influence out of proportion to their numbers. The political parties are in decline, running for office means finding money maven, and the direct democracy movement “referenda,” which is the logical conclusion of the growth of democracy, leads in California to chaos and ungovernability.

The decline of any sort of authority in politics mirrors the death of traditional elites in all phases of American life, from mass finance to mass religion to mass culture. But people need authority to avoid bad choices, though it is highly impolitic to say so today, from either side of the political divide. The professions, especially law, used to provide this sort of cultural leadership, but they have now succumbed to democratization and marketization. Of course, elites still exist and the country is still run by them. What has declined on the part of the new elites is a sense of responsibility to the greater good.

With the decline of traditional elites, a space has opened for a different kind of leadership—the highly-partisan voices we now hear so incessantly. There is very little room in American political life for independent thinking. To his credit, Zakaria is trying to provide just that sort of independent research. This book is not partisan in the current Washington sense.

In a too-short conclusion to the section of the book that concerns domestic policy, Zakaria gives his suggestions for changing the current situation. In general, Zakaria believes that there is too much public regulation of democracy. Although he does not really discuss the regulation of capitalism, he does outline what a regulated democracy would be like.

Zakaria sees the Federal Reserve Board and the Supreme Court as two exemplary instances of democratic government.⁴⁷ In these two institutions, competent professionals make policy that they judge to be in the public interest, more or less without regard to the popularity of the decisions. Yet sufficient public and legislative oversight remains to prevent terrible mistakes, which is what democracy is best at avoiding. The institutions of the European Union operate in a similar undemocratic fashion—giving European politicians an excuse for doing what they know they should do, although the required actions are unpopular.

Zakaria calls this delegating democracy and he thinks it is the direction we must go if democracy is to function properly.⁴⁸ This is how military base closing was accomplished and how the tax code could be reformed.

⁴⁷ See ZAKARIA, *supra* note 2, at 248.

⁴⁸ See ZAKARIA, *supra* note 2, at 241-56.

Zakaria suggests fleetingly that technology lies behind all the problems he identifies.⁴⁹ Technology allows for a world of direct action—one without mediating institutions. But that very capacity, to act without mediating institutions, may help render us undemocratic and illiberal. The philosopher Martin Heidegger said years ago that democracy might not be adapted to govern technological society.⁵⁰ Fareed Zakaria raises the same question of the place of democracy in our age.

II. ZAKARIA'S VIEW OF DEMOCRACY

If, as Dick Howard says, “there is no democratic practice without democratic theory,”⁵¹ then in order to understand the political world Zakaria is aiming at, we must look at the role democracy plays in his understanding of political life. From just the title of the book it is clear that freedom and democracy are in some kind of relationship, indeed some kind of tension. On one level, Zakaria is pointing out that illiberal democracy threatens freedom. But that is a tautology. The answer to that problem might be more and better democracy, which most certainly is not Zakaria's proposal.⁵²

What I hope to show in this section is that, despite Zakaria's formal praise, democracy is for him always a dangerous force that threatens the liberal world he wants to construct. That world, organized around a kind of freedom, has little or no place for the freedom of a people for self-determination.

A. *Is Democracy the Issue?*

Zakaria is not alone in arguing that democracy is a powerful force in the developing world. Amy Chua, for example, sounding many of the same themes as Zakaria in her book, *World on Fire*, argues that democracy in a free-market globalizing context unleashes powerful ethnic and other hatreds, including resentment against the United States and Israel.⁵³ But just as large numbers of people in the world can hate the United States and Israel without any democratic forums in which to express their hatred, so can autocrats build illiberal but popular regimes without holding any elections at all. Zakaria does not demonstrate that democracy, however broadly or narrowly defined, is the cause of the harms he describes.

⁴⁹ See ZAKARIA, *supra* note 2, at 253-54.

⁵⁰ “For me today it is a decisive question as to how any political system and which one—can be adapted to an epoch of technicity. I know of no answer to this question. I am not convinced that it is democracy.” *Only a God Can Save Us*, *Der Spiegel*, No. 23, 206 (1976).

⁵¹ HOWARD, *supra* note 1, at xiv.

⁵² In fact, Zakaria criticizes John Dewey's suggestion that more democracy is what we need and feels it has been unfortunately influential. See ZAKARIA, *supra* note 2, at 240.

⁵³ AMY CHUA, *WORLD ON FIRE* (2003).

The irrelevance of democracy to Zakaria's argument about illiberal governments is illustrated in his discussion of central Asian regimes. In that region, more or less free elections produce popular, powerful chief executives, but few civil and economic liberties.⁵⁴ But then again, when no elections are held, popular, powerful autocrats also hold sway with few civil and economic liberties. Zakaria points out that there is no real difference between an elected Eduard Shevardnadze of Georgia, who runs rigged elections, and Gaidar Aliyev of Azerbaijan, who seized power in a coup, but who would win an election if one were held.⁵⁵ But if there is no difference between the two, why does Zakaria adopt a tone of warning against democracy? Why is democracy so dangerous that, as Zakaria ends his book, "our task is to make democracy safe for the world."⁵⁶

The same point can be made with regard to Hitler. Zakaria reminds us that Hitler was a product of a genuinely democratic political system in the Weimar Republic.⁵⁷ Although Zakaria exaggerates the democratic nature of Hitler's capture of the government of Germany—he admits in a footnote that the 1933 election "took place in an atmosphere of national hysteria," and his graph shows the substantial decline in popular support for the National Socialists in the November 1932 election⁵⁸—it is true that democracy did not prevent Hitler from coming to power. But Zakaria fails to note that Hitler could not govern democratically. The 1933 election was the last German election before the war.⁵⁹ So, Hitler did not agree with Zakaria that a truly illiberal regime could readily be run in a democratic form.

The inability of Hitler to govern democratically also illustrates that in some cases, regimes Zakaria calls illiberal democracies do not deserve the term democracy. Zakaria sometimes admits this. For example, he calls democracy in Mexico prior to 2001 a "sham" and makes similar comments about elections in Georgia.⁶⁰ Zakaria in general says that democracy requires elections that are "open, free and fair."⁶¹ By that criterion, it may be that many of the governments that Zakaria labels illiberal democracies are not democracies at all. Then why blame, or even involve, democracy? Why not

⁵⁴ See ZAKARIA, *supra* note 2, at 98.

⁵⁵ See ZAKARIA, *supra* note 2, at 98-99.

⁵⁶ ZAKARIA, *supra* note 2, at 256.

⁵⁷ See ZAKARIA, *supra* note 2, at 60-61.

⁵⁸ ZAKARIA, *supra* note 2, at 260 n.2. For a discussion of the breakdown of democracy at the end of the Weimar Republic and the role law played in that breakdown, see DAVID DYZENHAUS, *LEGALITY AND LEGITIMACY: CARL SCHMITT, HANS Kelsen AND HERMAN HELLER IN WEIMAR* (1997).

⁵⁹ The Enabling Act of March 23, 1933, formally handed constitutional and legislative power to Hitler. See DYZENHAUS, *supra* note 58, at 27.

⁶⁰ See ZAKARIA, *supra* note 2, at 78, 99.

⁶¹ Zakaria, *supra* note 7.

subtitle the book *Illiberal Government at Home and Abroad*, instead of *Illiberal Democracy*?

Of course, that book would have been a different one from the one Zakaria wrote, and the difference demonstrates part of his view of democracy. All Zakaria really shows is that elections alone do not necessarily make things better in a country. That by itself would not justify a change in the foreign policy of the United States away from support for elections in developing countries. To justify that change, one would have to believe that elections tend to make things worse.

This is Zakaria's view, although he always formally maintains that democracy is a good thing. It is not just that elections sometimes pave the way to dictatorship or sometimes exacerbate group conflict;⁶² or sometimes encourage nationalist and militarist electoral appeals;⁶³ or sometimes lead to the tyranny of the majority;⁶⁴ or sometimes block needed economic and other reforms.⁶⁵ It is that democracy tends always to do all these things and can only be prevented from doing them by a very special set of policies—liberal policies—imposed on the people from without by bodies like the EU or the WTO, or from within by bodies like the United States Supreme Court or the Federal Reserve Board.

The fundamental problem with democracy, though not directly and fully acknowledged and discussed in the book, lies in something like human nature. Zakaria does not believe that, even in the long run, people will come to understand what he sees as their own best interests. This is why democracy is a dangerous institution.

B. *Does Capitalism Lead to Democracy?*

Zakaria assumes that capitalist policies automatically lead to the development of democracy. The word “automatically” here is no exaggeration. Zakaria even calls the section in which he makes his prediction that Singapore will become democratic “within a generation,”⁶⁶ *You Can't Stop the Machine*,⁶⁷ and his other policy section is entitled, *The Majestic*

⁶² See ZAKARIA, *supra* note 2, at 100 (“ethnic challenges to central rule”), 113 (“newly democratizing societies display a disturbingly common tendency toward [ethnic conflict]”), and 114 (“without a background in constitutionalism liberalism, the introduction of democracy in divided societies has actually fomented nationalism, ethnic conflict and, even war.”).

⁶³ See ZAKARIA, *supra* note 2, Chapter 2 (describing such democratic appeals in Europe in the early twentieth century).

⁶⁴ See *supra* notes 27 & 28 and accompanying text.

⁶⁵ See ZAKARIA, *supra* note 2, at 246.

⁶⁶ See ZAKARIA, *supra* note 2, at 86.

⁶⁷ See ZAKARIA, *supra* note 2, at 81.

Clockwork.⁶⁸ Both titles suggest an automatic and inevitable quality. The machine or the clock here is the strong tendency of capitalist policies to lead to democracy. It just is not possible, according to Zakaria, to liberalize an economy and, at the same time, keep a political system tightly restricted.

This assumption by Zakaria is not well defended in the book. Nor is the matter free from doubt. In a recent article in *The New York Review of Books*, Ian Buruma casts some doubt on Zakaria's model of flawless movement from economic to political liberalization.⁶⁹ Buruma calls Singapore and China the "new Asian model" of authoritarian capitalism and says it is "a challenge to those who still take it as a given that capitalism inevitably leads to liberal democracy, or, in other words, that a free market in goods automatically results in a free market in ideas."⁷⁰ This pattern did occur in Chile, South Korea and Taiwan, "but there was nothing inevitable or automatic about it."⁷¹ In terms of China, Buruma says, "capitalist authoritarianism has already lasted longer" than he had expected, "and the end is not immediately in sight."⁷² Buruma does expect the Communist Party in China to lose power eventually, which might lead to liberal democracy of the sort Zakaria thinks so likely. But, according to Buruma, "more violent, less liberal solutions remain more likely."⁷³

What is the significance of this disagreement? Of course, Buruma might be wrong and Zakaria correct about the course of history. In that case, Zakaria's confidence will turn out to be justified and we need only sit back and wait for countries, not only China but any other sufficiently well-off country, to adopt liberal democracy once market reforms are enacted. Not only that, but since Zakaria believes that capitalism will bring prosperity, any country that adopts market reforms will soon be sufficiently well-off to support democracy. So, the United States and supporters of democracy generally need do nothing at all, and market liberalization will spark democracy in the developing world.

What is significant is how little attention Zakaria pays to the mechanism of this "machine." Why does economic liberalization lead inevitably to political liberalization? Does this only happen when material progress results in a fairly even distribution of wealth or does it always happen?

⁶⁸ See ZAKARIA, *supra* note 2, at 155.

⁶⁹ Ian Buruma, *Asia World*, N.Y. REVIEW OF BOOKS, June 12, 2003, at 54, 56 (book review).

⁷⁰ *Id.* at 56.

⁷¹ *Id.*

⁷² *Id.* at 57.

⁷³ *Id.*

Buruma argues that a change to democracy requires that the middle class withdraw its support from the existing authoritarian government and begin to demand more democracy.⁷⁴ China and Singapore have avoided this change because they have been successful at co-opting the middle class through the attainment of stability and wealth, as well as, in China's case, patriotism.⁷⁵ Buruma points out that even Japan, while a formal democracy, developed a "de facto one-party system" in return for delivering order, security, and economic growth.⁷⁶

Zakaria's lack of interest in how or why this mechanism works could simply be part of his tendency to materialistic historical determinism. But it is also possible that it does not matter that much to Zakaria whether and when countries develop democracy. The stakes may not be high for him since, by definition, the countries involved are developing more liberal economic systems. If this does not lead to the attainment of democracy any time soon, that may not concern Zakaria very much. Again, the message of the book may be that democracy is not very important or beneficial.

C. *The Illusion of Popular Control*

Zakaria's negative view of democracy also surfaces in his surprising conclusion that the current American political system practices "too much" democracy. Zakaria's understanding is that there is a continuum of effective democratic government. The more democracy a system has, the worse it governs. The indirect democratic oversight to which the Federal Reserve Board and the United States Supreme Court are subject fosters good government. In contrast, the more direct democracy that is involved in congressional legislation, leads to dysfunctional government. And, the most direct form of popular rule, the referendum, leads to disaster, as in California.⁷⁷

⁷⁴ *Id.*

⁷⁵ *Id.* at 56-57.

⁷⁶ *Id.* at 57.

⁷⁷ See ZAKARIA, *supra* note 2, at 193-94. One statistic that I have heard repeated from the book at parties is that "[t]oday 85 percent of the California state budget is outside of the legislature's or the governor's control." ZAKARIA, *supra* note 2, at 193. As if on cue, as I write this, the Associated Press is reporting that the recall campaign against California Governor Gray Davis is about to succeed in putting the recall question on the ballot. The resulting campaign will cost \$30 million and will succeed in making California less governable than ever. According to the article, the recall effort is being financed by conservative Republican representative Darrell Issa, whose deep pockets funded an army of paid signature gatherers. Issa fits Zakaria's model of the initiative and referenda political player, "the billionaire policy-entrepreneur." ZAKARIA, *supra* note 2, at 197. Actually I should not place Issa in that financial league. Zakaria has in mind people like George Soros, Richard DeVos, Timothy Draper, and
(continued)

Actually, even crediting democratic oversight of these institutions exaggerates the positive role democracy plays in Zakaria's thinking. Although Zakaria refers to the democratic oversight of the Federal Reserve Board and the Supreme Court, in fact there is little such oversight. As a practical matter, once the selection process is undertaken—a process that itself is of uncertain democratic content because of the tradition of giving the President his choice of Federal Reserve Board Chair and the relative unwillingness of the Senate to veto a Supreme Court Justice nomination over policy disagreement—there is no further effective democratic oversight. Congress does not interfere with interest rate policy, nor does it readily undertake impeachment of Supreme Court Justices.

All Zakaria seems to mean by democratic oversight is that if the institution in question were to seriously malfunction, there are mechanisms of democratic oversight available, such as removal or impeachment. So the model of delegated democracy that Zakaria is proposing is much more delegation than it is democratic.

Zakaria's distaste for democracy stems in part from his misperception of the degree of popular control the current American political system contains. Zakaria is of the view that Congress in particular panders to popular will and that American policy follows the polls.

There is almost no evidence in the book to support Zakaria's assertions that the system panders to the public. In fact Zakaria's description of the American political system is contradictory. Zakaria admits that despite his criticisms of populism, special interests control things.⁷⁸ He blames that on too much democratization, too much openness in the system.⁷⁹ But even if Zakaria is right that the system is dysfunctional because it is too open, the resulting system would still not be pandering to the public, but to special interests.

Aside from offering a contradictory description, Zakaria is wrong in claiming that the system caters to the public. It is true that politicians attempt to cast policies in a popular mode, but that does not transform the policies into a response to popular demand. To use two recent examples, President Bush did not support the abolition of the Estate Tax⁸⁰ simply because "the people"

Paul Allen. Issa's net worth is estimated to be only \$60 million. Dave Downey & Marty Graham, *Issa in Spotlight Lately*, NORTH COUNTY TIMES, Feb. 10, 2002, available at <http://www.nctimes.net/news/2002/20020210/100146.html>. Apparently Issa is acting alone and not on behalf of the California Republican Party, which is another example of Zakaria's point about the lack of leadership and discipline in American public life.

⁷⁸ ZAKARIA, *supra* note 2, at 166.

⁷⁹ ZAKARIA, *supra* note 2, at 166.

⁸⁰ A ten-year phase out of the Estate Tax was passed as part of the 2001 tax cut. See Ramesh Ponnuru, *Death and Taxes*, NAT'L L. REV., Nov. 25, 2002, at 24, available at 2002 WL 1177728. The Estate Tax repeal was scheduled to reappear in 2010. See *id.*

demanded it. Indeed, the issue probably has hurt the President somewhat politically.⁸¹ In any event, the movement to abolish the tax was in no sense a bottom-up popular demand.⁸² Instead, abolition of the Estate Tax was a demand of a key Republican Party constituency. One sees the same tendency during the Clinton presidency. President Clinton did not veto partial birth abortion bans⁸³ because the public demanded it, but because a key Democratic Party constituency did so. The partial birth abortion issue itself was a somewhat contrived effort to aid pro-life political efforts generally.⁸⁴ The public had probably never even heard of the rare medical procedure before the pro-life movement made it a public issue.⁸⁵

The political scientist Robert Dahl has written that one of the key attributes of democracy is the ability of the public to exercise effective control over the agenda of political life.⁸⁶ That is what, by and large, is lacking in an American political system in which well-organized groups compete for political outcomes.⁸⁷ Zakaria mistakes the effort of each side to sell its position in the resulting struggle to the public as actual concern for the public's views.

⁸¹ There was a great deal of editorial opposition to the repeal, even among pundits who generally support President Bush. *See id.*

⁸² Critics called the partial repeal of the Estate Tax a "decade-long public relations and lobbying campaign." Rosie Hunter & Chuck Collins, *Death Tax Deception*, DOLLARS AND SENSE, Jan. 1, 2003, at 14.

⁸³ President Clinton vetoed federal partial birth abortion bans in 1996 and 1998. *See* Nadine Strossen & Caitlin Borgmann, *The Carefully Orchestrated Campaign*, 3 NEXUS 3, 6-7 (1998), *at* LEXIS, 3 Nexus J. Opp. 3.

⁸⁴ The emphasis by the pro-life community against partial birth abortions arose during opposition to the proposed Federal Freedom of Choice Act. *Id.* at 5.

⁸⁵ "Indeed, even most physicians were unaware of the availability and technique of partial birth abortions until it became well publicized by the Congressional hearings and the news media." Charlene Quint Kalebic, *Children, The Unprotected Minority: A Call for the Reexamination of Children's Rights in Light of Stenberg v. Carhart*, 15 REGENT UNIV. L. REV. 223, 226 n.22 (2002-2003). *See also* Richard W. Bourne, *Abortion in 1938 and Today: Plus Ça Change, Plus C'Est La Meme Chose*, 12 CAL. REV. L. & WOMEN'S STUDIES 225, 269-70 (2003) (describing "The Propaganda War Against 'Partial Birth' Abortions"). A campaign to prevent partial birth abortions has also achieved widespread legislative success. At one time thirty-one states attempted to ban the procedure, which is used only in extremely late-term abortions under circumstances where unforeseen medical complications of the fetus or mother threaten the mother's early intent to carry the child to term. *Id.* at 269.

⁸⁶ ROBERT A. DAHL, ON DEMOCRACY 37-38 (1998).

⁸⁷ *Id.* Dahl says generally of democracy today, "one of the imperatives needs of democratic countries is to improve citizens' capacities to engage intelligently in political life." *Id.* at 187.

Zakaria also points to the decline of political parties as another aspect of popular control.⁸⁸ The parties, he says, are not controlled by anyone.⁸⁹ In the summer of 2003, this seems a bizarre claim. It is perhaps unfair to criticize Zakaria for not foreseeing the astonishing success of the Bush Administration in imposing Republican Party discipline. President Bush certainly controls the Republican Party at this time.⁹⁰

This error on Zakaria's part is not a single mistake, however. Rather, it is part of a larger failure to see the structure of partisan politics in the United States. Zakaria forgets that every single Republican representative in the two houses of Congress voted against President Clinton's first budget.⁹¹ Those votes were not the result of any scandal but were simply hardball partisan politics. He also overlooks the successful "Contract with America" campaign that bolstered the Republican Party's takeover of Congress in 1994. In other words, the parties have not declined in America as effective governing tools. The Democratic Party may have declined, but the Republican Party has flourished. Obviously, decline of one party does not show a trend of declining political leadership.

The point is not that Zakaria's analysis is overstated. One reviewer said of Zakaria's book that it should really have been twice as long as it is.⁹² Zakaria intentionally wrote a quick book with a broad brush. The point is, however, that the errors and overstatements all go in one direction—to a brief against democracy.

D. *The Questionable Quality of Decisions by Elite Institutions*

Zakaria's prescription for the purported excess of democracy in the United States is delegated democracy.⁹³ He utilizes the models of the United States Supreme Court, the Federal Reserve Board, and the European Union to

⁸⁸ See ZAKARIA, *supra* note 2, at 180-84.

⁸⁹ See ZAKARIA, *supra* note 2, at 180.

⁹⁰ GOP strategist Scott Reed was quoted concerning President Bush in *The Hotline* on June 16, 2003 as follows: "His 71 percent approval rating and \$200 million [campaign contribution goal] has proven to be the most effective party discipline tool of the last 50 years." American Political Network, *THE HOTLINE*, Jun. 16, 2003, Vol. 10, No. 9.

⁹¹ "When Congress approved the president's budget, every single Republican opposed it and all but a handful of Democrats voted for it. It barely passed thanks to a near-unification of Democrats, who hold the majority. The actual vote was 218-216 in the House and 51-50 in the Senate." *Deja Vu on Federal Budget Passage*, HARRISBURG PATRIOT & EVENING NEWS, Aug. 10, 1993, at B7, available at 1993 WL 8127724.

⁹² Adam Garfinkle, *Fit for Export?*, NAT'L REV., Jun. 2, 2003, at 39, 40, available at 2003 WL 11520903.

⁹³ See ZAKARIA, *supra* note 2, at 241-44.

illustrate how democracy might be better practiced in the United States and, indirectly, through use of international lenders and the World Trade Organization, in the developing world. Another example of delegated democracy was the proposals made by independent boards that recommended military base closings, which could only be voted up or down.⁹⁴ The idea was to prevent log-rolling in which representatives would band together to prevent closing locally beneficial, but nationally unnecessary, bases.⁹⁵ Basically, Zakaria is recommending that difficult political decisions be made by bodies independent of the day-to-day give and take of political life. He recommends, for example, that an independent tax commission make recommendations to simplify the tax code and move the United States toward a flat consumption tax.⁹⁶

Zakaria believes that regular politicians cannot follow beneficial but unpopular courses of action, and that voters cannot be convinced that unpleasant actions might be necessary. Zakaria says that we cannot make anti-trust or interest policy “by plebiscite.”⁹⁷

One anti-democratic implication of these ideas is that the voters cannot make rational and beneficial decisions in the public interest. Zakaria’s view of voters goes even beyond that of public choice theory, which at least allows for the possibility of long-term thinking by the voters and their representatives.⁹⁸ For Zakaria, voters must be treated like infants.⁹⁹

⁹⁴ ZAKARIA, *supra* note 2, at 250. See also Charles Tiefer, *How to Steal a Trillion: The Uses of Laws About Lawmaking in 2001*, 17 J.L. & POL’Y. 409, 478 (2001):

After major successful enactment struggles, Congress enacted the Base Closure and Realignment Act of 1988, followed by the Defense Base Closure and Realignment Act of 1990. Each set up base closing commissions, which would produce proposals for closing bases. After consideration by the Secretary of Defense and/or the President, these proposal packages would go before the House and the Senate for possible disapproval as a whole. Pursuant to these laws, four base closing commissions, in 1989, 1991, 1993, and 1995, produced base closing packages, none of which was ultimately disapproved by Congress.

⁹⁵ ZAKARIA, *supra* note 2, at 250.

⁹⁶ See ZAKARIA, *supra* note 2, at 249.

⁹⁷ See ZAKARIA, *supra* note 2, at 244.

⁹⁸ For criticism of public choice psychology, see Abner J. Mikva, Forward to 74 VA. L.REV. 167, 168 (1988) (condemning the dim view of human nature he says is fostered by public choice analysis). But, although everyone in the view of choice theory is self-interested, public choice theory does expect rationality. “The central insight of this ‘public choice’ analysis is that political actors are just like everyone else; in the story told by economists, this insight means that they are rational individuals who act in their own self-interest.” Albert A.

(continued)

More broadly, Zakaria ignores the actual record of these elite, independent institutions he wishes to emulate. The recommendations of the WTO or the IMF or the World Bank have been controversial and certainly are not beyond question.¹⁰⁰ Domestically, the interest rate policies of the Federal Reserve Board have recently been criticized as favoring the interests of banks over those of society by being too slow to drop concerns over inflation.¹⁰¹ It has been estimated by critics that economic growth has been sacrificed to extravagant fears of inflation.¹⁰²

In terms of the Supreme Court, there are several difficulties with Zakaria's analysis that throw the entire notion of independent expertise into question. For one thing, the Court's self-understanding and the official ideology of the institution contradict the notion that the Court is rendering decisions in controversial areas where the representative political system has broken down or cannot function. Perhaps *Roe v. Wade*¹⁰³ can be looked at that way—given Zakaria's negative view of religion, he probably does think of the decision as socially necessary but stymied by medieval moral views. Certainly Zakaria must think of the Connecticut birth control case¹⁰⁴ as a case in which the Court was doing a job that normal political institutions should have done but could not. No one was being prosecuted under the anti-birth

Foer, *The Politics of Antitrust in the United States: Public Choice and Public Choices*, 62 U. PITT. L. REV. 475, 493 (2001).

⁹⁹ In this way, Zakaria is part of the larger question of how our policy elites deal with the public. See Susan Sontag's celebrated comment after the events of 9/11: "The voices licensed to follow the event seem to have joined together in a campaign to infantilize the public." Susan Sontag, Comment in *The Talk of the Town*, THE NEW YORKER, Sept. 24, 2001, at 32.

¹⁰⁰ See e.g., JOSEPH E. STIGLITZ, GLOBALIZATION AND ITS DISCONTENTS (2002) (criticizing the International Monetary Fund); Enrique R. Carrasco, *The 1980's: The Debt Crisis and the Lost Decade of Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 119, 124 (1999) (criticizing the role of the World Bank); and Andrienne S. Khorasane, Note, *Sacrificing Burma to Save Free Trade: The Burma Freedom Act and the World Trade Organization*, 35 LOY. L.A. L. REV. 1295, 1310 (2002) (the WTO has been accused of trampling labor and other human rights).

¹⁰¹ See e.g., Lawrence Kudlow, *Golden Years?*, WALL ST. J., Feb. 26, 2003, at A16, available at 2003 WL-WSJ 3960299 (Greenspan's efforts to curb the stock market and inflation now threaten the economy with deflation.); see also Mark Weisbrot, *Globalization for Whom?* 31 CORNELL INT'L L.J. 631, 641 (1998) (Federal Reserve Board's almost exclusive concern for fighting inflation favors large bondholders and other financiers over the interests of majority of people).

¹⁰² See Kudlow, *supra* note 101.

¹⁰³ 410 U.S. 113 (1973).

¹⁰⁴ *Griswold v. Connecticut*, 381 U.S. 479 (1965) (striking down Connecticut's ban on the use of birth control devices as applied to a married couple).

control law,¹⁰⁵ indicating that there was no widespread support for the law, and only the Catholic Church's enormous political influence in Connecticut kept the law on the books.¹⁰⁶

While this way of looking at the Court is plausible, none of the Justices described the issue before them in these terms in either case. Of all the major constitutional cases of the past century, the only cases that could reasonably be thought of in these terms are the reapportionment cases, in which existing political deadlock blocking reapportionment was perhaps a factor to the Justices.¹⁰⁷

Not only does Zakaria's recommendation require that there be self-consciousness on the part of the Justices, it also requires strict neutrality in the partisan sense. No one would have agreed to the recommendations of the base closing commissions if there had been the slightest suspicion that members of the commissions might reward or punish certain states. *Bush v. Gore*¹⁰⁸ may well have undermined such a social consensus around the Court—or might in the future when the next controversial decision with

¹⁰⁵ This was, in part, why the Court refused to reach the merits of the Connecticut ban in *Poe v. Ullman*, 367 U.S. 497, 508 (1961).

¹⁰⁶ See Sylvia A. Law, *Tort Liability and the Availability of Contraceptive Drugs and Devices in the United States*, 23 N.Y.U. REV. L. & SOC. CHANGE 339, 398 (1997) (Catholic Church provided the most significant opposition during the 1950s and 1960s in Connecticut to lifting the ban on birth control through the Church's influence within the Democratic Party).

¹⁰⁷ Even here, there is reason for doubt. The majority opinion in *Reynolds v. Sims*, 377 U.S. 533 (1964), made reference to the possibility of deadlock, but the reference had to do with hypothetical legislative deadlock between reapportioned and non-reapportioned legislative bodies. See *id.* at 576. But the majority did put the matter of reapportionment in a broader political context, suggesting that the Justices were aware that democracy had in effect broken down:

Legislative apportionment in Alabama is signally illustrative and symptomatic of the seriousness of this problem in a number of the States. At the time this litigation was commenced, there had been no reapportionment of seats in the Alabama Legislature for over 60 years. Legislative inaction, coupled with the unavailability of any political or judicial remedy, had resulted, with the passage of years, in the perpetuated scheme becoming little more than an irrational anachronism. Consistent failure by the Alabama Legislature to comply with state constitutional requirements as to the frequency of reapportionment and the bases of legislative representation resulted in a minority strangle hold on the State Legislature.

Id. at 569-70.

¹⁰⁸ 531 U.S. 98 (2000).

partisan implications comes to be made.¹⁰⁹

Aside from these reasons to quibble with Zakaria's identification of the Court as a model of needed independent, non-political decision-making, there is perhaps the more fundamental question of whether the Court has done a socially beneficial job in its decisionmaking. The whole point of selecting an independent institution for decisionmaking is that such a body can take the necessary, but unpopular course. If the decisionmaker does a poor job, there is no benefit to removing the decision from normal political discourse.

Judging the Court's record as a decisionsmaker is not as easy as it may at first appear. Law professors ask many doctrinal questions about judicial decisions, but ask only infrequently whether, on the whole, those decisions have served society well. Law and economics tries to ask such questions, albeit sometimes in question-begging form, because whether maximizing wealth itself benefits society in a particular instance is usually ignored. The exclusionary rule¹¹⁰ and *Miranda*¹¹¹ decisions have sparked some of this kind of questioning,¹¹² but the analyses have tended to be ideological rather than scientific.¹¹³

One case in particular suggests that the Justices are too socially irresponsible to be trusted with the kind of prudential judgment Zakaria has in mind. *Clinton v. Jones*,¹¹⁴ in which the Court unanimously held that a sitting president could be sued for actions taken before he became president, was a disaster for the country. Of course the Court's lack of wisdom in deciding the case does not excuse President Clinton's perjury and his lying to the American people. Nevertheless, the opinion in retrospect demonstrates an almost criminal naivete; the Justices seemed oblivious to the fact that Clinton's enemies would use the opinion to try to set up precisely the scenario that later occurred. The Court's unanimous conclusion that the case concerned an individual "who happens to be the President"¹¹⁵ betrayed an abysmal ignorance of political reality. No wonder the Justices could

¹⁰⁹ The damage that *Bush v. Gore* has done to the Court may not yet be apparent.

¹¹⁰ See *Mapp v. Ohio*, 367 U.S. 643 (1961) (State violation of the Fourth Amendment requires exclusion of resulting evidence).

¹¹¹ See *Miranda v. Arizona*, 384 U.S. 436 (1966) (Fifth Amendment requires warnings and waiver of rights before custodial interrogation).

¹¹² In one celebrated example, Chief Justice Burger raised the question whether the exclusionary rule really does deter police misconduct since it does not directly sanction the police. See *Stone v. Powell*, 428 U.S. 465, 498-500 (1976) (Burger, C.J., concurring).

¹¹³ In one book I use for Criminal Procedure class, for example, ROBERT M. BLOOM & MARK S. BRODIN, *CRIMINAL PROCEDURE EXAMPLES AND EXPLANATIONS* (3d ed. 2000), the arguments about the exclusionary rule are plausibly put in the mouths of those whose interests are at stake—police chief, prosecutor, and defense attorney. *Id.* at 200-204.

¹¹⁴ 520 U.S. 681 (1997).

¹¹⁵ *Id.* at 701.

conclude, with breathtaking lack of concern for the ship of state, that “[a]s for the case at hand, if properly managed by the District Court, it appears to us highly unlikely to occupy any substantial amount of petitioner’s time.”¹¹⁶ The fallout from Clinton’s deposition in *Clinton v. Jones* turned out to occupy everyone’s time and attention.

Justices of the United States Supreme Court do not acknowledge their errors, nor do they apologize. The Justices have not accepted any responsibility for the disaster that followed their misjudgment. It was simply dumb luck for the United States that something like the events of September 11 did not occur during the impeachment paralysis the Court helped create.

Nor is the Paula Jones case the only recent folly from which the Justices have apparently learned nothing. In *Employment Division, Department of Human Resources v. Smith*,¹¹⁷ Justice Scalia led a narrow majority to afford a lesser place in constitutional rights for the Free Exercise Clause of the First Amendment.¹¹⁸ The decision to treat the Free Exercise Clause differently from the rest of the First Amendment had little grounding in text, history, or precedent, and was repudiated by large bipartisan majorities in both houses of Congress.¹¹⁹ There is no doubt that the great majority of the American people would have repudiated the decision as well, had they known about the case.

Nevertheless, given the chance to acknowledge their error, the Justices dug in their heels when Congress passed legislation to overturn *Smith*.¹²⁰ Sometimes the Court’s willingness to stand alone is judicial courage and statesmanship, but in this case it was just an unwillingness to admit a mistake. Justice Harlan once wrote that the constitutional “tradition is a living thing. A decision of this Court which radically departs from it could not long survive.”¹²¹ But if the Court will not take correction, how is the survival of error to be prevented?

The Federal Reserve Board and the Supreme Court are not the only independent institutions exercising questionable judgment. The independent

¹¹⁶ *Id.* at 702.

¹¹⁷ 494 U.S. 872 (1990).

¹¹⁸ *See id.* at 874-90. The Court held that application of neutral, generally applicable laws to religiously motivated conduct does not violate the free exercise clause of the First Amendment. *Id.* at 879-82. But the Court acknowledged that application of such laws to free speech or association might violate the Constitution. *Id.* at 886. The decision left it to the majority to respect minority religious practices or not as they chose. Such matters would no longer merit searching judicial review.

¹¹⁹ In response to *Smith*, Congress passed the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. § 2000bb to bb-4 (1993).

¹²⁰ The Court held RFRA unconstitutional in *City of Boerne v. Flores*, 521 U.S. 507 (1997).

¹²¹ *Poe v. Ullman*, 367 U.S. 497, 542 (1961) (Harlan, J., dissenting).

prosecutor law was allowed to lapse even by those who had used it so effectively against President Clinton.¹²² There was a widespread feeling in Congress that independence in this office had perhaps been misused—not just in the case of President Clinton—to create a forum for misguided zealotry.¹²³ Zakaria does not admit that there are counter examples that throw his commitment to independent decisionmaking into question.

In a way, Zakaria is raising an old issue. The modern administrative state was created according to judgments like those Zakaria is making about democracy. There was a feeling throughout the early twentieth century that policy was better made by independent expertise than by political judgment.¹²⁴ The experience of agency decisionmaking should make us wary of the notion of neutral expertise in political contexts. As the recent decision by the FCC regarding concentrations in television and newspaper ownership¹²⁵ makes clear, such decisions are neither neutral nor technical. They are political policy decisions in the most fundamental sense.

Zakaria's very example of a flat consumption tax reinforces the conclusion that these matters are not technical. Zakaria believes that the change from the current tax system to one based on consumption is obvious. But people can disagree about the wisdom and actual effect of such an enormous change in tax policy on rational grounds. Putting this decision into some sort of commission does not alter the essentially political nature of the judgment that is to be made. Even a matter as politically sensitive as military base closings could be fairly described as technical in a way that tax policy,

¹²² The Independent Counsel Law, 28 U.S.C. §§ 591-599 (1994), expired by sunset provision on June 30, 1999.

¹²³ See Ken Gormley, *Monica Lewinsky, Impeachment, and the Death of the Independent Counsel Law: What Congress Can Salvage from the Wreckage—A Minimalist View*, 60 MD. L. REV. 97, 102 (2001) (describing some independent counsel investigations, aside from the investigation of President Clinton, as “shamelessly political”).

¹²⁴ See Loren A. Smith, Commentary, *Judicialization: The Twilight of Administrative Law*, 1985 DUKE L.J. 427, 440 (1985):

We began the modern era with an almost unbounded faith in the ability of scientific and other kinds of experts to set the world right. Neither the Great War nor the Great Depression shook this faith significantly. The new administrative bodies that sprang up from the teens to the late thirties were evidence of a belief on the part of our society that technical expertise had a critical role to play in administrative decisionmaking.

¹²⁵ On Monday, June 2, 2003, the Federal Communications Commission voted 3-2 to relax rules against media concentration by allowing companies to own television stations that reach forty-five percent of the nation's viewers and allowing newspaper broadcasting combinations in the same city. Associated Press, *Opinions Vary Across W.Va. About Media Ownership Rules*, CHARLESTON GAZETTE, Jun. 3, 2003, available at 2003 WL 5467097.

and indeed most issues, are not.

How can Zakaria can be blind to such obvious matters? Again, there is no great mystery. Zakaria must know that independent bodies cannot decide issues without making policy judgments and that these judgments may be wrong or at least controversial. Nevertheless, except at the extreme limit of failed decisionmaking, he seems to believe that almost any elite decision-making system is likely be an improvement upon democratic decisionmaking. To paraphrase Zakaria, democracy avoids only the worst-case scenario.

E. *The Harm in Capitalism*

One of Zakaria's most fundamental commitments is to capitalism at home and abroad. Of course, implementing capitalism abroad is the core message of the entire book: "Economic reforms must come first, for they are fundamental."¹²⁶ Capitalism must be introduced and take root before any political reforms, such as elections, will lead to stable, liberal democracy. At home, Zakaria believes that the regulation of capitalism overreached and that capitalism has been properly freed somewhat since the 1970s.

As befits a short book for a well-educated but general audience, Zakaria is not specific as to which economic policies should be introduced in developing countries or what the proper degree of regulation of capitalism looks like, or whether capitalism abroad should look like capitalism at home. In fact he does not distinguish between capitalism as production and distribution, on the one hand, and capitalism as free trade among nations, on the other. So, it is difficult to evaluate his economic proposals in any depth.

Nevertheless, the context of his views on economics is clear. The role of capitalism abroad is two-fold. It has a dual economic and political role in that capitalism offers the best chance of attaining the relatively high level of economic development that is compatible with liberal democracy. The other role of capitalism is more directly political. Autonomous capitalism—as opposed to state or crony capitalism—creates the independent institutions and groups in society that nourish and sustain liberal constitutionalism and thus prevent illiberal democracy.

Zakaria does not mention the controversy currently swirling around the "Washington consensus"—the term John Williamson invented in 1989 to describe the economic policies promoted by the United States, the World Bank, and the International Monetary Fund to aid development in Latin America.¹²⁷ There is at least some evidence that following free trade advice

¹²⁶ ZAKARIA, *supra* note 2, at 152.

¹²⁷ See Robert J. Samuelson, *Global Economics Under Siege*, WASH. POST, Oct. 16, 2002, at A25, available at 2002 WL 101068690. These policies embrace a free market economic model and emphasize, among other things, a limited role for government; lower tariffs; higher foreign investment; fiscal austerity; less inflation; the privatization of state-run

(continued)

led to worse economic performance from 1980 to 2000 and that the countries that did escape mass poverty—South Korea, Taiwan, Singapore, and Thailand—did so not through free trade policies, but through protectionism and state planning.¹²⁸

Even if this critique were completely convincing, Zakaria's promotion of capitalist development would not change. Zakaria is apparently not devoted to strict market strategies. An active government role in private development would still allow the growth of liberal institutions. With the exception of criticizing passive income from the sale of national, natural resources, he does not care how countries grow richer, as long as they do so. Liberal democracy can take root when a certain gross national product is reached. In terms of the political effects of capitalism, the economic model followed by the Asian Tigers presumably would encourage enough autonomous wealth to satisfy Zakaria's argument that independent institutions and an independent middle class are necessary for liberal democracy.

The underlying political problem with capitalism surfaces in Zakaria's description of political life in the United States. Zakaria wants capitalism at home to limit the power of the state and to eliminate wasteful subsidies from government that are, to a large degree, the substance of harmful interest group politics.¹²⁹ He shows and acknowledges, however, that big money is a threat to democracy. Zakaria even calls the section on Congress, *Open for Business*,¹³⁰ and the section on campaign finance, *The Money Machine*.¹³¹ Of course, the political power of money is not a direct indictment of capitalism, since government regulations and tax policy could theoretically limit that power. There is a quandary in the book, however, because Zakaria favors less-regulated capitalism. Can democracy survive the successful capitalism that Zakaria believes is democracy's foundation and ineradicable companion?

The depth of capitalism's harmful potential for democracy is demonstrated in his final chapter, *The Death of Authority*.¹³² A major problem in American democracy is the decline of responsible elites. Zakaria ascribes this decline in part to the spread of the mass market resulting from economic deregulation. He even calls the mistaken notion that commercial success should be the standard of cultural excellence "marketization."¹³³ By way of

industries; and financial liberalization. *Id.*

¹²⁸ See William Finnegan, *The Economics of Empire*, HARPER'S MAGAZINE, May 1, 2003, at 41, available at 2003 WL 9655846.

¹²⁹ Zakaria is careful to note that interest group politics do not need to focus solely on issues of income and material resources. He uses United States foreign policy with regard to Cuba to make that point. See ZAKARIA, *supra* note 2, at 179.

¹³⁰ See ZAKARIA, *supra* note 2, at 169-72.

¹³¹ See ZAKARIA, *supra* note 2, at 184-86.

¹³² See ZAKARIA, *supra* note 2, at 199-238.

¹³³ ZAKARIA, *supra* note 2, at 219.

example, Zakaria explains that marketization is why museums no longer provide needed cultural leadership.¹³⁴ It is why lawyers, who formerly served a necessary public purpose, have become “anxious hustlers.”¹³⁵ It is why doctors are now just another set of business owners. It is why the media can no longer provide good journalism and why accountants are no longer watchdogs, but lapdogs of business. And, although Zakaria does not make the connection, market ideology would explain the decline in political participation, including the decline in voting. After all, why should an economically-minded, self-interested person vote? What’s in it for me?

This is a serious critique, but Zakaria does not see its implications. None of his proposals for solving the problems of democracy have anything to do with the market ideology that underlies the decline in social responsibility he criticizes. Zakaria is so wedded to the notion that capitalism is needed for freedom that he cannot acknowledge the possibility that late-stage capitalism might have become a threat to freedom and democracy. Insofar as cultural leadership and social responsibility are necessary for healthy democracy—and Zakaria believes that they are—capitalist democracy may turn out to be an oxymoron.

F. *Why Democracy Matters*

Despite being a book about freedom, Zakaria has nothing to say about the freedom or right of self-determination. This raises the question of what democracy does for people. Zakaria says that democracy is a good thing. But why is it a good thing? Why does democracy matter?

For Zakaria democracy is primarily a method of selecting governments by open, free, and fair elections. This description does imply something about the general nature of a democratic society, for free speech and free association would have to exist, to an extent at least, to ensure such elections. Nevertheless, Zakaria’s description of democracy is not very restrictive. Many different kinds of societies would be compatible with this limited definition.

When Zakaria actually writes about the role democracy plays, he treats it as another form of the checks and balances that prevent governmental tyranny. He writes that democracy has good economic effects because, “[a]lthough it does not achieve the best results, it usually protects against the worst.”¹³⁶ Democracy does not achieve the best economic results because politicians are unwilling to inflict pain on important sectors in society. The best way for democracy to work is for the public to render a judgment on the

¹³⁴ ZAKARIA, *supra* note 2, at 218.

¹³⁵ See ZAKARIA, *supra* note 2, at 23.

¹³⁶ ZAKARIA, *supra* note 2, at 252.

results of decisionmaking, rather than to be involved in making policy.¹³⁷ This is why delegated democracy is so attractive to him.¹³⁸

At only one point does Zakaria seem to view democracy differently. In describing the failure of politics in the Arab world, Zakaria writes about the anger of a people “that has been given some wealth but no voice—locked in a gilded cage.”¹³⁹

Why would people with wealth be angry at having no say in their own destiny? Elsewhere, Zakaria says that good government through constitutional liberalism is more important than democracy.¹⁴⁰ But Zakaria does not ask what liberty without democracy would be like. It would include the right to speak, own property, and pray, but ultimately only in private and about private matters. Of course, one can imagine a truly free society that is ruled by a monarch—Spain was like that for a time after the end of the Franco regime and perhaps Jordan is like that today—but only under special and limited circumstances. Eventually, free speech about public matters must become the right to vote or it must wither away, for the right to vote is a vital form of free speech and association. Indeed, voting against the government may be the form in which these freedoms are most real. Zakaria imagines that democracy is an enemy of human or individual rights. But, as Dick Howard points out, “[t]he ability to articulate rights . . . is itself a right.”¹⁴¹ Howard suggests that Zakaria’s dichotomy between democracy and liberty is a false dichotomy.

This is why the examples of Singapore and China are so sinister from the point of view of democracy. In both countries there is a high degree of economic freedom. In both countries there is a real and growing rule of private law. In both countries there is a certain freedom of speech, but only in terms of private life. Freedom to seriously criticize government policy will not last in autocratic government. Singapore and China are models of liberty

¹³⁷ See ZAKARIA, *supra* note 2, at 168.

¹³⁸ The section, *Delegating Democracy*, begins, “[w]hen the stakes are high we do not entrust day-to-day politics to ourselves.” ZAKARIA, *supra* note 2, at 241. This is really a rejection of democracy. When matters are important, the public cannot be trusted. Actually, Zakaria’s main examples, war and national security, just demonstrate that the public cannot micro-manage matters of expertise. When the stakes are really high—the decision to go to war—the decision is supposed to be made by Congress, the political institution closest to the people. U.S. CONST. art. I, § 8, cl. 11.

¹³⁹ ZAKARIA, *supra* note 2, at 135.

¹⁴⁰ “Elections are an important virtue of governance, but they are not the only virtue. It is more important that governments be judged by yardsticks related to constitutional liberalism.” ZAKARIA, *supra* note 2, at 156. Zakaria makes the point more starkly in respect to Africa: “what Africa needs more urgently than democracy is good governance.” ZAKARIA, *supra* note 2, at 98.

¹⁴¹ HOWARD, *supra* note 1, at 133.

without democracy. But liberty in such systems is inherently unstable.

When discussing India, Zakaria says that democracy that does not bring economic development is not working for its people. He thinks we should judge political life by economic standards. In this conclusion, there is much truth. No parent would trade a better infant mortality rate for the right to vote. But Zakaria leaves out the anger of people who do not control their own destiny.

Democracy is more than a check on arbitrary or unwise government. It is not a threat to liberty. Democracy is itself a fundamental human right—the right to choose or have a say in choosing one’s own destiny. The premise of Zakaria’s book is that it is possible to have democracy without freedom. That is true. But he neglects to see that one cannot have freedom without democracy. The reason for this is not just that democracy creates or protects freedom. The reason is that democracy is itself a part of freedom.

G. *What is Left for Democracy?*

Zakaria always maintains that democracy is a good thing, although the ground must be laid for it so that it does not deteriorate into tyranny. But laying the groundwork for Zakaria involves so many of the fundamental aspects of life—most of the social order—that one wonder what is left for democracy to be democratic about.

According to Zakaria, the citizens in pre-democracy Indonesia enjoyed “order, secularism, and economic liberalization.”¹⁴² Elsewhere, Zakaria points out that economic liberalization requires property rights and the rule of law—at least contract law—and he links the rule of law to constitutional limits on government and the establishment and protection of individual rights generally. He also praises assimilation of ethnic and national differences¹⁴³ and privatization of religion. He believes the rights of women should be obviously and necessarily protected in any good society. In other words, the liberal framework Zakaria urges as the foundation of democracy is a social order largely like that of the United States and other western countries today.

Zakaria has forgotten that all of these rights and practices are not just the foundation of democracy in the West. They are also the product of democracy in the West. All this was in no sense an imposed structure. It was all achieved largely through democratic struggle. It makes democracy into a sham to imagine imposing liberal institutions and giving democracy no role to play until all these matters are settled.

Zakaria thinks that capitalism brought democracy. But this matter is not

¹⁴² ZAKARIA, *supra* note 2, at 118.

¹⁴³ ZAKARIA, *supra* note 2, at 114-15 (“democracy is simply not viable in an environment of intense ethnic preferences”).

free from dispute. Adam Smith's *Wealth of Nations* was not published until 1776,¹⁴⁴ when notions of democracy were already prevalent. Dick Howard views democracy, rather, as the underpinning of capitalism. In Howard's view, it is the very indetermination of democracy—that “it must itself produce the meanings that legitimate the existing forms of power, knowledge and law”¹⁴⁵—that “makes possible the emergence of capitalism [C]apitalism presupposes democracy, not the inverse.”¹⁴⁶

Nor did the rule of law come to exist in the United States without democracy. The authority of the Supreme Court to enforce individual rights certainly did not exist when President Andrew Jackson said of Chief Justice Marshall's decision in *Worcester v. Georgia*,¹⁴⁷ “John Marshall has made his decision; now let him enforce it.”¹⁴⁸ But that authority did exist when, in 1957, President Dwight Eisenhower sent federal troops into Little Rock to enforce judicial desegregation orders, dispersing white crowds who were preventing black students from entering Central High School.¹⁴⁹

Both presidential actions were democratic—popular, elected executives following announced policy. President Eisenhower even spoke to the nation to rally public support for his actions.¹⁵⁰ But Zakaria writes as if constitutionalism could exist without democratic support.

If capitalism and constitutionalism are opportunities or potentialities within democracy, then they might not have been actualized and they might not be in the future. And other democratic possibilities cannot be discounted *a priori*. Democratic societies might turn out to be different from what Zakaria expects.

Democracy in Zakaria's understanding exists only to adjust the basic arrangements of liberal life, which are themselves inviolate. This is an artificial restriction, too narrow and fixed for democracy. What of the old dream of a socialist democracy? Is it not something for people to seriously think about? Or, what about the possibility that the people of Iran might create an Islamic democracy different in some ways from the system Zakaria favors? Even Israel, usually counted as a democracy at least in part, does not fit into Zakaria's account of a liberal democracy.

¹⁴⁴ ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (Regency Publ'g, Inc. ed., 1998).

¹⁴⁵ HOWARD, *supra* note 1, at 132.

¹⁴⁶ HOWARD, *supra* note 1, at 131.

¹⁴⁷ 31 U.S. (6 Pet.) 515 (1832) (holding that state laws of Georgia had no effect within the boundaries of the Cherokee Nation).

¹⁴⁸ See Frank Pommersheim, *Is There a (Little or Not so Little) Constitutional Crisis Developing in Indian Law?*, 5 U. PA. J. CONST. L. 271, 275-76 (2003). Granted, possibly apocryphal, but Jackson did support Georgia sovereignty over Cherokee land. *Id.* at 276.

¹⁴⁹ *Eisenhower Address on Little Rock Crisis*, N.Y. TIMES, Sept. 25, 1957, at 14.

¹⁵⁰ *Id.*

For that matter, Zakaria, who claims that the Bible is, and should be, irrelevant politically in the United States today, cannot see that this is not, and could never, be true. While liberals like to denounce the growing power of the religious right in America, there are other examples of religiously-influenced democracy—whether Martin Luther King Jr.’s “I Have a Dream” speech or the opposition of the American Bishops to the abolition of welfare. Zakaria wants to exclude by fiat many important aspects of human life from the democratic arena.

III. WILL ZAKARIA’S CHALLENGE TO DEMOCRACY SUCCEED?

*Does one think that after having destroyed feudalism and vanquished kings, democracy will recoil before the bourgeoisie and the rich?*¹⁵¹

Zakaria is raising de Tocqueville’s question again and wants to answer yes. Zakaria wants to slow down the march of democracy today and subject it to the institutions that favor capitalism and other liberal practices. In the foreign affairs context, the argument about democracy is playing out over United States policy in Iraq. The June 23, 2003 issue of *Newsweek*, for example, reads like a debate between neoconservatives in the Bush administration, whom the magazine describes as standing “for a robust marriage of power and principle, a fusing of America’s precision-guided ability to change regimes with an evangelical belief that the only right regime is democracy,”¹⁵² on the one hand, and Zakaria, who argues against “[m]oving quickly toward Iraqi self-rule.”¹⁵³

In the context of Iraq, Zakaria’s view will certainly carry the day. The United States has already backed away from any early plans to form interim local governing bodies in Iraq.¹⁵⁴ Zakaria’s suggestion to create constitutional (legal) and economic structures before holding elections is likely to appeal to the Bush administration.

Iraq, however, is not indicative of the future of American foreign and

¹⁵¹ ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 6 (Harvey C. Mansfield and Debra Winthrop eds., 2000).

¹⁵² Michael Hirsh, *Neocons on the Line: Welcome to the Real World*, *NEWSWEEK*, Jun. 23, 2003, at 32-33, available at 2003 WL 8639239.

¹⁵³ Fareed Zakaria, *How to Make Friends in Iraq*, *NEWSWEEK*, Jun. 23, 2003, at 37, available at 2003 WL 8639240. Zakaria was ascribing this view to an Iraqi exile, but it plainly represents his view as well.

¹⁵⁴ See Patrick E. Tyler, *Iraqis Frustrated by Shift Favoring U.S.-British Rule*, *N.Y. TIMES*, May 26, 2003, at A1 (“The sudden shift in postwar strategy in favor of an American and British occupation authority has visibly deflated the Iraqi political scene, which earlier this month was bustling with grass-roots politicking and high expectations for an all-Iraqi provisional government.”).

domestic policy. For one thing, Zakaria's proposal in the book is not simply to delay elections for a while, but to hold them five years after a regime creates liberal legal and economic institutions.¹⁵⁵ Obviously, the United States does not have five years to leave Iraq unless the administration plans a bloody occupation.

Aside from limited time, Iraq is a special case in another sense. The United States is not imposing regime changes on countries throughout the world, as it did in Iraq. Zakaria is proposing that the United States not continue to press for immediate elections everywhere in the world.¹⁵⁶ But in Iraq, an immediate election after military displacement of an entrenched dictator was all but impossible. In contrast, most countries in the world could hold elections without obvious disruption. So, the potential lesson of Iraq, that elections should be put on hold, might not be applicable elsewhere.

One indication that the neoconservatives have not lessened their support of democracy despite the setback in Iraq is an article by former Speaker of the House Newt Gingrich in *Foreign Affairs* magazine, reportedly calling for the State Department to more effectively press for democratic values in the world.¹⁵⁷ Gingrich of course does not disagree with Zakaria about the importance of the rule of law and constitutional liberties, but his emphasis is primarily on democracy.¹⁵⁸ Zakaria says he favors democracy as well, but his emphasis is on other liberal institutions first, especially capitalism.

The main reason Zakaria's proposals will probably not succeed in changing U.S. policy is, as he acknowledges at the beginning of the book, that this is the "democratic age."¹⁵⁹ Democracy today is the dominant, perhaps exclusive, source of norms in political life. In Zakaria's terms, this means a problem of legitimacy¹⁶⁰ whenever policies outside the realm of democratic choice are pursued. In other words, Zakaria favors a set of liberal policies and he wants them to be imposed in some sense at home and abroad. He suggests that such policies would not be possible in a more democratic system. But how can this be justified in a democratic age? Why shouldn't people get the policies they want? What standard other than majority rule is available?

Zakaria is no philosopher and has no intention of trying to justify his liberal commitments by reference to John Rawls or Kantianism, or pragmatism or any systematic truth claim. Nor can he argue that his

¹⁵⁵ See ZAKARIA, *supra* note 2, at 155 ("In general, a five-year period of transition, political reform, and institutional development should precede national multiparty elections.").

¹⁵⁶ See ZAKARIA, *supra* note 2, at 155.

¹⁵⁷ Newt Gingrich, *Rogue State Department*, FOREIGN POLICY, July/Aug. 2003, at 42, 42-44, available at <http://www.foreignpolicy.com/story/story.phy?storyID=13742>.

¹⁵⁸ See *id.*

¹⁵⁹ ZAKARIA, *supra* note 2, at 13.

¹⁶⁰ ZAKARIA, *supra* note 2, at 244.

prescriptions will bring greater wealth. Perhaps they will in the long run, but not inevitably nor immediately. Zakaria cannot justify his commitment to liberty as good per se. He is, for example, ready to censure Islamic fundamentalists, despite their rights of free speech,¹⁶¹ in good, instrumentalist fashion.

Zakaria is content if international lending agencies impose liberal policies on developing countries. This probably will not work in the long run, however, and it does nothing to change the domestic policies of the United States, where Zakaria says even more damage is being done by democracy. Also, democratic ideology in the United States, if unchecked, will presumably continue to force American foreign policy into supporting democracy abroad.

Zakaria's only answer to this problem is that politicians should explain to people that the policies being imposed, in his example by the European Union,¹⁶² are really better for everyone in the long run.¹⁶³ That would solve the problem of legitimacy.

Zakaria must realize how hollow this suggestion is. If politicians were willing to be that candid with their constituents—assuming that Zakaria is right that politicians believe that liberal policies are better for everyone but do not want to say so for political reasons—they would just vote for liberal policies themselves, and no outside compulsion, nor undemocratic political structures, would be necessary. And if their constituents were sufficiently farsighted to understand such arguments, they would support liberal policies in everyday politics.

This observation highlights the fundamental flaw in Zakaria's program. There is no logical reason why democracy should be diminished to achieve his policy goals. Zakaria is not suggesting anything that democratic governments have not followed at one time or another. There is no reason in theory why a liberal program could not simply be adopted by the voters of either a developing nation or a mature democracy. The problem is only that Zakaria is convinced, and he thinks history shows, that voters will tend not to do so.

The proper response to Zakaria, then, is to say, "convince the voters." He certainly is in a position to influence public opinion here and around the world. If his ideas are so compelling, why does he not do this? Why is he so ready to invoke the power of the United States to impose his solutions?

Zakaria observes of the citizens of the United States that they have lost faith in democracy.¹⁶⁴ I am not sure this is the case. But it is certainly the case with Zakaria himself. He has lost faith in the ability of the common

¹⁶¹ See *supra*, note 18 and accompanying text.

¹⁶² ZAKARIA, *supra* note 2, at 245-46.

¹⁶³ ZAKARIA, *supra* note 2, at 245-46.

¹⁶⁴ See *supra* note 42 and accompanying text.

person to understand the truth. He has given up trying to convince ordinary people to adopt the policies he favors, and he now concentrates on the foreign policy elite and on domestic policymakers. Of course, Zakaria wrote this book, so he is trying to influence a substantial group. He is not, however, aiming his message at a mass audience.

Unfortunately, Zakaria seems to agree with the dark view of human nature espoused by the public choice theory of political thought. Frank Easterbrook, an apostle of the movement, says this of people: "People care more about themselves than about others [S]elf love dominates even when people know intellectually that virtuous conduct would be better. When the conflict between self and virtue is irreconcilable, cognitive dissonance leads people to conclude that civic virtue and personal ends coincide."¹⁶⁵

Is there really much evidence for this bleak claim? Has democracy failed consistently to embrace the public good? The historical record does not support this pessimistic view. It is strange that Zakaria and others are so certain that it is the case.

Zakaria blames democracy for bad policy choices even when it is probably not at fault. For example, he states that "[i]n America's greatest tragedy, liberty and democracy were often at odds."¹⁶⁶ He is referring here to the twin racial blights of American history, slavery and racial discrimination. But, while there is obviously much room to criticize the actions of the white majority in the United States, clearly this cannot be attributed to democracy, but to the absence of democracy. During slavery and the era of Jim Crow, African-Americans were denied the right to vote.¹⁶⁷ So, there was no real democracy on racial issues during most of American history. This is not to praise America, but to say that democracy had not been tried.

Plus, to the extent that democracy did fail in these crises, the elite institutions to which Zakaria wishes to entrust the country failed as well, and more so. In the 1850s Congress was the branch of government most committed to the limitation and eventual elimination of slavery. The Court effectively denied Congress the power to limit the expansion of slavery in the *Dred Scott* decision.¹⁶⁸

Later, in the 1950s, when state-sanctioned racial discrimination was finally dismantled, it is true that the Supreme Court played a leading role—perhaps its most important role in American history.¹⁶⁹ Yet, it was the Court

¹⁶⁵ Frank H. Easterbrook, *The State of Madison's Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328, 1330 (1994).

¹⁶⁶ ZAKARIA, *supra* note 2, at 21.

¹⁶⁷ ZAKARIA, *supra* note 2, at 21, 163.

¹⁶⁸ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857) (holding, *inter alia*, that Congress's attempt in the Missouri Compromise to abolish slavery in federal territories was unconstitutional).

¹⁶⁹ See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954) (holding separate but equal public
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in 1896 that originally upheld state-sanctioned segregation in *Plessy v. Ferguson*,¹⁷⁰ and it was the Court in 1883 that overturned the Civil Rights Act of 1875, which had banned racial discrimination in all public accommodations.¹⁷¹ Congress, although shamefully slow, did enact civil rights legislation in 1957¹⁷² and 1960.¹⁷³ Furthermore, it was probably the executive branch that was the most significant government department in the struggle against racial discrimination.¹⁷⁴ Zakaria curiously denotes presidential actions as “executive branch fiat,”¹⁷⁵ although elsewhere in the book the actions of elected executives are treated as the heart of democracy, albeit illiberal democracy. Presidents are elected, and if they act to lessen discrimination, these actions should be ascribed to democracy. In any event, it is not clear that the voters were the major impediment to progress against racial discrimination.¹⁷⁶

Zakaria is blind to the strengths of average voters and quick to criticize them. Early in the book Zakaria more or less calls the people of the United States “stupid” for wanting lower taxes and more government benefits—as if anyone would know that such a sleight of hand is impossible.¹⁷⁷ But who told the American people that they could have such inconsistent outcomes? Was it not their leaders, first of all Ronald Reagan in the 1980 presidential campaign?¹⁷⁸ Did economists as a whole denounce the false magic of “supply

school facilities unconstitutional).

¹⁷⁰ 163 U.S. 537 (1896).

¹⁷¹ Civil Rights Cases, 109 U.S. 3 (1883).

¹⁷² Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634 (codified as amended at 42 U.S.C. § 1971 (2003)).

¹⁷³ Civil Rights Act of 1960, Pub. L. No. 86-449, 74 Stat. 86 (codified as amended in scattered sections of 18 and 42 U.S.C.).

¹⁷⁴ See, e.g., Exec. Order No. 9981, 3 C.F.R. § 722 (1943-1948) (President Truman’s Executive Order abolishing racial discrimination in the armed forces).

¹⁷⁵ ZAKARIA, *supra* note 2, at 21.

¹⁷⁶ To be fair, it has been argued that the Court’s race decisions at the turn of the century were a judicial surrender to public opinion the Court could do nothing to change or challenge. Michael J. Klarman, *The Plessy Era*, 1998 SUP. CT. REV. 303, 304-05.

¹⁷⁷ See ZAKARIA, *supra* note 2, at 24 (“‘The American people are not stupid,’ politicians say endlessly, even when explaining the public’s persistent desire for lower taxes and more government benefits.”).

¹⁷⁸ See Neal E. Devins, *In Search of the Lost Chord: Reflections on the 1996 Item Veto Act*, 47 CASE W. RES. L. REV. 1605, 1613-14 (1997):

Riding the wake of Ronald Reagan’s dramatic 1980 election victory, the Reagan administration successfully pushed through Congress a new vision of economic growth—supply side economics. Believing that a tax cut would spur more than enough economic growth to offset lost revenues,

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side economics” that tax cuts would pay for themselves? Did the media, and Zakaria’s *Newsweek* magazine in particular, courageously tell the public the truth? President Bush is today repeating this line about tax cuts¹⁷⁹ when the real goal of such cuts may be to force a long-term reduction in the size of government.¹⁸⁰ In other words, it may be that tax cuts are being proposed in order to create long-term deficits, and the American people are being lied to about it.

If our leadership believes the supply side story, why should Zakaria blame the public for believing it too? If we are being lied to, why should Zakaria blame the voters, who are the victims of this conspiracy against the public good and against simple truth? Easterbrook might well say that the voters know that these are lies and consciously or unconsciously have refused to look into the matter. That may be the case, but it does not excuse the dishonesty in public life that has perhaps more to do with the failures of democracy than with any weaknesses inherent in democracy itself.

The real problem with democracy that Zakaria and others are pointing to may result from malfunctions, such as dishonesty in political leadership. These malfunctions could perhaps be addressed or at least discussed without the need to reduce the scope of democracy. Maybe democracy could be made to work better. At the risk of being characterized as yet one more radical democratic theorist, one irrelevant to real life,¹⁸¹ maybe we need more democracy rather than less. Maybe we have never yet had democracy.

IV. THE PROMISE OF DEMOCRACY

Zakaria continually presents a narrow understanding of what democracy is and what it can be. For him, democracy means a method of selecting governments by open, free, and fair elections.¹⁸² There have been broader understandings of democracy, and the narrowness of Zakaria’s definition is part of the reason why he believes democracy does not bring liberty or other

Congress slashed taxes by an estimated \$150 billion annually, while reducing expenditures by less than \$50 billion. Things did not work out as planned. Supply side economics could not turn around restrictive Federal Reserve Board action and a sluggish economy. As a result, the Reagan administration deficit estimate was off by over \$100 billion.

¹⁷⁹ See Ronald Brownstein, *Is Bush deliberately engineering deficits?*, CONTRA COSTA TIMES, Jun. 8, 2003, available at 2003 WL 57197802 (“One Republican strategist close to the White House says Bush believes that his tax cuts are the best way to stimulate the economy, which would increase government revenues and eventually reduce the deficit.”).

¹⁸⁰ *Id.* This charge—misleading the public in an attempt to “starve the beast”—was recently alleged by *The Financial Times of London* and liberal economist Paul Krugman. *Id.*

¹⁸¹ ZAKARIA, *supra* note 2, at 245.

¹⁸² ZAKARIA, *supra* note 2, at 18.

benefits. Later in this Part, I will try to show that with a broader understanding, democracy might be seen as the source of greater good than Zakaria is willing to admit. For now, however, let us say that democracy equals elections and that often such elections yield negative results. Even when democracy malfunctions, it is not true that elections have the potential only for harm.

A. *What Elections Can Do*

One of the main points of *The Future of Freedom* is that elections sometimes produce autocratic dictators who rule through occasional plebiscite-like democracy. There is a similar fear today that if elections were held immediately in Iraq, “extremist, illiberal and intolerant groups” would probably win.¹⁸³ Something like the Taliban might come to power in an Iraqi election.

But it should be remembered that the Taliban did not come to power through elections and did not rule through them. If they had, however limited those elections might have been, their rule might have been tempered.

Zakaria ignores the effects that continuing elections can have on tyrannical regimes. Two recent examples of these effects are Iran and Venezuela. In Iran, popular dissatisfaction with clerical rule led to the election of a reform-minded President, Mohammed Khatami, who, along with a large legislative majority, has been in conflict with Supreme Leader Ayatollah Khamenei. Citizen unrest is continuing in Iran and the outcome is in doubt, but certainly the imperfect democratic forms there have played a role in channeling and expressing the public will. From afar, it seems that the expression of the will of the people has placed conservative forces on the defensive, and may help to bring long-term political evolution to Iran.

In Venezuela, the rule of President Hugo Chavez also has represented the illiberal democracy that Zakaria describes. But the continuation of a democratic form of government in Venezuela has made room for a degree of political opposition, albeit somewhat ineffectual. Continuing elections have brought a measure of restraint and accountability to Venezuela. It is hard to see how Iran or Venezuela would be better off today without elections.

The point is not that Zakaria is wrong about the harm that elections can do. They can bring to power racist, violent, and dictatorial elements, just as he says. But, as long as the elections continue—and sometimes they do not—governing in a democratic form is itself a kind of limit and division of power.

Zakaria’s preferred model is the liberal autocrat who gradually brings liberal reforms and finally allows democracy. This is the path that the Shah of Iran might be said to have been pursuing before his overthrow. That model has brought stable and representative government in some places. But in the

¹⁸³ Zakaria, *supra* note 153, at 37.

Shah's case, it led to a political explosion, a change in government, and harsh repression.

Elections do replicate the divisions in society and sometimes worsen them. Because elections do not paper over these divisions, however, they can make long-term accommodation more likely. It is true, for example, that elections brought Slobodan Milosevic to power, but it is also the case that the failure of Yugoslav dictator Marshal Tito to address and resolve the ethnic tensions in Yugoslavia paved the way for Milosevic's Greater Serbia movement.

Zakaria recognizes the need for long-term reform to change the culture of developing countries and prepare the groundwork for stable, liberal democracy. But he does not see that elections can be a part of that long-term process of change.

This brings the matter back to Iraq. Once an Iraqi constitution is adopted, when should elections be held? Zakaria thinks later rather than sooner to prevent the emergence of a fundamentalist Islamic regime. But consider these two scenarios. In the first, rapid U.S. withdrawal and quick elections bring a fundamentalist, anti-Western government to power in a genuine expression of majority will. But the resulting government then mishandles the economy, and the Iraqi people, who were already suffering under Saddam Hussein, begin to press for genuine reform. In the second scenario, the United States remains in power for an extended time, alienates the average Iraqi from the West, and, after eventual withdrawal, a coup brings a non-elected fundamentalist government to power. Which scenario bodes the better long-term outcome for the Iraqi people?

Elections are not perfect. But they can be a part of the process of change that Zakaria thinks can only be achieved by coercive imposition of some kind. We must see elections as part of a liberal governmental system, rather than merely as the selection process through which certain political outcomes occur.

B. *What Democracy Can Do*

Despite his emphasis on elections, Zakaria acknowledges that democracy is more than elections.¹⁸⁴ Democracy is more than choosing which politicians will impose their ideas and policies on society. Zakaria says that democracy is power moving downward.¹⁸⁵

What are the implications of power moving downward? As the political scientist Robert Dahl explains, democracy must include the ability of the people to exercise actual control over the political agenda for a society.¹⁸⁶

Setting the political agenda is important because only then are

¹⁸⁴ ZAKARIA, *supra* note 2, at 13.

¹⁸⁵ See ZAKARIA, *supra* note 2, at 13.

¹⁸⁶ See DAHL, *supra* note 86.

experimentation and creativity possible in a society. If instead the elites set the political agenda, political life will revolve around conflict over details, but the core aspects of political, economic, and social organization will not change. Zakaria is a good example of this tendency to uphold the status quo. He is fixated on the liberal system of government—capitalism and the rule of law, including constitutional rights. But this system, although in many ways successful in the United States, is obviously not perfect. It is not the end of history, though Zakaria may imagine that it is.

Constitutionalism, for example, has not prevented excesses of government in reaction to the events of September 11. The courts have not interfered with government detention of prisoners without trial, without contact with counsel, and without attention to established rights to due process.¹⁸⁷ I do not mean to argue here the merits of government security policy since September 11. Perhaps the government and the courts have acted appropriately in an emergency situation. My point is simply that the courts, and by implication constitutionalism, have not impeded aggressive government action.

Nor has government regulation of the economy—another aspect of liberal government in the United States—prevented corporate excess. Money and the power of wealth and privilege dominate the political system, as Zakaria acknowledges. The rule of law, so deservedly praised by Zakaria, has led, despite its accomplishments, to policymaking through litigation and inordinate national resources devoted to litigation.

In other words, the liberal system of capitalism, constitutionalism, and representative government has its serious flaws. The American system of government is quite imperfect. Ironically, at the same time corporate interests are trying abroad to spread the American system, they are trying at home,

¹⁸⁷ For example, the detainees at Guantanamo are in a kind of limbo. See Carlotta Gall & Neil A. Lewis, *Freed Guantanamo Captives Tell of Suicidal Despair*, INT'L HERALD TRIBUNE, Jun. 19, 2003, available at, 2003 WL 56177867:

Human rights organizations have raised concerns about the conditions at Guantanamo Bay and the unclear legal status of the detainees. The American military has refused to consider them prisoners of war, even though the majority of them were captured on the battlefield, and does not allow them access to lawyers. No charges have yet been brought against any of the detainees, some of whom have been held there for 18 months. Concerned about their prolonged detention without trial or clear legal status, the head of the International Red Cross, which visits the detainees, urged the Bush administration last month to start legal proceedings for the hundreds of detainees and institute a number of changes in conditions at the camp.

through tort reform and other efforts, to effect change. But fundamental reform cannot happen when elites set the agenda.

On the other hand, if we think of democracy as the people setting the agenda, rather than simply voting for politicians, it may be that the basic terms of social life can change. Perhaps the people of Iran, for example, think that the secular societies of the West are empty of meaning and that this makes their citizens unhappy. Perhaps, despite Zakaria, they do not want secularism to dominate public life. On the matter of religion, Zakaria is no liberal. Religion is to have no public role to play in society. But, democracy as power moving downward may mean not having to agree with Zakaria.

It may be that real democracy in the United States would mean a frank, public discussion about the growing deficits that threaten our future. The columnist George F. Will has written that the American people do not care about deficits.¹⁸⁸ Perhaps he is right, but I wonder if that would be the case if the American people were truly setting the political agenda.

Another set of issues that pose a direct threat involve the environment in general, and global warming in particular. Vice President Gore chose not to make global warming a central issue in the 2000 election. This was another failure of the top-down model of democracy Zakaria favors. The American people have not been told much about the dangers of global warming by their leaders. Discussion of the issue has not been encouraged by our governing elites. Of course, the information is out there. If the voters were determined to make the environment a big political issue, it would be. Nevertheless, as with tax cuts, if the President of the United States implies that there is no serious peril, it is not fair to blame the voters for tending to accept that reassurance.

We might call the deficit and the environment the absence of policy. There are also fundamental policy commitments that have somehow been made without consultation with the American people. For example, the announcement of the tenets of American Empire, including the concept that no competing power centers would be allowed to emerge in the world, and the concept of preemptive military power, was proffered quietly by President Bush in an executive branch directive submitted to Congress.¹⁸⁹ This is something the people should decide in a democracy. But we are accustomed to deferring to the President in foreign policy matters.

¹⁸⁸ George F. Will, *Campaign by Tax Cut*, WASHINGTON POST, June 1, 2003, at B7 (“[B]ased on decades of disappointments, Republicans can tell Democrats a thing or two about the difficulty of turning deficit anxieties into votes. Americans are ideological budget-balancers but operational deficit-spenders.”).

¹⁸⁹ See Jonathan Alter, *Loud and Clear; Bush Claims to Enjoy Reading About Theodore Roosevelt but he Ignored Teddy’s Famous Foreign Policy Maxim: ‘Speak Softly and Carry a Big Stick,’* NEWSWEEK WEB EXCLUSIVE, Sept. 20, 2002, available at 2002 WL 9211476 (reporting on the National Security Strategy of the United States report).

Perhaps equally fundamental is the long-term commitment by the United States to globalized free trade. This commitment has basically been taken as a given by successive administrations. Legislative debate generally concerns details, not fundamental orientation. Try voting against free trade.

I admit that it is not clear what it would mean for the people to find their own way, to control the agenda of political life. I do not know what true democracy would look like. But if there were at least a commitment to moving in this direction, we might be able to measure our current political practices against that ideal.

Zakaria rightly condemns so-called direct democracy—the initiative and referenda movements. They are not democracy at all because they do not set policy in perspective and context. To be confronted by an up or down vote on a proposition carefully crafted by interest groups is not an example of the people setting the agenda. It is not a model whereby a society carefully discusses and decides on approaches to the problems that confront it. But the failure of that one form of participatory democracy does not mean that no form of direct citizen involvement is possible.

C. *What Democracy Can Be*

Zakaria not only acknowledges that democracy is more than elections, he also describes democracy as something beyond questions of power and policy. Democracy, he says, has moved from being a way of governing to a way of life.¹⁹⁰

This notion of democracy as a way of life is not new, but it is usually associated with champions of democracy rather than with its critics, like Zakaria. By democracy as a way of life, Zakaria apparently means that mass life controls everything in society. The market is the mass market, in which the actions of the average consumer, rather than those of the wealthy, control the way the market works. Zakaria calls this phenomenon middle-class markets. The replacement of culture by celebrity and the decline of elites are also part of this process of a democratic way of life. Basically, life in the United States is the life of the mass.

Zakaria does not say at the beginning of the book, where these tendencies are outlined, that they are unhealthy trends. When he discusses them later, however, he indicates that they are bad for society. What is missing is leadership. We could call this missing quality education.

Is there a way to achieve community without formal hierarchy, which is what Zakaria is criticizing, while maintaining a commitment to education?

¹⁹⁰ ZAKARIA, *supra* note 2, at 14.

That is, can we have the benefits of democratic life without the harms that concern Zakaria? If that could be achieved, we would see a healthy way of democratic life.

During the summer of 2003, many of the faculty at Duquesne Law School conducted an experiment. We met to read, and then discuss, Steven Rockefeller's biography of John Dewey.¹⁹¹ The purpose of our experiment was to see where this common intellectual engagement would lead us.

This is not the first time we have conducted this sort of community-wide experiment. A few years ago, most of the faculty and senior students read *The Practice Of Justice* by William H. Simon.¹⁹² Professor Simon then came to Duquesne to discuss his ideas and the concerns and questions that had emerged from our reading. The result was highly satisfying to all concerned.¹⁹³

I mention these events because they may shed light on what it means to live democratically. Zakaria thinks that a democratic way of life is undifferentiated—that it consists only of the mass market or mass celebrity or mass finance—and unmediated because there are no norms of cultural guidance. Zakaria seems to believe that these conditions are inevitable in a truly democratic society. For these reasons, he wants less democracy.

But Zakaria's view of democratic life as undifferentiated seems to me a misunderstanding of what a democratic way of life involves. To live as part of a "mass" is not to live as a person. Zakaria probably intends to indicate a tension between democracy, where we are a mass, and liberal individualism, where we are individuals. Of course, he favors liberalism over democracy.

Who could blame him if there were such an either-or choice? But individualism and democracy are not mutually exclusive.

Steven Rockefeller interprets Dewey's view of self-realization as follows: "self-realization involves becoming a person in a community of persons in which development of personality is the supreme value."¹⁹⁴ Note that in this formulation, which I think is fair to attribute to at least the young Dewey, one cannot attain self-development alone or primarily as an individual. Perhaps liberal democracy is precisely what Dewey is describing. Liberalism is the commitment to the development of personality. But this is possible only democratically, that is, within a community of persons with shared responsibilities to each other. In other words, becoming an individual may be the most social of endeavors.

¹⁹¹ STEVEN C. ROCKEFELLER, JOHN DEWEY: RELIGIOUS FAITH AND DEMOCRATIC HUMANISM (1991).

¹⁹² WILLIAM H. SIMON, THE PRACTICE OF JUSTICE: A THEORY OF LAWYERS' ETHICS (1998).

¹⁹³ See William H. Simon et al., *Thinking Like a Lawyer—About Ethics*, 38 DUQ. L. REV. 1015 (2000) (reporting the formal proceedings).

¹⁹⁴ ROCKEFELLER, *supra* note 191, at 110.

This brings me back to our Duquesne reading group and our earlier engagement with Professor Simon. People cannot become a community by an act of will. It takes a shared commitment. It takes a gathering. Gathering around texts has been one such way to create communities in the West since the schools of Greece and the rabbis and the monastic tradition. Gathering around texts is in steep decline today.

This is in fact Zakaria's contention about the decline of elites leading to unmediated interactions. The decline of the Book of the Month Club¹⁹⁵ mirrors the familiar complaints about the decline of the western canon in our schools.¹⁹⁶ There is no cultural leadership.

Unfortunately, Zakaria is wrong about the absence of cultural leadership. Americans do not lack for models and examples about how to live. It is just that these examples no longer come from the traditional, responsible elites. They now come, for example, from consumer advertising.¹⁹⁷

The question is, can we step out and engage each other? We are accustomed to thinking that this is impossible, as Zakaria assumes, but there is no literal impediment. Nothing would prevent the establishment of "Democracy Clubs" in our cities and towns. Nothing has prevented my fellow faculty members from engaging in community learning this past summer. I cannot say I expect to see a democratic revolution, but I at least can hope for one, and I can live in such a way that a revolution becomes more of a possibility.

So much of Zakaria's book is an attempt to sidestep the central questions of social life by treating them as problems that have already been solved, if only people could be forced to follow certain obviously true advice. Instead, Zakaria should have been considering how democratic life can become what it promises to be, a forum for informed and reflective communities. Since Zakaria is a journalist, he must share that commitment on some level. What he lacks is trust in his fellow men and women.

V. CONCLUSION

It is by now almost commonplace to say that democracy is in trouble. Fareed Zakaria's book is a reminder of just how much trouble it is in. At least since Woodrow Wilson's time, American foreign policy has been formed around the commitment, sometimes only a verbal commitment, to establishing democracy around the world.

¹⁹⁵ See ZAKARIA, *supra* note 2, at 215-17.

¹⁹⁶ See, e.g., ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987).

¹⁹⁷ For a reflection on the interaction of advertising, democracy and the First Amendment, see Bruce Ledewitz, *Corporate Advertising's Democracy*, 12 B.U. PUB. INT. L.J. 389 (2003).

To his credit, Fareed Zakaria has the independence of mind to challenge the shibboleth of democracy. But he does so on behalf of a very particular set of policies—capitalism, private property, the rule of law, constitutionalism—that he insists must be adopted if a society is to succeed. Since at least some of the people of the world are not interested in these policies, and Zakaria threatens to impose them nonetheless, he propounds a highly illiberal goal.

Instead of a proposal to jettison democracy or reduce it in favor of liberal constitutionalism, we need to maintain, improve, and perhaps establish democracy. We need to reinvigorate our fundamental political practices. We need to reinvent, as our constitutional Founders did. We need a more perfect democracy.