



Decline and Fall

A little over a decade ago, in Volume 2 of his highly acclaimed *We the People* series, Yale law professor Bruce Ackerman portrayed the power of the presidency as a largely positive force, invoked against elitists, reactionaries, and constitutional formalists. But times have changed, and so has Ackerman. In fact, in his latest book, *The Decline and Fall of the American Republic* (Belknap Press, 2010), he warns that not only has the presidency become too powerful, but it is also more likely now to fall into the hands of a charismatic extremist. In January, Ackerman spoke with *California Lawyer* Editor Martin Lasden.



Bruce Ackerman

▶ For the full videotaped interview, go to callawyer.com.

Legally Speaking is a series of in-depth interviews with prominent lawyers, judges, and academics, coproduced by *California Lawyer* and UC Hastings College of the Law.

Q The title of your book has a Gibboneseque ring to it. Do you see compelling similarities between where the United States is right now and where, say, ancient Rome was during the waning days of its republic?

Well, on the one hand I don't buy into the thought of pervasive social decadence in America. I'm not a gloom-and-doomer so far as that's concerned. But I do think there is a parallel with ancient Rome. The American republic begins on the fringe of civilization just as Rome did. It begins as an anti-bureaucratic state. When Frederick the Great in Prussia declared himself the first civil servant of the state, Washington, D.C., had 2,500 officials, the large majority being customs people. The idea of a bureaucratic authority and the idea of having a major standing army—which we take for granted today—would have struck all our founders as a recipe for the decline and fall of the American republic.

The challenge for Rome was how to maintain a republic when it had an empire to run. Is that, in essence, our challenge as well?

The word *empire* is a melodramatic

word. I'd say that the challenge for us is: How do we retain a republic with an enormous military establishment? And how do we retain a republic with a presidency that has no relationship to George Washington's? George Washington was a revolutionary hero. He was sort of like Nelson Mandela or Charles de Gaulle. He was a republican general who ran an insurgency but didn't take the path of military dictatorship as so many insurgents do. He didn't get elected on a platform. He got elected on character.

This was before the emergence of political parties.

Completely right. The revolution of the presidency began in 1800, and I wrote about this in a book called *The Failure of the Founding Fathers*. The failure was that they didn't anticipate how parties would transform the presidency into an office with a mandate from the people. So by the time we get to the 20th century we have this notion that the presidency speaks for the people, something that the founders tried desperately to make impossible. They knew this kind of plebiscitary presidency was sort of like Julius Caesar.

Do you think our status in the world has led to a dangerously powerful presidency, or is it the other way around?

There are several pieces of this puzzle that we have to put together to understand our present predicament, and the first is how we select presidential candidates. The modern method really begins in 1972 with the Democratic Party insisting that the primary system must be the exclusive method of selection. And what that does is open the door for extremist presidential candidates.

And yet, when you look at the candidates who have emerged during those years, they've been for the most part rather moderate.

Completely right. But you know, 40 years is a short time. That's ten rolls of the dice. My point is that what the primary system does is to permit 20 to 30 percent of the electorate called Democrats and 20 to 30 percent of the electorate called Republicans to select these candidates, while the middle doesn't participate much at all. ... This is not healthy.

Does Sarah Palin pose a serious threat?

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This is politics for you to debate. But someone like that, a charismatic extremist, can become a nominee. That's the key thing.

Are you more worried about the presidency or the military?

Beautiful question. Both. We can see—and you just have to look around the world—lots of pathological scenarios in which the military and the presidency collaborate.

Let me read to you something that Teddy Roosevelt said in 1909. He said: "The biggest matters such as the Portsmouth peace, the acquisition of Panama, and sending the fleet around the world I managed without consultation with anyone, for when a matter is of capital importance it is well to have it handled by one man." Isn't that an expression of presidential power that at least equals anything Richard Nixon ever said?

Expression. I'm not talking about expression. I'm talking about capacity.

Didn't Teddy Roosevelt have the capacity?

No much. He could send the fleet around the world. Not much.

Apart from the question of whether the United States can survive as a republic, there's the more general concern over whether our country is in decline. Let's assume for the moment that we are in decline—culturally, economically, militarily—and that this decline is irreversible. Are we as equipped to have as graceful a decline as, say, Great Britain, which was able to keep its democracy even though it lost its empire?

Obviously we're declining. But I wouldn't overstate the rate of our relative decline. You know, when I walk into my classes at Yale there are eager students from around the world. But the perception of crisis—whether real or imagined—is a great motor for presidential authoritarianism as well as extremist reactions. And that makes the management of decline a trickier business. ¹⁴

Watch the full interview at www.callawyer.com.