

## THE ROLE OF "CHARISMATIC LEADERSHIP" IN THE FUTURE OF WORLD CONSTITUTIONALISM

*Carla Bassu\**

### *Abstract*

Bruce Ackerman does not support the validity of a «one size fits all constitutionalism» and the facts prove him right. We have been witnessing to the deterioration of the structure and the substance of the constitutional liberal democracy, which has gathered place in countries that have generally been considered as consolidated democracies. Ackerman's innovative proposal of a Popular Sovereignty Initiative is important, because it is aimed to value the People's role in the decision-making process, preventing the risk of exploitation by more or less charismatic leaders. It is oriented to give the People the importance they deserve in determining the orientation of the constitutional order, within the framework of constitutionalism.

*"Revolutionary Constitutions. Charismatic Leadership and the Rule of Law"*<sup>1</sup> is an intense and thought-provoking book and that is no surprise, since reading Bruce Ackerman's production is always an enriching experience.

I found very powerful and inspiring the general reflection on the rise of world-wide constitutionalism and on the imperfection of the concept of constitutionalism, as «one size fits all ideal type».

Every section gave new, interesting gateways about the genesis, consolidation and evolution of «Revolutionary Constitutions».

The three constitutional pathways construction is extremely evocative and reading through the chapter gave me a lot to think about.

Ackerman notes how leading countries of Europe emerge from different constitutional pathways and claims that countries that have travelled down the three different paths of constitutionalism confront very different crisis. Moreover, since

---

\* Associate Professor of Comparative Public Law, University of Sassari.

<sup>1</sup> B. Ackerman, *Revolutionary Constitutions. Charismatic Leadership and the Rule of Law* (2019).

constitutionalism involves the imposition of significant legal constraints on top decision makers, the book points out that any autocratic regimes have found «the rule of law» an extremely useful device in governing their societies. Ackerman notices that autocrats assert their arbitrary right to establish the rules, but require the bureaucracy and the judiciary to implement their commands in a consistent and principled fashion.

Among the many, suggestive issues covered by the book, I'd like to dwell on the theme of Charismatic Leadership. I was impressed and fascinated by the analytical, compared consideration of the personality and vision of leaders who played a key role in revolutionary constitutionalism. It was interesting and, at times surprising, to notice analogies and differences pointed out by Ackerman in leading figures like De Gaulle, De Gasperi, Nehru, Walesa, Ben-Gurion, Mandela, Khomeini. In particular, I found illuminating the study of the impact of leaders' choice to constitutionalizing charisma or not on the evolution of the constitutional order.

1. In this context, I would like to focus on the argument affirmed in the chapter dedicated to the alleged «American Exceptionalism». Ackerman suggests the American case to be considered in a new perspective, comparing it to the revolutionary experiences.

In particular, I would like to emphasize the comparison made between President Roosevelt's effort to constitutionalize social democracy in America and similar attempts such as Nehru's in India and Ben-Gurion's in Israel.

Ackerman notices that Roosevelt, «in contrast to Nehru, refused to codify the New Deal's sweeping assault on laissez faire capitalism in a series of formal constitutional provisions elaborating foundational principles of social and economic equality» (p. 393). On the other hand, «like Ben-Gurion, he feared that judges would use their power of "interpretation" to transform these new textual commitments into new juridical weapons against the New Deal vision of the welfare state. Rather than write things down on paper – says Ackerman – it was better to force courts to recognize that they suffer from a profound "counter-majoritarian difficulty", which required them to defer to the political branches» (p.393).

Ackerman explains in detail how Roosevelt's refusal to lead a popular campaign for the proposal and ratification of New Deal

Amendments has had a profound impact on the next sixty years of American constitutional development,

I was impressed, and indeed persuaded by the relation individuated between Presidents Roosevelt and Trump's Administration. Actually Ackerman identifies a continuity in the attitudes of some of the most remarkable American Presidents who challenged the status quo in the attempt of promoting constitutional change. In this perspective, George Washington, Abraham Lincoln, Franklin D. Roosevelt and - yes - also Donald Trump - look like each other because even, if they are deeply different in their approach to the Presidential Institution and in their use of power, they all wanted to represent «new beginnings» in constitutional history.

So Donald Trump can be seen as a «revolutionary outsider», Bruce Ackerman tells us (see chapter. 13), because he is determined to sweep away the old insider elite in the name of the American People.

He can be identified as a Charismatic Leader who explicitly reported to the American People his intention to use the presidency to «drain the swamp» in Washington D.C.; he has no interest in elaborating the constitutional implications of his position. He relies on the opportunities connected to the appointment of Supreme Court Justices (not an easy operation...).

Donald Trump shows a sort of impatience towards constitutional boundaries and he has a peculiar concept of popular sovereignty which is supposed to legitimate any presidential action.

Moreover, President Trump speaks directly to the People, making extensive and unconventional use of social media, removing any bureaucratic or diplomatic filter in spreading his message around. And this is somehow flattering to the mass who feel important, being the straight interlocutor of the President. This sort of *one on one telematic relationship* between the Executive and the People makes persons who usually consider themselves as outsiders to the institutional dynamic feel powerful. But they are mistaken. Trump's confidentiality to the electorate has nothing to do with enhancing popular sovereignty.

Popular sovereignty is something very different from tweeting (and Ackerman with his proposal of Popular Sovereignty Initiative explains it very clearly).

But this kind of misunderstanding of the concept of popular sovereignty is not an isolated case. Many «Charismatic Leaders» nowadays adopt exactly the same approach and we have some good example of it in Italy as well.

The question is: what are these leaders going to do with their “charisma”? Is such “charisma” going to be somehow constitutionalized?

2. Bruce Ackerman does not support the validity of a «one size fits all constitutionalism» and the facts prove him right. We have been witnessing to the deterioration of the structure and the substance of the constitutional liberal democracy, which has gathered place in countries that have generally been considered as consolidated democracies. That’s what Huq and Ginzburg called *constitutional retrogression*<sup>2</sup>, which is an incremental erosion that happens simultaneously to three institutional predicates of democracy: competitive elections; rights of political speech and association and the rule of law.

In general, it can be said that we have been assisting to a sort of intolerance towards some fundamental constitutional principles that have been hard achievements for constitutionalism. Even here in Italy (and I don’t think that our country is a case of constitutional retrogression) we have lately heard some political leader talk about removing from our constitutional system cornerstones of constitutionalism such as the prohibition of a binding mandate and someone has even figured out the perspective of abolishing the Parliament which is seen as not really necessary since the people should be involved directly in any public decision so that no representative filter should be needed (statement by Davide Casaleggio).

That’s something that does not properly fit in with constitutionalism.

Such ideas would have not came to mind to anyone few years ago, while now they come together the wave of populist movements that have grown up so fast and became established in Europe and not only. Such ideas do find breeding ground in the electorate. So, can we say, with the intention to be provocative, that

---

<sup>2</sup> A. Z. Huq, T. Ginzburg, *How to Lose a Constitutional Democracy*, UCLA Law Review, (2017).

the People - or at least a significant part of it - is somehow disappointed by constitutionalism?

Has constitutionalism become an elitarian ideal type?

That is the message that some political movements worldwide seem to be wanting to send. And it is a worrying message. What seems to be happening is that principles of constitutionalism, designed as guarantees for the safeguarding of constitutional democracy, are interpreted and reported as limits to popular sovereignty.

But in a constitutional democracy popular sovereignty is not absolute, nor unlimited. On the contrary it is mitigated by boundaries aimed to avoid the violation of the essential core of the Constitution itself.

We don't need here to remind the harms caused by the indiscriminate interpretation of popular sovereignty in the rise of authoritarian regimes.

That's why I think that Ackerman's innovative proposal of a Popular Sovereignty Initiative is so important, because it is aimed to value the People's role in the decision-making process, preventing the risk of exploitation by more or less charismatic leaders. It is oriented to give the People the importance they deserve in determining the orientation of the constitutional order, within the framework of constitutionalism.