

Bruce Ackerman, *The Decline and Fall of the American Republic*. Cambridge, MA: Belknap Press of Harvard University Press, 2007. 270pp.

Julie Irene Prieto^{*}
Stanford University

Bruce Ackerman's *The Decline and Fall of the American Republic* serves in large part as a response to John Yoo's "torture memos" produced under the Bush Administration. Ackerman returns to them again and again in his latest book to query how an administration could not only produce, but exploit such a document to justify policy decisions in the context of the War on Terror. His answer is at once alarming and concise: the Executive branch has too much power, so much that its ability to act independently threatens the very foundation of the American Republic. The irony of the contemporary American Republic is, as Ackerman illustrates, that the "office that has sustained a living tradition of sovereignty threatens to become its principle agent of destruction." (4) Ackerman then sets forth to outline the structures that have allowed the President and his subordinates' power to become so perilous before offering a number of fixes to reverse the trend. Provocative yet short on detail, Ackerman's argument leads to solutions both elegant and unexpected. These recommendations frequently ignore the role of Congress in our current political crises, if not arguably by design. More troubling is Ackerman's treatment of the role of citizens in rejuvenating the Republic, which at once assigns too much and not enough importance to public opinion and its role in supporting presidential power and authority.

Ackerman begins his book with an exploration of the nexus of changes to our political system that have allowed presidential overreach to flourish. First are the factors emanating from outside the executive branch. Chief among these are structural issues that allow for a "charismatic outsider" (21) to gain greater traction than in the past in presidential elections. In this, Ackerman identifies the direct primary system in parties, the lack of an open primary, the decline of print journalism, and the subsequent growth of partisan news sources. At the same time, Ackerman argues that the military has become increasingly dangerous due to the

^{*} Julie Prieto is currently a PhD Candidate at Stanford writing a dissertation on public diplomacy between the US and Latin America. She can be contacted at jprieto@stanford.edu.

politicization of its officer corps. Military reform has led to fewer divisions between the branches and a greater reliance on the expertise of retired military officials in jobs that were formerly occupied by civilians. This gives the military more seats at the table in a crisis, while high profile “celebrity generals” increase the visibility of military views with the public. Within the executive branch, Ackerman focuses on the growth the Office of Legal Counsel and the White House Counsel, both of which he accuses of being “constitutional apologist for the sitting president.” (104) Staffed by political appointees, Ackerman targets the OLC in particular for issuing sweeping pronouncements on legal questions with an air of legitimacy that far exceeds its mandate to mediate legal disputes between agencies within the executive. The modern president therefore has an army of “superloyalists” (34) at his disposal, who lack the ability or the will to act independently of the chief executive. Ackerman here expresses significant vexation with his fellow academics and with the elite of both parties for offering little resistance to these changes, many of which he traces back to the last thirty years.

The book’s solutions to this complex set of circumstances are as numerous as the problems themselves. Some of them are timely and sensible. He prescribes a fix for the Electoral College that involves states pledging to assign their votes to the winner of the popular vote regardless of the local tally so that there is no repeat of the traumatic Bush-Gore stand-off at the close of the 2000 election. Ackerman also suggests a scheme for public financing of journalism that relies on public funding in proportion to number of views for the sort of heavy-weight pieces that feel so endangered with the collapse of print and paper. His call for a new canon of military ethics that places more emphasis on civilian control is similarly reasonable and apt. More disquieting are his suggestions for reform that entail sweeping changes in the polity. Ackerman calls for the establishment of a Supreme Executive Tribunal where parties could challenge the legal opinions of the OLC and WHC, thereby providing a check the power of both groups. This would presumably prevent the John Yoos of the future from writing legal opinions without fear of review by a court. While more independence within the OLC is certainly desirable, Ackerman glosses over the possibility that bringing in more lawyers to oversee the lawyers instead of simply restricting their mandate increases the danger of creating yet another institution that can be abused by an able president. Most alarming, however, is Ackerman’s suggestion that the President be granted extra powers in emergency situations for limited periods of time, with extensions based on a “supermajoritarian escalator.” (171) This system, in which the majority

needed to renew the expansions of power would get higher with each extension, seems ripe for the same sort of dangerous abuses that Ackerman aims to avoid with his prescriptions for reform.

Even ignoring this one suggestion, Ackerman's analysis becomes problematic when it turns to the issue of the citizen's role in reinforcing presidential overreach. Ackerman decries presidential attempts to gain legitimacy from opinion polls when the opinions given could be superficial, but his fix for creating deeper and more developed opinions, a national "Deliberation Day" before each election, seems ill-equipped to create the sorts of political beliefs that Ackerman would see as the proper basis for presidential action. Though provocative and worthy of discussion, Ackerman's analysis rejects the idea that the current political divisions of citizens are the result of deeper social and economic divisions that cannot be bridged by periodic intra-community debate.