THE PROGRESS OF PLURALISM AND THE TUG OF WAR OF CIVILISATIONS

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"What is the use of laws if we have no basic values"

Horace

The present world order is reflected in the United Nations as the international forum for sovereign states. The UN was founded at the moment of triumph for the Great Powers, which were just winning the greatest war in history. Consequently, it was the self-evident basis for membership of all recognised states. During the Cold War period and the decolonisations, UN membership grew and nations clustered into groups according to their economic and political characteristics: the industrialised countries, the socialist states and the developing countries. When The People's Republic of China joined, it formed a 'group' of its own. After the dissolution of the socialist group, most of its former members tended to join the industrialised group while Russia is likely to follow the Chinese example and form its own 'group'. Now a tendency is discernible whereby some of the former colonies are being regarded as 'empires' in the sense that they comprise entities wishing to establish independent states. There exist no criteria for UN membership status – a small island with a few thousand inhabitants is eligible, a people of millions inside some state or divided as nationals of different states are not. If every state composed of several ethnic or otherwise self-identifying groups divided itself into a number of eligible states, the consequence would be no upper limit for the number of UN members. It has been pointed out that such tribalism and fragmentation, if unchecked, is likely to gain the upper hand in many parts of the world.1

The prevalence of equal and sovereign states is generally referred to as the Westphalian system, named after the peace conference in 1648, which established political relations in seventeenth century Western Europe after the Thirty Years' War and grew to cover all of Europe after the First World War. Its forms were even respected during the era of the Soviet Union's domination of Eastern Europe when a number of subordinated states had formal independent membership of the UN. The question has been raised if this system is really fitted for the present world. It came about because of a long process of establishing nation states based on ethnic and linguistic considerations, conditions that were hardly to be found anywhere else on the globe. When in the twentieth century the European powers' colonies acquired independence, the same system of nation states was imposed on them with little regard to historical, ethnic and linguistic realities. Many of these states are not capable of meeting the needs of their inhabitants for food, work and security. It has been argued that perhaps the time is ripe for visualising a globalised world where the duties and functions of the state should be gradually handed over to regional organisations like, for example, the EU, the Organisation of African Unity and the UN.2

Such a vision may become true but only in an undetermined future. For the time being, efforts could accordingly be directed to studies aiming at a more thorough understanding of the Westphalian system, its origins, its merits, its faults and, as we are bound to live with it, its applicability in the future. 'Westphalian' is of course only a symbolic heading for a phenomenon that took centuries to establish and covers most aspects of human activities. Its main characteristic lays in the fact that the western brim of the Eurasian continent had maintained a relatively stable number of interrelated sovereign states, in marked contrast to the eastern brim where China had developed into an all-embracing unitary and centrally governed state. Sovereign states were in principle equal regardless of size, which, for example, expressed itself in the practice of sending envoys to each other (in contrast, rulers like the Emperor of China and the Ottoman Sultan regarded the reception of a foreign envoy as a token of submission from the sending nation). Was it haphazard? Was it just a series of extraordinary circumstances involving technical inventions and sustained economic progress that led the western brim peoples to retain this system and spread it by populating other continents and to arrive at the position they now enjoy in the world order? Or, is it possible to discern a limited number of decisive events or crossroads when determining paths were chosen, leading to inventions or ideas being born, tried, applied and realised, not just in isolation but in connection with the organisation and structure of society, characterised by simultaneous progress in technology, science, arts, politics and, not least, the capability to exert power? Does the remarkable simultaneity of the various processes indicate a common denominator?

In looking for this common denominator, we can, by way of illustration, undertake some comparisons between Western and other civilisations. The gap in technological and military power between leading European and African states was relatively small during the Middle Ages. However, in the nineteenth century it became enormous because Europe had embarked upon scientific and industrial revolutions whilst Africa had remained in the Iron Age.3 To varying extents, this was as valid for other continents as for Africa. After the fall of the (western) Roman Empire, the new West Europeans had first been the receiving partners (not least in acquiring the intellectual classical heritage by way of translations via Arabic) and had later, after the great discoveries, with admiration taken in cultural influences from other distant civilisations, especially China. But, from the time of Westphalia, the West's dominating influence virtually exploded. A number of theories have been launched in order to explain the underlying reasons for the West European region's arrival at the system of sovereign states, which managed simultaneously to make war against each other and to exert a growing influence over the whole globe. The importance of the Renaissance, which illustrates a state of mind unique for Western Christianity, on one side and other civilisations on the other side, including Orthodox Christianity, is commonly stressed. Some have gone beyond that and highlighted the positive consequences of external and material factors during the Middle Ages – the invention of better ploughs and arms, interrelations between technical innovations and the decrease in population because of the Black Death, subsequent population growth and its affects on land use, industrial innovations related to sheep breeding and textile production, geographical conditions favouring increased trade, the tremendous growth of shipping, and the importance of sea warfare for the emergence of sophisticated state institutions, such as the high sea navies.4 Others have stressed that these material advances should be regarded as the consequences or products of immaterial factors; of changes in patterns of thought and ideology, an open-mindedness to scientific discoveries resulting from questioning authority, especially religious authority. Innovations and experiments are, in this

view, due to a development or change in mentality with its roots in the allegedly tolerant climate of debate and the lack of respect in the Middle Ages.5 More precisely, they manifested themselves in the religious revolution of the Protestant Reformation, which constitutes a prerequisite for the Westphalian order.6

The Protestant Reformation was born in 1517 and quickly changed the political map of Europe, manifesting new vested interests by introducing new borders reflecting new antagonisms and alliances. It decisively paved the way for promoting a scientific outlook on life and nature at the expense of the theological world order. Heresy had, however, been common in medieval Europe, as testified by the Cathars, Valdensians, Hussites and Lollards. Also the beginning of the great discoveries, ocean-going ships and inventions like firearms, are to be found in the preceding century. This indicates that the Renaissance and the Reformation are milestones, and certainly outstanding ones, on a road originating earlier and continuing to Westphalia. Changes in attitudes and ensuing developments are like oak seeds, taking their time to grow into big trees. We must consequently look further back in history to find the common denominator. Again, by way of illustration, we can revert to the comparison with Africa, the Iron Age structure of which succumbed to the onslaught of the Westphalian West European states. After having glanced cursorily over the late medieval influences mentioned above, it becomes natural to look for earlier ones, and then especially for the conditions which prevailed and the events that took place when these states were themselves established, that is, during the European Iron Age. This leads us to the break-down of the (western) Roman Empire under the pressure of the great Teutonic migrations, when invading tribes or peoples established their kingdoms all over the territory. Most famous were the Goths, Longobards and Normans in Italy and Sicily, the Visigoths in Spain and southern Gaul (France), the Franks, Burgundians and Normans in central and northern Gaul, and the Anglo-Saxons and Normans in the British Isles. Their conquests drew the ground plan for the political map of Europe as we still know it and their names are retained in both provinces and states.

There and then, something started to grow. To say that it was a seed would be to use a misleading metaphor; it was rather a crossbreeding or graft which would show itself to be unusually fruitful. This occurrence can hardly be discerned when considering the circumstances prevailing at the time. During generations of war and strife, a number of 'barbarian' kingdoms were established on the remnants of the once magnificent Empire of Rome, the name and fame of which, notably enough, the conquerors did not abolish but selectively took over and transmitted to posterity. The Empire had during its later centuries been ruled by totalitarian emperors, styling themselves dominus et deus, that is, lord and god. While the invaders deposed the (western) Roman Emperor, the Eastern Roman ruler inherited the title, and similar pretensions were common in other empires we know from history as well as the ones which were to grow up, decline, fall and reappear in the East: the Caliphate, the Ottoman and other kingdoms and empires all the way from Persia and Russia, including the Soviet Union, to China. The same goes for the Aztecs and Incas in the Americas. 'Totalitarian' in this context is understood as rulers demanding to be honoured for combining spiritual and temporal powers, claiming to be God or vested by God with powers to govern as his deputy, or, in the Far East, by Heaven with the Mandate of Heaven. In the dictatorships of the twentieth century Europe, ideology took on the role of religion. The ruler's person combined legislative, judicial and executive powers. This means that his rule and the prevailing political system should be seen as a reflection of the universal moral order and that

differing political views by definition become unethical, i.e. on a par with the criminal. Compromise is rejected because the conception of the world is dualistic: black or white, loyal or disloyal, good or evil.   In practice, holy scripts, for example, the Koran, and its interpreters can, at best, exert a moderating influence, but in principle his word is law. This totalitarian form of government has, generally speaking, characterised the globe's dominating civilisations – with one exception, namely the one that slowly emerged in Western Europe out of the above-mentioned crossbreeding. Its kings and emperors as well as its bishops did not consciously strive to avoid becoming totalitarian rulers, on the contrary (as manifested by the revival of the Roman Empire and a millennium of temporal and spiritual princes who never gave up their endeavours to establish a 'Universal Kingdom', be they emperors, kings 'by the grace of God', popes or dictators). But their successes were never more than temporary and in the long run they incessantly failed. No King of Kings, no High Priest ever managed to durably monopolise power, not even if they co-operated with each other – like in the Inquisition – because their position was consistently challenged by a third party in various shapes, which stubbornly insisted upon partaking in power. From this angle, the Westphalian Order can be seen as the ultimate rejection, as far as Western Europe was concerned, of the concept of the Universal Empire. The onslaughts of totalitarianism were thus in the long-run forced to retreat, even if their resistance caused innumerable difficulties and blood-stained backlashes up to our own time. The links were thus slowly but safely forged, which eventually would be united into the Western development chain we may now, by its most eminent links, call by the names: rule of law, democracy and human rights.

The common denominator we search for can, consequently, easily be identified in negative terms as the absence of a unitary state, governed by an overriding totalitarian ideology and absolute ruler. But, as a third party, claiming this position of strength, it must also contain positive elements crucial for the growth and solidity of the development chain mentioned. Our attention is then drawn to the respect for and the rule of law, which was to become of singular importance. The Roman legislative powers originated in the comitia, the Roman people's assembly, and, with the growth of the Republic into the Empire, Roman Law developed into probably most the renowned legal system in world history. It survived the decline and fall of the Empire and was still generally applied at the time of the Great Migrations, whereby, because of the unruly times, the administration of justice for generations was in the hands of local authorities. There were two laws, the ius civile for the Romans themselves and the ius gentium for dealings with non-Romans.   The Teutonic conquerors brought with them their own laws, also originating in their respective assemblies of freemen (thing). Their laws were oral and so to speak not instituted but inherited from one generation to the next. Another difference consisted of Roman Law being in principle territorial and the Teutonic personal. Verdicts were arrived at in the thing but, in the absence of an established state power, execution of the verdict belonged to the injured party and his family. When commencing to run a state, the conquerors realised that they had to adjust to local ways and codified their laws, so it was in northern Italy with the Visigoths in 506, the Ostrogoths in 508 and above all the Lombards from 643 and onwards. Consequently, the kings administered a judiciary running a double system consisting of leges barbarorum for themselves and leges romanorum for the locals. Lombard legislation became heavily influenced by Roman law, especially to the extent it became necessary to legislate in fields where there had been no need for laws before they settled. The Lombard law survived the kingdom's fall in 774 and became, together with the Byzantine Emperor Justinianus' comprehensive edition of Roman laws from the sixth century (later to be known as the Corpus Juris Civilis), the object of methodical

study and systematisation by eleventh and twelfth century north Italian law schools. But before that happened, "in the last chapter of the history of Roman Law in the West … the Justinian Corpus [played] no part at all" and "the end of the story was the blending of Roman with Teutonic law in as many different mixtures as there were local customary laws in Medieval Western Christendom."7 As a consequence of these processes, the conquerors never dominated the local judicature, but neither were they assimilated by it. The result was a fruitful crossbreed that shaped the legal foundations for the emerging Western civilisation.

A prerequisite for these developments was the fact that the legislation was originally worked out by popular assemblies and not instituted by divine revelation or other metaphysical explanations. Attention shall here be drawn to two essential factors, both of them dependent on this basically secular character of the Roman and the Teutonic laws. First, the importance of the Western laws being   pre-Christian can hardly be overestimated. In consequence, even the Catholic Church's Canon Law was based on Roman Law. Second, the Christian faith had from the beginning been the religion of the oppressed, who were persecuted by the authorities in the Roman Empire. In consequence, disobedience towards established authority and the right of the individual to be protected against state encroachments belonged from the outset to the conditions of Christianity and this remained a unique feature in the development of Western society. And furthermore, when state and church, often with combined forces, tried to establish totalitarian power, such actions could always be opposed by asserting Christ's teaching 'Render to Caesar the things which are Caesar's and to God the things which are God's' and 'my kingdom is not of this world'. This brand of dualism prevented the balance between temporal and spiritual power from being but temporarily overthrown. In spite of all absolute rulers, Church inquisition and a thousand years of all imaginable expressions of intolerance and bloodshed, the ultimate justification for persecuting people who thought differently, be it in questions of faith or science and eventually also in politics, was lacking as it could be challenged by referring to the Holy Writ.   For these reasons, the West never to the same extent as most other civilisations surrendered to the overwhelming concentration of combined temporal and spiritual power.

In retrospect, the direction of the march is obvious, but for the contemporaries it has mostly been obscure – including in our own age. The Pope found the Lombard kingdom a strong rival for power and instigated the Frankish king to conquer it. Shortly afterwards,   the Pope, in the year 800, crowned the victorious king Emperor of a thus revived Roman Empire, thereby revealing his intention to re-establish the universal state, but now with the spiritual power overruling the secular one. Lombardy then followed the East Frankish line of rulers into the Holy Roman Empire of the German nation. The Pope's ambition for secular power resulted in politics being dominated by the rivalry between Pope and Emperor to the extent that no strong central power could establish itself. Instead, there emerged, especially in northern Italy and Germany, a tapestry of smaller autonomous entities like duchies, baronies, bishoprics and free city republics. In the areas where local administration was weak, the omnipresent Church, to a large extent, managed to let the bishops take over its duties. In the protracted tug of war between Church and state, the Emperor finally got the upper hand, which signified a decisive prerequisite for safeguarding the secular and pluralistic character of Western civilisation. The Church, nevertheless, for a long time managed to claim the exclusive application of Canon Law as far as its servants and clerks were concerned. But, all the same, the common origin of Canon and Roman law manifested itself. The Church's vested interest in the revival of the universal Roman Empire later came to imply the promotion of the

Justinian code as a general law (jus commune) over the whole territory, especially in areas where local Teutonic customary laws were inadequate. Similar considerations can be traced in the distant lands where the Church took an active part in assisting the establishment of centrally governed kingdoms on the periphery of and outside ex-Roman territory and where local customary laws constituted a solid basis for future legislation. In these countries, the reception of Roman Law could be considerable but they maintained distinct features of their own, as demonstrated by Common Law in England and the laws of the different Nordic 'lands'. In this way, the overriding rule of the law of the state could take root and the long fight for the extended application of its principles could continue.

It has been observed that the crossbreeding favoured Roman elements more in the south, where Roman administration to a higher degree had remained intact, i.e. in Italy and southern France, rather than further northwards. As a consequence, the southern kingdoms became weaker and lasted for a shorter time than in the north, where "the Franks and Anglo-Saxons … who accorded little if any recognition to the Roman element in their population, gave their names to states that survived from the medieval period to the present time."8 As far as legislation is concerned it should also be remembered that conditions in France, which had a more Roman-based legislation in the south and a more Teutonic-oriented one in the north, was overcome first by Napoleon's Code Civile and that England's Common Law prevailed from an early stage. Because of the Arab conquest, Spain became a special case – the pre-Islamic, strongly Roman-influenced law of the Visigoths was, during the reconquista, reissued in Spanish as late as 1229.9

The strength of the Franks and the Normans derived from the development of the feudal system which, expressed in simplified but practical terms, was used by the Teutonic invaders as the method for ruling conquered peoples and territories. Today the word 'feudalism' simply means landowners exploiting peasants. At its inception, however, it functioned as a social organisation in times and territories when and where state authority met difficulties in asserting itself. To control his conquests, the king entered agreements concerning mutual obligations for the protection and promotion of their common interests with his sub-chiefs, the barons, who were entrusted with vast rural domains. It soon became the characteristic social order in France and England, in spite of the many towns that retained their autonomy as city republics. With the exception of Denmark, feudalism failed to take hold over the Nordic countries because they were not governed by conquerors. Iceland, Norway and Sweden-Finland stayed non-feudal. But, Danish nobility, living in the neighbourhood and under the influence of the German-occupied Slav-inhabited lands along the southern coast of the Baltic, eventually adopted the system. Many aristocrats of the other countries, especially Sweden, would have liked to follow this example but the inherited social order prevented it.

The essence of feudalism consisted of statutory agreements regulating the rights and duties of both the king and his subject vassals. At the outset, there was no question of general equality before the law as it only applied to the hierarchy of landowners, while the peasants, belonging to the conquered peoples, were tied to the land as serfs. But, with feudalism, a contractual and legally binding way of looking at personal relationships was established and eventually

became something natural and worthy of imitation.   The famous Magna Carta of 1215 constitutes an illuminating example. It is best known for safeguarding the barons' rights at the expense of the king's powers, but it did not exclusively deal with feudal rights and its significance has with time been enlarged so as to become the symbol of safeguarding liberal rights in general against the oppression of state authority. Together with the development of the concept of 'juridical entity' or 'legal personality' (possibly derived from Teutonic rules regarding rights and obligations of kinship groups – ätt in Old Norse), a fruitful soil for a growing recognition of the purport of the rule of law was prepared. The Church also contributed to this field: most importantly because of the necessity of balancing secular power and to safeguard and promote its own rights as a juridical entity (especially as a prominent landowner), but also partly because of the ambitions of its great number of officials of non-aristocratic or feudal background to uphold the status of a clerical career, and partly and naturally with the message of the Gospel. Of utmost importance was the establishment of universities, not only because they were outside the jurisdiction of the Church but also for having taken the crucial step of organising different faculties for law and theology. On these foundations, there emerged in Western societies a medley both of legal counterweights to absolute rulers and of institutions which on legal grounds claimed recognition of their right to assert themselves against both secular and religious prerogatives. Through history, the power of kings and bishops was curtailed by feudal lords, local assemblies with judicial rights, parliaments, estates, guilds and similar institutions that managed to safeguard and legalise inalienable rights for individuals as well as for corporations. Much-decried feudalism has, by acting as a door-opener for these developments, deserved the right to be rehabilitated.

Against this background, it becomes easier to discern the consistency of the onward developmental path of Western society along the chain 'rule of law + democracy + human rights'.   The obstacles were, however, formidable and centuries were required to improve the situation of the serfs, to acknowledge the principle of equality before the law, of universal suffrage and the equal rights of heretics, infidels and women. The time aspect is depressing. The first laws mentioned above are the Justinian Code and the first Gothic Law, both from the early sixth century, that is, 1500 years ago. The first proper parliaments emerged some 750 years later, that is, at half-time, and still a considerable number of today's democratically elected European legislatures cannot boast of a venerable age. The character of the parliaments in many aspects followed the northwest-southeast borderline that stretches roughly from Normandy in the northwest to the Alps in the southeast.   The weak central power of the Empire conserved local autonomies, and the subjugated peoples in conquered territory were of course not allotted representation in parliament. The conquerors of England established two Houses and the French three Estates (as a curiosity, we can add that in non-conquered Sweden four Estates emerged, the fourth being the peasants, who were to become the king's ally in checking the ambitions of the others, especially those of the nobility). The parliaments were, generally speaking, conservative and inclined to protect their respective privileges and to curtail those of the other chambers, which was a blessing in disguise because it rendered unavoidable an open and continuous debate on political reforms and social conditions. It was a suitable tool for gradually forcing autocratic rulers to share the power and, if that failed, like in France, revolution followed. As time went on, the parliaments had to reform themselves and grudgingly adjust their representation to changing times.

Milestones in these developments were, as indicated above, the Renaissance and the Protestant Reformation, which fought the heavy grip of the Church over education and learning and thus paved the way for freedom of thought. The revolution in natural sciences followed. Discoveries in astronomy banished mankind from its place at the centre of the universe and thus opened boundless horizons for scientific and experimental discoveries in any imaginable field. New milestones followed one after the other and only a few needs to be highlighted. The theories of natural law re-emerged with force in the seventeenth century and further loosened the ties between religion and law. The concept of the 'Social Contract' was (re)introduced and culminated during the next century which saw the respect for man and the self-respect of mankind flourish during the Enlightenment. Charles Baron de Montesquieu launched his programme on the separation of powers. Expectations were raised to a level that made a democratic breakthrough inevitable, as illustrated by the American Declaration of Independence in 1776 and the French Revolution of 1789. The latter, however, immediately demonstrated that democracy must be based on the rule of law so as not to relapse into conventional and bloodthirsty totalitarianism, a drama that has been repeated time and again.

The establishment of a republic aimed at transforming the inhabitants of France from subjects to citizens and to inspire them to take an active part not only in economic and political reforms but also in foreign policy questions. In practice, this meant not only warfare in order to defend their achievements against the aggressive and malevolent world around but also to spread the new teachings by armed force. A new brand of nationalism entered the stage, based on the equality of all citizens and on the abolition of the aristocracy, that is, of the privileges belonging to the descendants of the conquerors. The ensuing French military occupation of its neighbours called into play defensive reactions of a similar character in many parts of Europe, and nationalism had come to stay. Rich and poor, nobleman, peasant and worker united and fought side by side to defend the common cause, the fatherland, against the intruder who was seen more as an ordinary aggressor than a revolutionary liberator.   The story repeated itself in 1914 at the outbreak of the Great War and again after 1917 when socialist revolutionaries turned Russian nationalists and empire-builders. In contrast to the 'people's democracies' of the twentieth century (which were the products of Russian imperialism and consequently became dictatorships unable to survive without the presence of Soviet troops), the 'people's nations' of the nineteenth century became the greenhouse for the decisive development of parliamentary influence and democratic government because the fight for a common cause enforced a sense of belonging, which not only necessitated but made it increasingly natural to disregard differences between compatriots. From the outset, the Teutonic conquerors were at least in principle equal to the subjected serfs before God and, as centuries passed with constant pressure and, again, at least in principle, they became equals before the law. As one law tended to rule in a nation, it was operative in contributing to the citizens' identity of nationality. The recruitment of conscript armies undoubtedly contributed to this effect. Legal rights accordingly to a considerable degree passed over from landowners, local parliaments, professional guilds, etc. to the individual with the equal right to vote at the level of the nation. Nationalism promoted the growth of equality but, as usual, development took its time and, as usual, defenders of old orders and privileges yielded only gradually and under pressure. Of course, a number of different forces contributed to these developments. The freedom of thought had led to an ability to read and a broader dissemination of ideas, and to drastically changed economic conditions as manifested by industrialisation and, not least, by the successful nation across the Atlantic, which was open for Europe's population surplus and offered a tempting alternative for millions of individuals. The combination of a good

portion of arable land of one's own, equality before the law and democratic government was irresistible.

A major force contributing to the growth of democracy was the nineteenth century Industrial Revolution, which brought with it fundamental social changes as industry gradually took over the dominant role in the economy from agriculture. The industrial workers had, so to speak, no place in a society of estates, be they two, three or four, and consequently state and society had to accommodate. Grudgingly, they did but, as usual, it took time. Meanwhile, socialist ideology was born and, in its militant forms, aspired to replace religion. In this respect it succeeded in the communist realm and consistently created a totalitarian system combining temporal and ideological power, thereby sacrificing the rule of law and, as a consequence, democracy. This was no coincidence. On the contrary, Marx's teachings on the class struggle are based on the view that the dominating class uses legislation as the means of acquiring and controlling ownership of property.10   He had no eye for the capacity of the nationalist spirit of community to prove itself to be more attractive than class consciousness. Nor was he aware of the quality of law permeating society in a process like the long one outlined above. According to him, legislation was among the spoils of the victorious revolutionaries and was totally subjected to the promotion of ideological ends and the political cause. Law was thus degraded to a tool equivalent to sword, fire and violence in the fight for absolute power. The rise and powerful influence of this brand of socialism has without doubt constituted the most formidable attack on Western soil against the very prerequisite for the development of democratic government and respect for human rights. It did not have the character of just another obstacle to progress that had to be overcome. From the outset, it constituted a conscious counter-ideology, which declared war on the liberalising tradition of enforcing the rights of the individual.   It actively promoted a return to the totalitarian Unitary State in the shape of the dictatorship of the proletariat. Large parts of Europe became victims of this setback, which lasted more than half a century, before they could rejoin the Western mainstream of cultivating pluralistic societies. This return was in varying degrees obstructed by the emergence of powerful mafias from the state bureaucracy. These were able to lay their hands upon great riches when the monopoly of state ownership was abandoned – a way of conduct rendered possible by the absence of proper legislation, which is a characteristic of totalitarian states.

Some sketchy comparisons with developments in other areas of the globe may cast a clearer light on the pluralistic evolution of Western civilisation. It is thought provoking to consider Eastern Europe. Why did not the penetration of Nordic tradesmen and warriors (a people called Rus) along what are now Russian rivers   (a penetration which in the ninth century led to the establishment of the principalities of Kiev and Novgorod – the origins of Ukraine and Russia) leave the same imprints in these eastern lands as that of their kinsmen in the West? After all, they are remembered in Nestor's chronicles, in the Icelandic sagas, in the name of a country they ruled and for having introduced Christianity in its Byzantine form. They also promulgated a law in the eleventh century, the Russkaja Pravda, influenced by Swedish and Byzantine law and at a level comparable to the Teutonic laws. The Rus had as easily adapted to and been assimilated in their new surroundings as their Western cousins, be they Goths (who during the migrations had passed the area, leaving a number in Crimea), Longobards, Franks or Normans. In the first centuries, however, they maintained contacts

with Scandinavia and were an inter-link for the Vikings who passed on their way to or from service in the Byzantine Emperor's Varangian Guard and for political ends, such as concluding royal marriages. Their rulers also divided the land between the king's relatives but it led to family feuds rather than to feudalism. This seriously weakened their capacity to withstand the enduring onslaughts of the Tartars, who finally conquered Kiev in the thirteenth century, giving Novgorod the opportunity to flourish as an independent trading centre for another two centuries. But even if the Tartar invasions were irresistible in the long-run, it is noteworthy that the Teutonic founders of kingdoms in the east did not succeed in creating feudal states as strong as in the West. In the territories of the former (western) Roman Empire, the conquerors successfully met the challenge of taking over a functioning administration created by a more developed civilisation and founding new vigorous societies together with the locals. It is tempting to draw the conclusion that the eastern steppes did not provide the same fertile soil for crossbreeding or grafting. In this context, it is also worth noting that the Arab invaders of the Iberian peninsula gave proof of a constructive state-building capacity comparable to Teutonic counterparts in the West, whilst the early Tartar hordes from the east were famous for making every conquest 'a mart of destruction'. Their interest was concentrated on booty and taxation, not on state building. Conditions and opportunities in the West and the East differed too much, rendering parallel developments impossible.

The ability of Western Europe to develop in pluralism its features of relative stability were founded on a combination of favourable conditions that deserve attention in comparison with Eastern Europe. The (western) Roman Empire was replaced by a number of independent secular kingdoms while the Eastern Roman Empire continued to exist for another millennium. In the fourth century the Emperor Constantine recognised the Christian religion and moved the capital to a new town he named Constantinople after himself. As emperor he and his successors ruled as deus and dominus (god and lord), which was not alien to the beliefs of his oriental subjects but of course incompatible with Christian monotheism. In respect of this, the Byzantine emperors were regarded as the 'vicar' or deputy of Christ, sharing a two-seated throne with Him. Religious and temporal power grew into a symbiosis with the Patriarch accepting the Emperor's leading role. Emperor Justinianus, as mentioned earlier, in the sixth century ordered the comprehensive edition of centuries' of valid Roman constitutions and statutes as well as comments of leading jurists. For obvious reasons, this legislation could not claim divine inspiration – but the ruler could. Its impact seems to have been limited during the following centuries but half a millennium later it became the object of systematic arrangement in the West by the Italian law schools, for centuries exerting an enormous influence on European legislation and printed in 1583 under the title Corpus Juris Civilis. Justinianus also, however, strengthened the exclusive position of the Christian Church, for example, ordering the closure of Plato's academy in Athens. Neither Western nor Eastern Christianity were inclined to recognise religious tolerance but they developed along divergent paths. In the West there were a number of temporal rulers and at times more than one pope, of whom none was allowed to get general recognition as the unchallengeable and ultimate interpreter of the will of God. This inevitably led to pluralist tendencies in practice manifesting themselves, in spite of the long discrimination against heretics and infidels. The Byzantine Empire on the other hand chose to become a Universal Empire, governed by an Emperor who was also the representative of God. The conception of the world was dualistic: good or evil, loyal or disloyal and, as in all authoritarian or totalitarian regimes, the ensuing attitude resulted in an instinctive rejection of compromise. By way of illustration, it has been pointed out that the pragmatic Western Church invented purgatory as a pluralistic compromise in order to escape

the exclusive alternatives of hell and paradise, but that this aspect of a grey zone is lacking in the East European brand of the dualistic concept.

Imperial Russia claimed to be the successor of the Byzantine Empire and inherited the dualistic conception of the world and, consequently, developed authoritarian rule. It must, however, be underlined that the Tatars heavily influenced early Russian history. For a long time, the ruler in Moscow, the cradle of the future Russian realm, had to pay tribute to the Khan of Kazan and this left a strong imprint of despotic tradition, which other European nations escaped. In due time it was the autocratic Tsar's turn to be deposed by a violent revolution and society was equally violently transformed into totalitarian communist despotism. The psychological mechanism of this transformation in its dualistic context has been explained by using the metaphor of changing the terminals of a battery – in the old days the Tsar represented 'good' and revolutionaries 'evil' and after the revolution they changed place – and thus the conception of the world remained the same. Using the battery terminal metaphor, it is illustrative to think of pluralistic society as alternating current and totalitarian society as direct current because such a change of terminals only operates in strictly authoritarian societies and when using direct current. In pluralistic societies and when using alternating current, the phenomenon for practical purposes does not exist. It is, consequently, characteristic of the bi-polar mind to have a negative attitude to compromise. It became ingrained in Russia and Henry Kissinger gives a lucid illustration with his observation of nineteenth century conflicts that "Russia always preferred the risk of defeat to compromise."11

The task of conquering Byzantium, the Eastern Roman Empire, was not given to Teutonic but to Turkic tribes. Among them, the Seljuks and the Ottomans proved to be successful state-builders. When the Sultans had conquered both the territory and the Emperor's throne they considered themselves the successors of the Byzantine Empire. In contrast to the Teutonic conquerors, they had no inclination to share power with their kin and consequently did not introduce a feudal system. Instead they chose the devshirme system, whereby young boys were forcefully recruited mainly in the Balkans, converted to Islam, professionally trained according to individual dispositions and then supplied to the Imperial household, army and government as artisans, janissaries and generals as well as civil servants up to the post of Grand Vizier, second only to the Sultan. In consequence, the Empire's administration was not run by Turks or even Anatolians. With the exception of the religious-judiciary-educational sector, the ruling class consisted of slaves so, by definition, they had reduced legal status compared to the rest of the population. Islam was the religion of the conquerors, where the rulers' power and religion were united from the beginning and took the form of the Sultan being also Caliph. Shari'ah ruled in principle, but in practice the phenomenon of a Muslim Sultan as owner of Muslim slaves constituted a violation of Shari'ah. Also in other aspects Ottoman rule was authoritarian rather than totalitarian: heretics and infidels were certainly not integrated as equals in Muslim society, but neither were they persecuted or deprived of civil rights to the same extent as could be the case in Western Europe. Christians and Jews were, according to the millet system, permitted to practice their religion and to apply their family laws. The hard core of the differences of attitude is to be found, on the one hand, in the original Christian sanction of rebellion against the powers and, on the other hand, in the claim of Islam to represent an order of state and law founded on divine revelation. The pragmatic approach as illustrated by the related deviations from religious principles constituted no real problem as long as the country and its rulers were strong. But, when the Empire was forced

into retreat and decided to introduce Western-inspired changes, the complications started. Compromises were tried but proved more or less unworkable. During the reforms of the nineteenth century, Western legislation was introduced in parallel but subordinate to the Shari'ah. A constitution was adopted in 1876, but the diet could not be given exclusive legislative powers as legislation was a prerogative of God, which in practice meant that it had to be sanctioned by the Sheikh-ul-Islam, ex-officio member of government in Ottoman times.

When Kemal Atatürk, after the defeat of the Ottoman Empire in the First World War, deposed the Sultan and Caliph and established the secular Turkish Republic, he realised that, in order to modernise Turkey, the Shari'ah had to be abrogated as the law of the nation and it was replaced with West European laws in translation. Considering the time-consuming aspects of democratic reforms in the West European context that we considered above, it is not surprising that many Turkish citizens had difficulties coping with the pace and scope of the necessary adjustments. The development of sharing Western standards of pluralism soon became irreversible but some residual traditions and values have persisted in constituting obstacles to forging the last link of the chain 'rule of law + democracy + human rights'. Traces of the distrust of compromise in politics are still discernible, especially in the relationship between secular and religious politicians.12 In retrospect, Turkey's ability to forge the first links of the chain in the comparably short time of a few generations stands out as a most remarkable feat of historical significance.

In the Islamic context, Turkey clearly stands out as the pluralistic vanguard. The other countries in this group are on a wide scale from approaching pluralism to monistic-oriented religious dictatorships. Islam is based on divine revelation that is interpreted to imply a monistic claim to rule all aspects of everything. Expressed in practical terms, this means that society and human life cannot be separated into religious, political, personal or other categories. On the contrary, life must be treated as a unity created by God. Hence, we see the establishment of 'Islamic Republics' where the combination of executive, legislative, judiciary and all other imaginable powers is indissoluble. It should, however, be remembered that other Islamic theologians disapprove of such a polity, like that instigated by Ayatollah Khomeini. Such a monistic attitude cannot but promote the prevalence of the dualistic conception of the world as black and white, true believers and infidels, especially in circumstances where a zealous religious politician is able to get support from the masses to conquer a quasi-dictatorial system or, alternatively, to hamper the growth of democratic institutions. This is a constant threat against which modernising countries meet difficulties in defending themselves. And yet this has not always been the case. During its first three centuries, Islamic spiritual civilisation rapidly grew not least by absorbing the classic and Hellenistic heritage including most aspects of tolerance and mysticism. It by far overshadowed contemporary Western thinking, which later, in its turn, took over essential parts of this heritage in translations from Arabic. But in the tenth century, a strictly literal obedient school got the upper hand and declared the Koran to be the ultimate divine revelation, not open for interpretation. Tolerance had to retreat and mysticism and free thinking only survived – and survives – in the background while the strict orthodoxy dominated the scene and quite successfully upheld a militant dualistic concept. But, as the Ottoman example illustrates, Islam adapts to the local climate like all religions and ideologies.

It is interesting to observe how an Asian respect for dynasties has survived both in Bangladesh and even the orthodox Pakistan by admitting women to the leading political post.

Hinduism and Buddhism direct the attention of their adherents to spiritual ends and are in principle – if not always in practice – disinterested in temporal power. Ambitious generals can of course seize power and oppressed citizens seek inspiration in religion in order to resist them – or even to fight them (as few people practise what they have learned). Certainly, most of these countries are characterised by traditional poverty at the grass-root level and traditional arrogance of the richer and ruling classes. But, generally speaking, it is noteworthy that a democratic form of government has achieved safe footholds in these areas, which ought to bode well for the long-term prospects of both the rule of law and human rights. There have, however, unexpectedly arisen disquieting signs of growing violent religious intolerance in Hinduism.

This antagonistic brand of dualism has been the object of strong criticism. Black and white, day and night, good and evil are seen as contradictory terms used as guiding principles for the organisation of state and society through the promotion of attitudes of intolerance and the creation of authoritarian and totalitarian rule. The emergence of Western civilisation has been described as a slow but consistent endeavour to avoid authoritarianism by promoting pluralistic attitudes. In the Far East, the approach has been basically different. Black and white are not seen as contradictory but complementary, leading to or presupposing a comprehensive conception of the world. The Chinese Emperor was honoured as the 'Son of Heaven' who represented the given moral order.   This, however, makes it condemnable to be of a different opinion, not even to speak of the concept of 'loyal opposition', which is an intellectual monstrosity in this context. The leading Confucian ideology taught that good government was only possible in a state led by morally outstanding individuals. In this respect, it was élitist and hierarchic. But it was simultaneously – at least in principle – egalitarian by emphasising that all individuals possessed the qualifications for moral improvement through schooling and thus social advancement. The moral monopoly was absolute but there existed an in-built remedy for the societal petrifaction that must threaten to become the consequence of its strict application. When for instance a reigning dynasty degenerated and ceased to be a moral model, the leader of a rebel movement manifested through his victory that the 'Mandate of Heaven' had been transferred to him. This made it possible for China to experience a number of rejuvenating changes of dynasty – and the people followed because it is unthinkable to oppose the 'Will of Heaven'. The latest change introduced a communist system but the pragmatic Chinese soon realised its constraints and the need for compromise, that is, market oriented reforms. Does this imply a grudging acknowledgement of the necessity of slackening the totalitarian strangle-hold on society or, which seems more likely,   is it a reflection of the imperative to remain a moral model? The solution does not lie in this Western concept of either-or – the path to follow is to harmonise the components.

Korean history was different because the king was in reality not a 'Son of Heaven' but invested with his powers by the Chinese Emperor. No dynasty changes took place after the

late fourteenth century, by the time of the Japanese conquest 500 years later, Korean society had stagnated to the point of petrification. Regaining independence after the Second World War, the two halves of the peninsula followed extremely divergent paths. North Korea developed its own peculiar combination of Confucian moral authoritarianism and Communist totalitarianism which, by shaping an extraordinary social discipline, contributed to unusually rapid industrialisation. But, it also nourished a presumptuous conviction of superiority combined with a near total ignorance of the world around. The unavoidable disgust of compromise in combination with communist economics led to such disasters that the state's future is at stake – it may have to revert to its Confucian basics in order to retrieve its balance and get a new start.13 In contrast, South Korea landed in the orbit of the market economy and was able to pursue a rapid development to democratic government. On the whole, the Confucian nations have shown a remarkable ability to adapt themselves to the conditions of modern market economics and social transformations while at the same time preserving traditional values and life-style. Japan is of course the outstanding example of a contemporary, affluent, pluralist, parliamentary democracy. And, all the emerging Asian Tiger economies belong to the Confucian tradition.

In the beginning, we made some comparisons between the comparably young European states and Africa. After looking quickly at the developments of secularism vs. theocracy, and monism or dualism vs. pluralism, from the Atlantic to the Pacific,   it is by comparison obvious that Africa was given an extremely disadvantageous starting point for partaking in the increasingly globalised twentieth century and beyond. The continent was lacking in domestic legislation and state-building. The states that arrived at independence had not established their frontiers according to their own historical experiences and transactions. Their administrations were to varying degrees affiliations of alien rules of different kinds and levels of development and economy. The educational standard was, except for a small number of individuals, low or outright missing. All of them had been autocratically ruled, some of them were given a few years of preparatory 'home rule' but many were virtually told to set up functioning parliamentary democracies over night. To the extent that it worked, it merits to be called a miracle and the successful African democracies deserve deep respect. Many of the East European countries that recovered their independence after the collapse of Communism – albeit having clear reminiscences of their own pre-occupation societies – met difficulties in managing their politics and economics, and in fighting corruption and crime. The same abuses happened in Africa – and why should it not be so, given their lack of pre-colonial reminiscences? Much effort and great resources have been and are allotted to the promotion of democracy in Africa – and much despair demonstrated at the difficulties encountered. As illustrated above, the Western democracies grew from the peoples' assemblies, the Roman comitia and the Teutonic freemen's thing, a form of original democratic fora for political decision-making cum verdict-pronouncing, the equivalents of which are still to be found all over the world in villages, to which the arm of central government law does not reach or where it is absent. To what extent is it possible to build a democratic and parliamentary legislature without conscious and unconscious affinities with the village councils' political and legal instincts, proceeding to safeguard a fruitful crossbreeding or graft with external systems needed for dealings in a globalised world? One of the first heads of an independent state in Africa, influenced by Marxist-Leninism, stressed the decisive importance of conquering political power by launching the slogan: "Seek ye first the political kingdom" – an explicit paraphrase of the Gospel's exhortation: "Seek ye first the kingdom of God and his righteousness and these other things shall be added unto you."14   The president's suggestion led him and likeminded colleagues in neighbouring states to steer country and

people to poverty and violence. Better advice would have read: "Seek ye first the rule of law." It is still not too late.

And at this juncture, I shall venture to suggest that there are two decisive insights to be found behind the progress of pluralism. The first concerns the concept of a god, the second the concept of law. First, as long as man worships tribal gods he prays for their support against strangers having other gods. Enhancing the power of one's own god into becoming the One and Almighty God must inevitably lead to the conclusion that this god cannot but be also the god of one's enemies – ultimately implying that all men are equal before this god. Hence, the totalitarian ideologies' denial of a god's existence. Nevertheless, many adherents of monotheistic religions still insist on praying for their god's support in their wars against each other. Second, the emergence of law is to be found in the necessity of society to regulate its reaction to, for example, the slaying of a fellow countryman. It meant a decisive leap forward when, by way of illustration, the law of the Swedish province of West Gothia in the Middle Ages enlarged the concept of manslaughter to include also the slaying of an outlander, albeit with the penalty limited to half the amount due for killing a countryman. A decisive step was then taken towards the recognition of all men as equal before the law.

The often quoted theses of "the end of history" and the "clash of civilisations" play principal parts in the present context. The first, which many readers mistakenly rejected as exaggerated, contains the incontestable truth that the fall of communism meant that the champions of the development chain 'rule of law + democracy + human rights' saw their most powerful antagonist suddenly collapse before them because of a lack of conviction in his own ideology. State socialism had built its totalitarian power by making the state the only employer, capable of depriving dissidents of their means of subsistence and, consequently, unable to enjoy legal protection against arbitrary rule. It was ideologically founded on the primogeniture of the rule of politics at the expense of democracy and the rule of law. It had been an efficient system, weakening democracies by financing subversive political supporters among them and also constituting a temptation for power-hungry rulers all over the world to emulate. The importance of the victory of the market economy is to be found in the prevalence of pluralism being recognised, not in any strengthening of capitalism.

The Teutonic migrations once upon a time constituted a drawn out clash of civilisations. So did the Arabic and Turkic expansions as well as the 'great discoveries' of the West, which resulted in colonialism. The Cold War was another and future ones will probably follow. Based on witnessing the history of the last 1500 years, it does not seem very daring to guess that the odds favour those who chose the path of the civilisation of the rule of law. It has proved capable of guaranteeing its followers the safest way to overcome hunger and to medical, economic and technical advance, decent legislation, voting rights and democratic government and, not least, to have arrived at holding out the prospect of peaceful lives. The achievements constitute the pride of its adherents but have caused the emergence of two external threats. One is represented by authoritarian and totalitarian regimes, which are antagonised by the aspirations, perhaps even the categorical imperative, of the democracies in propagating the gospel of human rights. They are often able to muster the support of nationalists who reject all forms of Western influence as a form of the clash of civilisations. The other is constituted by the masses of both the educated and the illiterate who aspire to

sharing the Western lifestyle. As we have seen,   the affluent Roman Empire attracted the less affluent Teutonic and Turkic conquerors and the Chinese Great Wall testifies to a similar phenomenon. Today the affluent West attracts the less affluent from the whole globe and this will continue as long as people believe that they can improve their quality of life only by migrating to the West. Some 150 years ago, China's trade barriers against the import of opium were forcefully abolished by Western powers in order to promote their exports – also a manifestation of the clash of civilisations, called colonialism. In the future, it will on the contrary be in the obvious self-interest of the affluent world to enlarge the scope of free trade by peacefully abolishing its own trade barriers in order to improve the standard of living in the rest of the world, thus making staying at home a rational choice. The safest way to attain this goal is to combine such a policy with the same measures as were used in the West, namely by methodically working for the realisation of the development chain 'rule of law + democracy + human rights' all over the world. By such a twofold approach, the threatened clashes of civilisations in the form of uncontrollable migrations may be avoided and give way to a more civilised and peaceful tug of war. And it may also, hopefully, assist in making the time aspect more favourable in the future by contributing to Africa achieving tangible results in a fraction of the 1500 years the West needed to arrive at what still only deserves to be called a promising beginning.

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