



*FACULTY OF THEOLOGY AND ISLAMIC STUDIES*  
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# REVOLUTIONARY CONSTITUTIONS

## CHARISMATIC LEADERSHIP AND THE RULE OF LAW



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FTIS of UT held international conferences in which Nadia Maftouni has talked with distinguished scholars like Bruce Ackerman, Dudley Andrew, Robb Moss, Gisela Striker, David Bordwell, Kristin Thompson, Nicholas Rescher, and Dimitri Gutas, Jonathan Rosenbaum, and Slavoj Žižek. Nadia, an associate professor at University of Tehran, a Yale appointee and on the board of *History of Philosophy Quarterly*, is a prominent Iranian philosopher, author and artist. Her presentation on Bruce Ackerman follows.

### Ackerman's Theory of Legitimacy as a Post-Weber Political Philosophy

Constitutionalism occupies a pivotal position in Bruce Ackerman's theory of legitimacy. Seeking to avoid the failures of Max Weber's theory, which ascribes political legitimacy to tradition, charisma, and bureaucratic rationality, Ackerman argues that nowadays debates over the legitimacy of states revolve, rather, around their constitutions. The latest work of the contemporary authority on constitutional law is an extensive analysis of historical, political, and cultural events of the twentieth and twenty-first centuries in various countries that criticizes, complements, and extends Weber's classic work.

This essay is an analysis of the role of the constitution of the Islamic Republic of Iran in Ackerman's tripartite model. After outlining the model, I will explain Iran's place therein. It is for the first time since the Islamic Revolution that the country commands attention in an academic work of such stature. Whereas Mao's and Stalin's experience serve as negative instances of the ideal-type, Iranian system exemplifies positive revolutionary constitutionalism as well as democracy. For Ackerman, the Iranian constitutional system has, after forty years, stood the test of time.

### Issues

The source of political legitimacy is considered a theological issue as well as a problem of political philosophy. Furthermore developing the structure of government of utopia, philosophers like Farabi took up the issue and regarded revelation as the main source of political legitimacy. (Fara 1991, 44; 1968, 133-134; 2004, 55; 2003, 116-121; 1987, 259; 1997, 195; see also: Maftouni a

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Baharluysi, 2011, 57-74) The most prominent theory of political legitimacy in modern era is of Max Weber. While Weber viewed political legitimacy as arising from tradition, charisma, and bureaucratic rationality, Ackerman puts forth constitutionalism as the dominant model of political legitimacy in the twentieth century. In an exemplary feat of scholarship that draws on years of comprehensive historical research, Ackerman compares the birth and evolution of nine constitutions. Bruce Ackerman is Sterling Professor of Law and Political Science at Yale, and the author of 19 books that have had a broad influence in political philosophy, constitutional law, and public policy. His latest book entitled *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law* explicates Bruce's thesis on constitutionalism. He's devoted a whole chapter, i.e. Chapter 12, on Iran and some analyses in the introduction and Chapter One besides. It should be mentioned that the mainstream literature on law has generally dismissed Iran as a case of dubious constitutional authenticity, if not outright authoritarianism. Challenging the orthodoxy, Ackerman considers the birth of the Islamic Republic of Iran among the world's original constitutional transitions that define the rise of world constitutionalism. (Ackerman, 2019, 1-53, 166, 295, 324-360, 395; for a book review see: Maftouni, 2019, 4-5)

The prominent topics in our current debates will be about: Ackerman's thesis on three pathways to constitutionalism; and the assessment of Iranian 1979 revolution, also called Islamic Revolution, in Ackerman's thesis. In addition to his latest book, Bruce Ackerman has made helpful remarks on these subjects in his special interview for *Tehran Conference on Constitutional Law*, made in Yale Broadcast Studio (2019).<sup>[1]</sup>

The governments of 20-21 centuries, Ackerman argues, try to legitimate their powers based upon constitutions, in different pathways though. He holds:

"Max Weber ... famously distinguishing between the very different appeals of tradition, charisma, and bureaucratic rationality. This trichotomy remains relevant, but it fails to recognize the distinctive attractions of constitutionalism."

Trying to fill the gap, Bruce asserts that each pathway of constitutionalism puts up with own features, attractions, and pathologies. (Ackerman, 2019, 1-3)<sup>[2]</sup>

Prior to developing this theory, Ackerman has dealt with a variety of issues around constitutionalism in the United States. (Ackerman, 1991, 1995, 1998, 1999, 2002, 2005, 2007, 2010, 2014) Evaluating the philosophical foundations of his view on the pathways of constitutionalism, Ackerman expends compelling efforts. (Ackerman, 1980, 1982, 1989, 1997)

### **The First Pathway: Revolutionary Constitutionalism**

Expanding trichotomy of Max Weber, i.e., tradition, charisma, and bureaucratic rationality, Bruce Ackerman declares his own trichotomy. As mentioned earlier, the core of Ackerman's theory political legitimacy is constitutionalism, varying in cultural and political conditions.

The first version of Ackerman's trichotomy is termed revolutionary constitutionalism. (Ackerman, 2019, 7) In greater detail in the first version, also called the first scenario and the first pathway,<sup>[3]</sup> a revolutionary trend has strenuous efforts to galvanize people against the government. Consolidating the status quo, these movements time after time fail to change the existing governments. However, every now and then revolutionary trends like Iran, Italy, Poland, France, and South Africa<sup>[4]</sup> succeed reasonably well, capturing the political power. Despite all differences between these revolutions and countries, all of them share common circumstances, in which "revolutionary insurgents manage to sustain a struggle against the old order for years or decades before finally gaining political ascendancy." (Ibid, 3-4)

Successful revolutionary movements go on in four stages, the first of which is attaining political power. Ackerman names the first stage, that is, the time of insurgency, Time One. We are not to think of the first stage as one in which revolutionaries just lean on the brute force strategy. "They also denounce the existing regime as *illegitimate*." In effect, the canons declared in the hard conditions of Time One as revolutionary principles will play a pivotal role in sustaining the revolutionary movement. Those principles included in the revolutionary pronouncements "set the stage for the construction of the new regime at Time Two," constitutionalizing the revolutionary charisma. That is to say, revolutionaries try to render their "high-energy politics into a constitution that seeks to prevent a relapse into the abuses of the past and commits the republic to the new principles proclaimed during the long hard struggle of Time One." (Ibid, 4)

Reminding us that constitutionalization is not an imperative, Ackerman points to totalitarian dictators like Lenin and Mao. He holds that Lenin and Mao, no less than leaders like Imam Khomeini, Nehru, Mandela, De Gasperi, de Gaulle, and Wafesa, were revolutionaries against the existing regimes. However, Bruce holds, "the constitutions generated by the Communist Party served as mere propaganda devices for Stalinist and Maoist terror, and failed to impose significant constraints on the subsequent authoritarianisms of Nikita Khrushchev or Xi Jinping." (Ibid, 7)

Spawned in Paris by Imam Khomeini, Iranian revolutionary constitution is deemed a positive instance of the first pathway according to Ackerman. (Ibid, 50) For Ackerman, the right of presidential election in Iran is a genuine right. Accordingly, Iran is regarded as a constitutional government. Replying to those who consider Iranian system to be a totalitarian regime, Bruce compares Iranian constitution with the constitution of the United States and demonstrates similarities between two constitutional institutions: Iranian Supreme Leader and American Supreme Court. (Ibid, 324-354)

"American Supreme Court justices, like the Supreme Leader, have life tenure—and also claim the right to safeguard the regime's fundamental values when they are endangered by popularly elected institutions. Obviously, the value commitments the two regimes are different; ... These differences are important. But they sho

not disguise the feature that the United States and Iran share in common: both are separation-of-powers systems that emerge from revolutionary constitutional traditions.” (Ibid, 325)

### **The Second Pathway: Reformist Constitutionalism**

Although Bruce speaks of three patterns, he expands upon the first pattern in greater detail. He even has included the first pattern in the name of his book: *Revolutionary Constitutionalism: Charismatic Leadership and the Rule of Law*.

Anyway, after the first model we will turn to the second pathway.

In the second scenario, while popular movements are seeking to change an existing regime, a trend from inside the existing regime takes on strategic concessions, dividing the outsiders into two groups of moderates and radicals. Such being the case, insiders ask moderate group to abandon the radical group, that is, to join the existing regime. “This co-optation strategy culminates in landmark reform legislation that allows the “sensible” outsiders to join the establishment—and thereby reinvigorates the establishment’s claims to legitimate authority.” (Ackerman, 2019, 4)

As an instance of Ackerman’s second ideal type, he speaks of Great Britain.

“Great Britain provides a paradigmatic example. During the Napoleonic Wars, its governing elite repudiated revolution as a model for legitimate transformation. But over the next generation, the establishment refused to support hard-liners, like the Duke of Wellington, who were determined to suppress all efforts at fundamental change. Instead, “moderate” insiders reached out to “sensible” outsiders to support the Reform Act of 1832. This set the stage for further acts of strategic co-optation at later moments of popular confrontation. During the twentieth century, perhaps the most salient example was the Parliament Act of 1911, which legitimated the politics of redistribution characteristic of the modern welfare state.” (Ackerman, 2019, 4-5)

Comparing and contrasting the two first patterns, i.e. revolutionary outsiders and reformist insiders, Ackerman believes that both of them emerge “emerge out of high-pitched struggles” while their outcomes vary. In the revolutionary-outside scenario, the existing regime is totally changed. But in the reformist-insiders scenario, the existing regime can weaken outsider momentum by making strategic concessions to the moderate revolutionary outsiders. (Ackerman, 2019, 5-6)

### **The Third Pathway: Elite Construction Constitutionalism**

After the reformist constitutionalism, we turn now to the third scenario of constitutionalism. In the third pattern, called elite construction, the story begins from the point at which an existing regime starts decaying from within. However, the populace does not embark on revolutionary movement. Ackerman explicates as follows:

“The emerging power vacuum is occupied by previously excluded political and social elites, who serve as a principal force in the creation of a new constitutional order. Sometimes the new constitution allows the old elites to retain a significant share of power; sometimes it doesn’t. But whatever the particularities, the key point is that the new regime is an elite construction, not a revolutionary creation.” (Ackerman, 2019, 6)

As an example of the third pattern, Bruce puts forward the case of Spain.

“Franco’s death propelled the Falangist regime into a succession crisis. Haunted by memories of the Spanish Civil War, moderates led by King Juan Carlos preempted another revolutionary upheaval by reaching an accommodation with Franco’s bitterest enemies. Resisting hard-line pressures, the young king appointed Adolfo Suárez prime minister, who reached out to bitter opponents—most notably Santiago Carrillo, leader of the illegal Communist Party. With the support of the army chief of staff and the leader of the Spanish Church, Suárez prevailed upon the Falangist legislature to pass a Law for Political Reform, setting the stage for free elections that included the Communists. When the electorate gave left and right extremists low levels of support, elite moderates were in a position to elaborate a democratic constitution, which was overwhelmingly approved by the voters at a referendum.” (Ibid, 6-7)

Although the referendum was a crucial part of this scenario, it was not following mass mobilization unlike the revolutionary constitutionalism—for example what happened in 1979 in Iran. For in Spanish case, the decision of King Juan Carlos was the most crucial part of constitutionalism. In 1981, it was King Carlos who could prevent the coup d’état against the existing regime, thereby emerging the elite constitution of a new legitimate government. (See: *ibid*, 7)

Contrasting the third and the first pathways, Ackerman holds that in the Elite Construction Constitutionalism there is no revolutionary movement but it is a camp of elite who reconstruct the constitution, instituting a new constitutional order.

On the other hand, the difference between the third pathway and the second pathway of constitutionalism is that in the third pattern the existing regime confronting a severe crisis might maintain a small part of political power. However, in the second pattern the existing regime making strategic concessions maintain the main part of political power. Moreover, the constitutions of the third pattern differ widely from the constitutions of the second model that are based on some succinct strategic concessions. (Ibid, 6)

## **In Brief**

Two facets of Ackerman’s theory go as follow:

Displacing Weber's trichotomy, he puts forth a groundbreaking version of legitimacy in our century. As he once put it, "It's passed time to move me on Weber's favorite list."

Pathways to constitutionalism can be categorized into three ideal-types:

- a. revolutionary constitutionalism,
- b. establishmentarian model, in which the insider-establishment gives strategic concessions to moderate outsiders,
- c. elite construction.

Or put another way,

- a. outsider revolutions, like the United States, South Africa, India, France, Italy, and Poland (out of revolution track)
- b. insider evolutions, like Great Britain, Canada, New Zealand, and Australia (out of establishment track)
- c. outsider elite, like Germany and Spain (out of elite construction track)

The main problem of path one is dictatorship in relevant cases, while the problem of path two is disestablishment and the problem of path three is that the elite constructions can't point to the broad popular legitimacy earned by revolutionary constitutionalism, lacking a long history of success.

The second aspect concerns Iran and its 1979 Islamic revolution. Iran, and Ayatollah Khomeini's leadership of its constitutional revolution, occupy a prominent position in this landmark contribution. A case of revolutionary constitutionalism, the Iranian experience compares with France, Italy, India, and South Africa, and contrasts with Mao's China and Stalin's Soviet Union.

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[1] “Yale Broadcast Studio is a full-service video and audio production department for recording, editing, and distributing high-quality video and audio for teaching, web, YouTube, and TV broadcast.” (<https://broadcast.yale.edu/>)

[2] Before his book, Bruce Ackerman presented his theory in *Revolutionary Constitutionalism Conference* (2018) in the New Haven.

[3] In his book, Ackerman uses the terms “pathway”, “scenario”, “model”, and “pattern” interchangeably. (Ackerman, 2019, 1, 3, 4, 6, 7, 8, 17, 27, 40, 42, 48, 49, 52, ...)

[4] Pointing to the ANC, i.e. African National Congress, I should mention that in 1979 in Iran there was no such organization. Rather, there were mosques all over the country. Mosques were revived by the second Pahlavi after destroying by the first, most likely because of the Cold War like what happened in the West. I couldn’t resist throwing in this remark that a difference between Iranian mosques and Western churches is that Shiite thought is more or less homogeneous across the country, while I’ve heard, as a tongue-in-cheek remark by a Christian friend, that almost each church on each street is sui generis!

