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INDIVIDUALISM IN THE AGE OF INTERNATIONALISM

*Alyson Cole**

THE EMPOWERED SELF: LAW AND SOCIETY IN THE AGE OF INDIVIDUALISM. By *Thomas M. Franck*. New York: Oxford University Press. 1999. Pp. xiii, 312. Cloth, \$ 45.

In the brief conclusion to *The Empowered Self: Law and Society in the Age of Individualism*, Thomas M. Franck asserts that he cannot satisfactorily summarize his book's argument. Even if it were achievable, he clarifies, he would not engage in such an endeavor, since it would "preempt the reader's autonomy and subvert his or her individual rights" (p. 278). That the author himself rejects the desirability of doing what reviewers generally do (i.e., condense and inevitably simplify complex tomes) is perhaps a somewhat awkward way to commence a discussion of his book. Nevertheless, this comment illustrates the extent to which Franck champions individual liberties and rights. It is also indicative of the declaratory tone of his prose: Franck reports observing "signs of tectonic change" (p. 278), indicating that we have reached "truly an historic watershed" (p. 195) of a "glorious self-invented future" (p. 45), or, as he puts it elsewhere, the "new dawning of a spirit of individual assertiveness" (p. 60). Ironically, while he seems to encourage diverse readings, his text, for the most part, relies on a rhetoric of inevitability, leaving the reader little room for alternative views.

Professor of Law and Director of the Center for International Studies at New York University, Franck has earned a distinguished reputation in the field of international law. In this new study, he adopts quite an ambitious framework that, beyond legal matters, covers a vast terrain, from the fall of the Soviet Union and the rise of the "new economy," to the history of the state over the last 300 years and fundamental disagreements in political theory. His argument about the global ascendance of individualism progresses through an exploration of the changing balance of power among a trinity of "rights claimants" — the state, the individual, and the group — as measured by their respective capacity to determine personal identities. This, in turn, is gauged largely, but not exclusively, through the construction and

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application of international and national laws. The increasing power of individuals to be masters of their own identities comes at the expense of the other two vertexes of the triad — states and groups. Global developments in economics, communications, and urbanization have also facilitated a new elasticity of personal identity. But most conducive to “the age of individualism” has been the eroding of the eighteenth century Vattelian structure,¹ which conceived of the world as comprised of well-defined, solitary states, and of universal well-being as resting upon states’ unfringeable sovereignty. Franck sincerely hopes that his work will advance this process.

The Empowered Self is not solely for the specialist; its audience will likely include many beyond the field of law. Overall, it is a lucid, comprehensive, and timely analysis. It successfully draws from a remarkably wide array of materials to build a coherent synthesis. Franck’s juridical focus endows discussions of identity-formation — which frequently slip towards the speculative and the ephemeral — with a concreteness that is refreshing, if not always entirely convincing. Moreover, the global reach of the comparativist approach brings new perspectives to persistent debates over identity politics in North America. The portrayal of the new international jurisprudence is perhaps the book’s greatest contribution. Unlike the former global system that hinged on (and enhanced) the autonomy of states, the new arrangements are linked with the rights and freedoms of individuals. Franck reveals an aspect of internationalism that has been overshadowed by other, much hyped, elements in the new world order, such as the burgeoning market economy and the distance-shrinking effects of the Internet. These, as well as the accelerated process of democratization worldwide, are related to, and yet distinct from, the phenomenon described in *The Empowered Self*. Franck’s assessment is especially important today when the prospects of internationalism raise fears and anxieties across the American political spectrum. Unfortunately, he takes a fine point too far by interjecting into the work a celebratory, millennial discourse and indulging in an excessively optimistic futurology.

1. EMER DE VATTEL, *THE LAW OF NATIONS* 1 (Luke White trans., 1792) (1758). Franck rightly characterizes Vattel as John Locke’s transnational cousin, for Vattel argued:

[N]ations or states are political bodies, societies of men united together to procure their mutual safety and advantage by means of their union.

Such as society has its affairs and interest, it deliberates and takes resolutions in common, and thus becomes a moral person, having an understanding and a will peculiar to itself, and is susceptible of obligations and laws.

Id. The Vattelian model acknowledged neither group nor individual rights. Efforts to protect minorities in the aftermath of World War I served as the foundation for international recognition of groups’ rights, eventually emboldening secessionist groups. This asymmetry in the triad would only be addressed after the Second World War, when the individual was seen as needing protection by international laws.

The old order imposed rigid identities on individuals, mainly because states demanded exclusive loyalty from their citizens. Hostility toward the Other was also constitutive of certain identity configurations within national communities as well as among them, perhaps most notably through the capitalist/communist divide (p. 78-79). Particularly restrictive in this regard was the hybrid of the nation-state, a fictive union that largely depended upon the myth of a cohesive citizenry sharing ties of blood and memory. In the aftermath of the Cold War, and with the waning of the nation-state, other factions beckon individuals for their allegiance, emphasizing linguistic, religious, ethnic and racial affinities. Still, Franck confidently maintains that recent eruptions of ethnocultural strife — in places such as the former Yugoslavia, Rwanda, or even some of the more divisive quarrels of the “culture wars” in the United States — are aberrant “growing pains” in a larger trend toward greater international cooperation, on the one hand, and strong individualism on the other. “[I]ndividuals are now, for the first time, making free, genuine choices in determining their own identities” (p. 40). Rigid factionalism is in retreat, and will likely disappear once we stop fearing our new heterogeneous global existence. In this version of a Kantian *Weltburgertum*, individuals will divide their diverse interests among transnational groups rather than conform to inflexible collectivities.

Franck discerns compelling support for his position in the unprecedented flexibility of current citizenship. In contrast to the familiar “resident alien” status, new arrangements allow individuals to sustain layered or overlapping nationalities. For example, the *intercitoyennete* of the European Union enables citizens of each state to acquire many privileges of citizenship in all other member states, including the right to vote in local elections, or even to run for office (p. 64). Another indication of the weakening of the state is that it no longer reigns as the sole guardian of rights. Individuals may approach international tribunals directly. In fact, citizens can use these courts to wage disputes against their own governments. Franck admires the precedent set by the European Torture Convention in particular. The convention-based and other NGO forms of adjudication and monitoring seem promising ways to secure individual liberties without placing undue burdens on less affluent states, even though problems of access and compliance, as well as the risk of retaliation, remain.

The foundational principle of the age of individualism is freedom of conscience (p. 150). Franck emphatically rejects the idea that the globalization of freedom of conscience is a consequence of Western cultural imperialism, pointing to its support by indigenous elites. Kofi Annan, Secretary General of the United Nations, thus avers that viewing liberal humanism as ethno-specific (whether the charge is that such values are a luxury or an imposition) is “truly demeaning of the yearning for human dignity that resides in every African heart” (p.

148). Furthermore, if the notion of freedom of conscience may be read into traditions of tolerance, especially toward the religious Other, the historical record provides sufficient evidence that non-Western societies have often accommodated dissenting views and differing practices. Conversely, respecting difference, religious or otherwise, has not been a hallmark of Western civilization, whose history of persecuting minorities and dissidents is all too familiar. Questioning the conventional hierarchy between Western and non-Western does not, however, prevent Franck from rearticulating this hierarchy in temporal terms. He not only presumes that vying for core rights associated with Western liberalism is a universal trait, but, subscribing to a teleological model, he also postulates that all human societies are differently located on a trajectory that will lead them from “communitarian uniformity” to individual self-expression.

Market globalization and advanced technology have also expanded identity-making options, for instance, in terms of vocational preferences or even the possibility of physiological changes. Franck attempts to evaluate the level of social acceptance accorded such decisions by analyzing legislation and court cases (for “the social indicator is, usually, a legal one”) that address three domains of personal transformation — name, sex, occupation — in addition to various aspects of privacy (e.g., sodomy, abortion) (p. 151). Some of the most interesting material in *The Empowered Self* emerges from the restrictions that many countries still impose on name alterations, maintaining that nomenclature is a public matter crucial to the nation’s stability. In France, for example, the government ferociously protects its control over name assignment and reassignment. Stringent regulations make it exceedingly difficult to alter one’s name with a few notable exceptions to promote *francisation*, as in the case of making a “Jewish name” sound less foreign, “less Jewish.” Even the far more flexible common law tradition in Britain stops short of being completely adaptable, disallowing, for example, incarcerated persons the privilege of changing their names, since renaming would make future surveillance too difficult. In Italy, the parliament fought over and then defeated a proposal that would permit matrilineal assignment of surnames, a crusade led by none other than Benito Mussolini’s granddaughter, Allesandra. Equally fascinating are the comparative perspectives on the legal status of sex reassignment, both prenatal (in most instances, abortion) and postnatal choice (typically transsexuality). For all of the scientific and social advances, sex reassignment in most parts of the world is now increasingly permissible and yet officially closeted. Thus, in Britain, the national health system may fund the medical procedure, but the state will not acknowledge gender transformation in other ways.

In recent years, international law has tended to side with the rights of individuals to make choices of this kind. The International Covenant of Civil and Political Rights (“ICCPR”), for instance, upholds

married women's prerogatives to retain their maiden names. Article 121 of the 1948 Universal Declaration of Human Rights, to give another example, certainly helped decriminalize sex acts between consenting adults in various parts of the world. Franck trusts that international bodies will go further in securing, for example, official recognition of sex transformation. He does not consider, however, that such legislation may itself be inherently deficient as a guarantor of freedom with respect to identity. As Kristin Bumiller and Wendy Brown have argued, the legal protection model may actually restrain or fix identity by inscribing particular and/or partial definitions.²

Franck's writing about collectivity reveals a degree of ambivalence. He maintains "[t]he need for community appears as strong as ever, even among those who carry more than one passport" (p. 74). Nonetheless, it is both his professional opinion and his political preference that groups will not replace the state in affixing identities to individuals. This segment of the book relies heavily on prescriptive argumentation. While the empowerment of the individual and the corresponding disempowerment of the state may have overt legal manifestations, the relationship between the individual and the group does not readily lend itself to the same sort of codification.

For identity to be genuinely contingent, self-chosen, and multiple, group boundaries must be permeable. Frank proposes two additional principles to achieve the requisite Calderesque balance among the parts of the identity triad. First, he recommends allowing for local autonomy (including legal autonomy), especially for geographically insular groups (e.g., Native American tribes' exemption from civil suits) and for the perpetuation of some forms of cultural difference. Second, in the case of irreconcilable claims between groups and the state, he asserts that universal norms should trump particularism (pp. 246-52). This is akin to the primacy of the individual in the triad, since the individual stands for a universal principle. Unlike the other rights-claimants, his or her rights are unacquired, natural, and therefore non-transferable.³

Franck, not surprisingly, supports only the integrationist strains of multiculturalism and suspects all claims guided by the precept of group survival as typically "the self-interested preferences of [the

2. WENDY BROWN, *STATES OF INJURY: POWER AND FREEDOM IN LATE MODERNITY* (1995); KRISTIN BUMILLER, *THE CIVIL RIGHTS SOCIETY: THE SOCIAL CONSTRUCTION OF THE VICTIM* (1989).

3. P. 282. Here he relies on Kant, Williams, and Mulholland. Cf. IMMANUEL KANT, *FOUNDATIONS OF THE METAPHYSICS OF MORALS* (Lewis White Beck trans., 1969); BERNARD WILLIAMS, *PROBLEMS OF THE SELF* (1973); Leslie Mulholland, *The Innate Right to be a Person*, in *ETHICS AND BASIC RIGHTS* 131 (Guy LaFrance ed., 1989).

group's] current power-elite."⁴ Still, he is careful never to slip from the language of integration to that of assimilation. He presents regulations that allow religious Jews to wear yarmulkes in the military or Sikhs to don turbans under their construction hats as positive models of preserving markers of difference post-integration. The question remains, however, whether most cultural groups' rights can be similarly reduced to individual rights. When multiculturalism means more than the (literal) wearing of different hats, or the assortment of fast food options available at the food court in a suburban mall, accommodating diversity becomes far more complicated.⁵

At the same time, Franck seems rather uncomfortable with the implications of extreme individualism. He recruits expressions such as "new communitarianism," "networks of interdependence" and "communities of personal autonomy" to modify what otherwise might be construed as a celebration of narcissism. He wants to convince the reader that his individualistic universe will not bring a new age of alienation and anomie. Unfortunately, his model communities do not entirely ameliorate such apprehensions. He valorizes arbitrary and momentary encounters among free-floating, abstract (truly bodiless and accent-free) entities, borrowing Howard Reingold's discussion of relations in cyberspace "where I can participate in a hundred conversations with people who don't care what I look like or sound like, but who do care how I think and communicate" (p. 91; quoting Reingold).

A second set of problems revolves around the perils of inequality. For the most part, *The Empowered Self* minimizes the extent to which self-creation, or even self-designation, remains the province of elites, although the list of global self-imagining "individuals" includes transnational corporations. Franck concedes that invigorated individualism may entrench and deepen inequalities, "magnify[ing] the 'natural' advantage of those already favored: by social rank, family cohesion, education and economic well-being" (p. 255). Social disparities will likely hinder the delicate equilibrium within his rights triad since the international regime seems presently (and for the foreseeable future) ill equipped to handle inequality within and among societies, especially in comparison with the state, whose power over the last century was

4. P. 250. Separatists seek cultural, social, and political autonomy, whereas integrationists seek protection (through antidiscrimination legislation) and, at times, assistance (through programs such as affirmative action). Membership in a separatist group is absolute and enduring, while affiliation with an integrationist group is infrequent and temporary. Pp. 225-28.

5. What I call the "food court multiculturalism" resembles Fish's discussion of "boutique multiculturalism." See Stanley Fish, *Boutique Multiculturalism*, in *MULTICULTURALISM AND AMERICAN DEMOCRACY* 69 (Arthur M. Melzer et al. eds., 1998). For a discussion of the limits of the individual cultural rights paradigm, see Adeno Addis, *Individualism, Communitarianism, and the Rights of Ethnic Minorities*, 67 *NOTRE DAME L. REV.* 615 (1991).

much augmented by attempting to address this very predicament. With a few exceptions, such as the (as yet not ratified) Declaration of Human Responsibilities (of which he ultimately disapproves), the notion of responsibility to those left behind is still not an ideal promoted by international bodies or jurisprudence. Moreover, Franck's version of liberalism cannot sustain a conception of social responsibility that might compel the haves to assist the have-nots. All he can propose is that "the recognition of a 'right of persons to be left alone' must go hand in hand with a universal right of persons not to be left behind" (p. 256).

The Empowered Self is so preoccupied with individual freedom of association that it also ignores the lingering inequities among groups. Franck's argument thus elides the majoritarian implications of allegedly neutral or objective rights. As Will Kymlicka (among others) warns, minorities will always be uniquely vulnerable to nonminorities. Abstract, universal laws, which allocate equal rights to all individuals, do not resolve this imbalance.⁶ Furthermore, the principle of unencumbered exodus may be less pertinent to the actual conditions of members of certain disadvantaged groups (determined by, say, race or gender). There is a larger issue at stake here: identities often spring into being through complex acts of attribution and recognition (or interpellation) that cannot be explained within Franck's triadic relationship.⁷

Moreover, Franck conceives of the Self (i.e., the self-directing, self-determining, autonomous self) as a natural entity that requires only protection from external intrusions. He does not subject the Self to the sort of critical scrutiny that assists him in exposing the contingent, arbitrary, and fictive elements in the making of the nation-state and other "imagined communities."⁸ A substantial scholarly literature has undertaken the task of historicizing the Self and underscoring the relatively recent social, political, and cultural forces that produced the ideology and practices of the "autonomous self." (Michel Foucault's

6. Cf. WILL KYMLICKA, *MULTICULTURAL CITIZENSHIP* (1995); LESTER C. THUROW, *THE ZERO-SUM SOCIETY: DISTRIBUTION AND THE POSSIBILITIES FOR ECONOMIC CHANGE* (1980); Robert Paul Wolff, *The Concept of Social Injustice*, in *FROM CONTRACT TO COMMUNITY: POLITICAL THEORY AT THE CROSSROADS* 65 (Fred Dallmayer ed., 1978). A related issue Franck might have addressed in greater detail is the concern, as expressed for instance by critical race theorists, that legal neutrality presumes and requires assimilation. See, e.g., DERRICK BELL, *AND WE ARE NOT SAVED: THE ELUSIVE QUEST FOR RACIAL JUSTICE* (1987); PATRICIA WILLIAMS, *ALCHEMY OF RACE AND RIGHTS* (1991).

7. For just two examples beyond texts already mentioned in this Review, see JUDITH BUTLER, *THE PSYCHIC LIFE OF POWER: THEORIES IN SUBJECTION* (1997); FRANTZ FANON, *BLACK SKIN, WHITE MASKS* (Charles Lam Markmann trans., 1967).

8. Franck seems to take Benedict Anderson's thesis on nations as "imagined communities" too literally; the constructed nature of nations does not render them less stable or less powerful. BENEDICT ANDERSON, *IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM* (1983).

work, which he mentions in passing, comes to mind.) For all of the gestures that Franck pays to “postmodern” sensibilities by seeming, for instance, to rejoice in the fluidity, multiplicity, and indeterminacy of identity, his argument upholds a notion of a centered, ahistorical Self always capable of assuming control over its own making.⁹ This is not to deny the increased malleability of identity today. Were this not the case, “identity” would not be the focus of so much anxiety. Nonetheless, the notion of self-making is a conceptual slippery slope that, when taken to the extreme, assumes “self-birthing” of the Horatio Alger school.

One manifestation of Franck’s adherence to an inflated idea of the Self is the ease with which he decouples the individual from society. His vision of “communities of personal autonomy” does not account for the many ways in which relations of interdependence govern interactions between individuals and collectives qua collectives. Since the notion that individuals (identities included) are products of their culture and time has become such an article of faith in American academia (at least in the Humanities), this idea (as well as its excesses) needs no further explication here. It is somewhat surprising, though, that Franck, who makes the occasional attempt to anticipate his critics, either ignores this approach or, alternatively, maintains that the external social forces that molded the individual are now receding from the stage of history (at least in their capacity to impose identity). The book thus seems to engage in an “end of history” type of argument.

Occasionally it seems that Franck conflates identity-making with procedures of rendering preferences in the marketplace — hardly the process of “inner dialogicality” Charles Taylor so thoughtfully explicates in his discussion of the rise of the modern Self.¹⁰ True, since the turn of the twentieth century, consumption has had a key role in configuring individuals’ self-understandings and self-presentations, but consumption does not exhaust the means and methods of producing such signification, nor have market decisions been bereft of collective cultural patterns. A market approach to identity ignores the way in which the medium of selection (the marketplace) itself functions as a differentiating mechanism that creates hierarchies regardless of the content of specific choices. In addition, the book minimizes the differ-

9. Numerous references to “multiple” identities aside, Franck’s conception also seems rather one-dimensional. For a critique of this sort of “tootsie roll metaphysics,” see ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN* (1988); Deborah King, *Multiple Jeopardy, Multiple Consciousness*, in *FEMINIST THEORY IN PRACTICE & PROCESS* 75 (Micheline Malson et al. eds., 1989).

10. Charles Taylor, *The Politics of Recognition*, in *MULTICULTURALISM* 25 (Amy Gutmann ed., 1994).

ences among various types of affiliations, the diverse circumstances under which they may emerge, and their disparate social functions.¹¹

These weaknesses in the theoretical apparatus of *The Empowered Self* do not diminish the book's importance as an exploration of a new internationalism. Testifying to a stronger transnational commitment to privilege human rights over diplomatic and other political exigencies, the recent struggle over the prosecution of the Chilean dictator General Augusto Pinochet may support Franck's argument. The 2000 United States census furnishes another illustration of the greater flexibility of self-identification, including the possibility to register multiple affiliations. The census suggests other lessons as well, however, for the choice it offers is a limited one, restricted to a few specific designations. Perhaps, counterintuitively, expanding options may actually have served to deepen personal investments in these classifications. Some allegiances, evidently, are more important than others, and ethno-racial categorizations seem to be as ingrained as ever.

The book needs a more nuanced understanding of identity and a less conventional reiteration of Lockean liberalism. While opposed to "binary categorization" in other contexts, Franck divides the theoretical terrain between himself and conformist communitarians, evading significant portions of contemporary theory highly relevant to his topic.¹² David Hollinger, Will Kymlicka, and other scholars who have recently grappled with the relationship between individuals and collectives have benefited from incorporating into their analyses and prescriptions insights culled from the multicultural moment.¹³ At times Franck's empowered Self appears to resemble Hollinger's "post-ethnic," who may choose to affiliate with her "community of descent." But such similitude is deceptive, for unlike Hollinger's "rooted cosmopolitan," Franck's self-making internationalist is rootless. Hollinger eschews the problematic of "identity" by limiting his theorizing to "affiliation," for "the concept of identity . . . can hide the extent to which

11. The fact that social groups may not have essential, enduring characters does not make them somehow less real. For more on the contingent and relational nature of group identity, see, for example, WILLIAM CONNOLLY, *IDENTITY/DIFFERENCE: DEMOCRATIC NEGOTIATIONS OF A POLITICAL PARADOX* (1991); MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* (1990); IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* (1990).

12. Many of those Franck lumps together in the communitarian camp do not rightly belong there. While Amitai Etzioni, Adeno Addis, Michael Sandel, and Will Kymlicka all argue against abstract individual rights, there are more profound differences among them with respect to the role they give to collectivity and the kind of collectives they seek to protect. Even with the adjectival modifier "radical," it is a bit of a stretch to classify Addis, for instance, as a communitarian, especially when he explicitly divides his critical ire between individualists and communitarians. See AMITAI ETZIONI, *THE NEW GOLDEN RULE* (1996); KYMLICKA, *supra* note 6; MICHAEL J. SANDEL, *DEMOCRACY'S DISCONTENTS* (1996); Addis, *supra* note 5.

13. DAVID HOLLINGER, *POST-ETHNIC AMERICA: BEYOND MULTICULTURALISM* (1995); KYMLICKA, *supra* note 6.

the achievement of identity is a social process by which a person becomes affiliated with one or more acculturating cohorts.”¹⁴ Franck, in contrast, translates every mode of choice and allegiance into the language of identity. Perhaps his understanding of the place of the individual in the new world order follows too closely (and ironically so) in the footsteps of the old Vattelien view: autonomous, sovereign, self-determining nation-states are replaced in his conception with autonomous, sovereign, self-determining individuals. While Franck does much to undermine the former myth (the “naturalness” of the nation-state), he wholeheartedly embraces the latter.

14. HOLLINGER, *supra* note 13, at 6. Likewise Brodtkin, in her discussion of how Jews came to be classified as “whites,” insists on distinguishing between “ethno-racial assignment” and “ethno-racial identity”: the former is imposed and the latter chosen within the limits of this imposition. KAREN BRODKIN, *HOW JEWS BECAME WHITE FOLKS: AND WHAT THAT SAYS ABOUT RACE IN AMERICA* 3 (1994).