

Bruce Ackerman costituzionalista.

Laudatio per la Laurea Honoris Causa conferita dall'Università di Trieste

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The decision of the IUSLIT Department to award the “ laurea magistrale in giurisprudenza honoris causa “ to Bruce Ackerman underlines the amazing and innovative contribution he has given to the study of the main topics of constitutional law at the global level. This motivation correctly summarizes the most relevant aspects of the scientific work of the new doctor. Even when dealing with the formation, the interpretative developments and the transformations of the constitutional law of his Country, Bruce Ackerman has given a contribution which goes further the items he is studying. Special and productive attention is paid to the methodological aspects of his research and to the implied theoretical choices. His approach is always problematic and aimed at offering a reconstruction of historically relevant constitutional and political events in innovative juridical terms. History is an essential tool for the lawyers, as many scholars have learnt from professor Ackerman's teaching at the Yale Law School.

As a matter of fact, he follows this path of research in the frame of his seminal contribution devoted to the interpretations and transformations of the document adopted by the Framers of the American Constitution, even in absence of a formal process of revision. Dealing with such passages as the civil war, the New Deal, the last century civil rights case law of the Supreme Court, he has realized that all these events imply a continuous review of the legal configuration of the constitutional modifications. Therefore he emphasizes the importance of factors not explicitly provided for by the rules concerning the amendments of the 1787 Constitution. But he arrives at definitive conclusions only after having tested the practical usefulness of the newly proposed concepts at the scientific level. The elaboration of the historical genesis of the constitutional choices made by WE THE PEOPLE in more than two centuries opens the way to an articulate vision of the progressive change of the constitutional identity of the United States. The correctness of the choice is assayed step by step by converting the features of historical events in legal factors. However only at the third stage of his research he introduces a definition of the

concept of the living constitution suitable to the understanding of different moments of the constitutional and political developments, that are at the centre of his studies.

At the basis of these conclusions is the important and enlightening idea that the identity of a constitutional order can change with the time even if the text of the relevant Constitution is not formally amended. But the construction of the heuristic model of the constitutional transformations is not a concession to indiscriminate legal realism. Ackerman is always attentive to the compliance with the principles of the western constitutionalism by the political actors. I mean that the acceptance and elaboration of historical developments as factors of constitutional innovation is conditioned to the conformity of the behaviour of the institutions with the fundamental principles of the American constitutional order. The concept of the living constitution has to be the product of the analysis of the cycles of the popular sovereignty, but at the same time the relevant events have to be the result of behaviours fully respectful of the separation of powers and guarantee of human rights. This is the reason why Ackerman's research is always attentive to the changing case law of the Supreme Court as far as judges display an essential role in the implementation of the rule of law, even at the constitutional level. The constitutional transformations grow up along innovative constitutional interpretation.

We arrive in this way to another field of the scientific production of Bruce Ackerman who frequently confronts the problems concerning the heritage of the western constitutionalism. He has a peculiar position among the American scholars for his attention to the comparative legal studies which reminds us that of John Merryman, who was also awarded of the laurea honoris causa in giurisprudenza by the University of Trieste some years ago. On one side, he identifies the core of the constitutional heritage as the product resulting from the contribution of the revolutionary doctrines and events occurred on both sides of the Atlantic Ocean. The analysis starts with the last years of the XVIII century and arrives to the second part of the XX century covering both the adoption of the new constitutions after the second world war and the substitution of the liberal constitutions for the Mediterranean dictatorships. But he deserves special merits for having realized that after the fall of the Berlin Wall, perspectives were open to a new start of the expansion of constitutionalism. The countries of Central and eastern Europe had at that time a great opportunity to choose the liberal democracy through the adhesion to the principles of rule of law, separation of powers and protection of human rights. They lacked a tradition in this field, but they could profit from the cooperation of the existing western democracies and

the support of such sovranational institutions as the Council of Europe, the Organization for Security and Cooperation in Europe and the European Union.

The hopes of Ackerman were met by the progresses of the liberal revolution between the XX and XXI centuries, which conjugated the liberal freedoms with the commitment to social justice. However in recent times dangerous winds are blowing in Europe, other reasons of complaining are added to those which Ackerman derives from what he explicitly calls the decline and fall of American Republic. He supports the idea that it is a shame about the politicians' inability to deal with the new problems of the fight against terrorism, in the frame of the globalized world, without endangering the democratic institutions and the safeguard of human rights. The governments, and specially the Presidents of the United States have reacted by strengthening the Executives whose enlargement he aims at refraining by emergency regulations which should provide for the frequent check-up of the necessity and convenience of the adopted restrictions of human rights. In numerous editorials on the newspapers and in interesting instant books he exhibits what we Europeans and Italians would call civil engagement, and suggests to avoid a unjustified continuity of the emergency measures and to promote a deliberative process of the formation of the will of the people.

In conclusion Bruce Ackerman has always displayed great intellectual energy in calling our attention to the complexities of the contemporary constitutionalism which depend not only on the multiplicity of the manifestations and institutions of the democracy and of the human rights, but also on the great number and variety of the principles which have to be complied with. It is a clear admonishment to those scholars who think that a simplified interpretation of the contemporary experience of constitutionalism is possible, but also a caveat to those politicians who want to solve the problems of the contemporary world with an individual voice and decision.

Let me a final, personal note. Recently I have had the privilege to read and comment the draft of a new book of Bruce concerning the revolutionary formation and adoption of the Constitutions. It is an important and courageous effort of comparative constitutional law. I hope that when this book will be published next year, we'll be able to talk about it with Bruce Ackerman here in Trieste, again.

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