

Reviews

The Unconventional Conventionalist

BRUCE ACKERMAN
WE THE PEOPLE: TRANSFORMATIONS
BELKNAP 1998

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“**I** AIM,” BRUCE ACKERMAN writes early in *We The People*, “to push the [Founding] Fathers off the pedestal without dropping them into the dustbin of history.” (32-33) In this historically detailed second volume of a planned three-part series, Ackerman molds rather than pushes, focusing on the recurrent pattern of constitutional change he finds in the Founding, Reconstruction, and the New Deal. In a nutshell, Ackerman argues that constitutional lawmaking is as much a result of the constitutional procedures laid down in Article V of the Constitution as it is the result of the voice of “We the People” speaking at the “constitutional moments” he identified in his first volume, *We the People: Foundations*.

We The People: Transformations analyzes the “extraordinary process of democratic definition, debate, and decision” (4) through which the Constitution was transformed during these three great periods in United States his-

tory. Ackerman argues that these changes were brought about in “unconventional” ways that did not follow the constitutionally prescribed process for amending the Constitution in Article V (or the Articles of Confederation). They were successful, nonetheless, because the U.S. has a “two-track Constitution” (5) which allows for “higher lawmaking.” The first track, “normal lawmaking,” captures the everyday political process where issues are mundane and most citizens are uninterested and only dimly aware of what is going on. In contrast, the “higher lawmaking system” (5) is triggered by the “The Prophetic Voice ... calling upon Americans to rethink and revitalize their fundamental commitments, to recapture government in the name of the People.” (3) At these rare times the American public becomes engaged and mobilized for political action. The result is authoritative and legitimate constitutional transformation which is not

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bound by the formal procedures spelled out in Article V.

Although *We the People* is billed as a book on constitutional law and its author is a respected constitutional theorist, it is more a political history of these critical periods in service of a late twentieth century liberal agenda than it is a study of constitutional doctrine. Ackerman's history is fascinating, but unfortunately his particularistic and ad hoc analysis of electoral politics and its relation to development of the law offers little in the way of new insights (much of the ground he covers was mapped by political scientists years ago). The "higher lawmaking" he postulates is not well supported despite his detailed research and graceful presentation. The surprising strengths and weaknesses of *We the People* make it, however, a useful addition to the legal literature – a first-rate political history and (yet another) caution about the pitfalls awaiting legal scholars who attempt to apply their considerable skills to other fields without adequate grounding in existing scholarship, and to advance a political agenda under the guise of impartial historical analysis.

THE HISTORY

Ackerman's history appears well-researched and is compellingly retold. Since it is the basis for his arguments about alternative means for changing the Constitution, at least a partial summary of his work is essential to a discussion of his analysis and conclusions.

The Illegality of the Founding

It was the framers of the Constitution who set the pattern. They faced a seemingly insurmountable set of problems. Article 13 of the Articles of Confederation required both congressional approval and the unanimous consent of all thirteen state legislatures for an amendment. To make matters worse, the Philadelphia Convention at which the Constitu-

tion was drafted had no authority to draft a document replacing the Articles. Finally, the proposed Constitution stated it would become binding with the ratification by two thirds of the states meeting in convention, thus violating not only Article 13 of the Articles of Confederation but also each state's own revisionary procedures.

In overcoming these legal obstacles, the framers went through a five-stage process that Ackerman argues was repeated during Reconstruction and the New Deal. First, the Framers held two conventions (in Annapolis and Philadelphia) that *signaled* their intentions to transform the existing constitutional arrangements. By winning congressional authorization both for the Philadelphia convention and then for submitting its final product to the states, the founders *legitimated* their proposal. They *triggered* the ratification process by calling for conventions, not existing state legislatures, to act. In facing down the "legalistic quibblings of their opponents," the framers created a "bandwagon" effect through which they brought pressure to bear on states to *ratify* the Constitution. Finally, when two states, North Carolina and Rhode Island held out, the new (secessionist) Congress went on the offensive, *consolidating* its apparent victory by threatening Rhode Island with economic sanctions unless it ratified the Constitution. In essence, the framers generated sufficient popular support for their proposal so that their running roughshod over existing legal requirements was inconsequential. Ackerman generalizes this five-stage process towards the end of the chapter, describing "five Founding activities ... [1] signaling, [2] proposing, [3] triggering, [4] ratifying, and [5] consolidating their constitutional authority." (66-67)

The result of all this was an illegal but nonetheless successful adoption of the Constitution. It was successful because the framers won overwhelming popular support for their Constitution through a lengthy process that

provided opponents ample opportunity to mobilize against them. This demonstration of popular support morally trumped legal requirements. And this is the beauty of unconventional adaptation. As Ackerman puts this “central claim: ... in America the People rule, and judges and other officials have an *obligation* to follow the People when, after appropriate public debate and decision, a mobilized majority hands down new principles to guide the polity.” (92) Popular sovereignty, then, acts something like adverse possession, conveying good legal title to actions taken outside of and in violation of the formal law. (93)

But what about Article V of the Constitution which sets forth well-known procedures for amending the Constitution? Ackerman argues that Article V “makes its procedures sufficient, but not necessary.” (15) Its procedures may be followed, but they need not be: “Whatever else Article Five may say, it does *not* claim exclusivity.” (73)

The Legitimacy of Reconstruction

Ackerman’s chronicle of the adoption of the 13th amendment and the battle royale between the Radical Republicans in Congress and President Johnson over the 14th amendment is riveting. To Ackerman these events show Americans transforming their Constitution outside of the formal procedures of Article V through a “rather successful adaptation of the Founders’ unconventional precedent to nineteenth-century conditions.” (120)

But this can’t be right, the reader might object. Weren’t the 13th and 14th amendments proposed by a two-thirds vote of Congress and ratified by three-fourths of the state legislatures as required by Article V? The answer depends on whether the defeated Southern states were to be counted for the purpose of Article V. If they were, then the proposed amendments were doomed to defeat. If they were not, then the legitimacy of the amendments was questionable: They would be

merely an exercise of military might by We the Conquerors, without the consent of the governed, rather than a constitutional act of We the People. For Ackerman, Reconstruction is the story of how the reformers navigated between these two choices and won ratification for their amendments in a legitimate and authoritative way.

The Fourteenth Amendment

Ackerman tells the tale of the 13th amendment masterfully, but it is with the adoption of the 14th Amendment that his historical narrative reaches its peak. After joining President Johnson in conditioning readmission to the Union on ratification of the 13th Amendment, Congress upped the ante, making ratification of the 14th Amendment an additional requirement for readmission. This demand, Ackerman notes, “made hash of Article Five,” (111) and with Johnson opposing it, all Southern states except Tennessee rejected the 14th amendment.

The Republican Congress had to come up with a legitimate ratification mechanism for the 14th amendment. What was needed was “a triggering mechanism that would override the Southern veto of the Fourteenth Amendment.” (195) The plan Congress adopted was to require that African-Americans be allowed to vote in the Southern states. Congress “explicitly promised” that as “soon as the new black-and-white governments joined to ratify the amendment,” representatives of the Southern states would be seated. (197)

But how was Congress able to overcome both Southern and presidential resistance to its plan and do so in a way that made the process legitimate and authoritative? Ackerman’s answer is through the electoral voice of the People. In the 1866 congressional election, “the Congressional leadership proposed the Fourteenth Amendment as the platform on which they called upon the American people to renew their mandate. Andrew Johnson used the

Presidency to mobilize the people against the Republicans by electing solid conservatives to Congress who would repudiate the Fourteenth Amendment.” (19) The great issue was squarely before the People and they could speak. They did so and conservatives “suffered a devastating personal, organizational, and electoral defeat.” (182) Johnson ignored the signal, however, and “rejected the temptation of a ‘switch in time.’” (189) His continued opposition led Congress to enact the Reconstruction Act of March 2, 1867, authorizing the military to create multi-racial governments in the South to ratify the 14th Amendment. It also led to the “unconventional threat[]” (209) of impeachment and near conviction of the President. Thus, “with the aid of the Union Army, enough states of the South signed on to the amendment” to reach the required $\frac{3}{4}$ ths. (211)

The amendment was consolidated as a result of the 1868 election. The Republicans won big, gaining a 2-to-1 majority in the House, a 5-to-1 majority in the Senate, and electing Grant president. They then used this “*consolidating event*” (237) to finish off the process. “With the Republicans in firm command of national institutions, the remaining states of the South had little choice but to ratify the Reconstruction amendments as the price for readmission to Congress.” (238) Turning to the Court, the Republicans expanded it back to nine justices (it had been shrunk to six to prevent Johnson from making any appointments) and packed it. The Court then upheld the validity of the 14th Amendment in the *Slaughterhouse Cases* and “effectively ended all serious legal debate” over its validity. (246)

In the adoption of the Civil War Amendments, Ackerman sees the five-stage process of the Founding – signaling, proposing, triggering, ratifying, and consolidating – repeating itself. Most importantly, Ackerman writes, for both amendments, “a sweeping victory in a national election gave the reformers the

mandate they needed for their unconventional triggering activities.” (206) Over and over, he stresses the crucial role of elections as the source of moral authority legitimating constitutional amendments: “It is only by repeatedly winning this cycle of popular election and institutional confrontation that the Republicans finally gained the constitutional authority needed to hand down the Thirteenth and the Fourteenth Amendments in the name of We the People” (125)

The New Deal

The New Deal is Ackerman’s toughest case because the Constitution was not formally amended. At issue was the attempt by President Roosevelt and the Democratic Congress to greatly expand the use of federal government power to deal with the Great Depression, and the resistance of the Supreme Court on constitutional grounds. In 1935-36, the Supreme Court invalidated a slew of important pieces of New Deal legislation. Roosevelt responded in 1937 with a court-packing plan that would have expanded the Court to fifteen justices and immediately given him six appointments. The Court capitulated before the plan was voted on, reversing nearly half a century of its constitutional interpretation and upholding the New Deal. This made the plan unnecessary and, by 1941, Roosevelt had made seven appointments through death and retirement to a Court of nine justices, which unanimously consolidated the new understandings. Ackerman argues that the victory of the New Deal vision is the equivalent of a constitutional amendment and worthy of the same authority and legitimacy.

President Roosevelt succeeded because he followed a process similar to the Republicans’ during Reconstruction. First, the President threatened opponents until they capitulated. The Court made a “switch in time” and the immediate crisis was averted. Second, Roosevelt made use of elections to energize

We the People. Roosevelt's unprecedented landslide in the 1936 election sent the message that We the People had decisively endorsed the New Deal. (311) Third, Roosevelt consolidated the victory by the "self-conscious use of *transformative judicial appointments* ... to establish the basic contours of constitutional doctrine." (26)

Ackerman also argues that the Supreme Court helped rather than hindered the legitimacy of the New Deal, by repeatedly putting "Americans on notice that the New Deal was shaking the foundations" of constitutional understandings. (303) This provided the opportunity for We the People to speak authoritatively in the 1936 election. However, Ackerman asks whether the Court "retreat[ed] too soon?" (315) Some of the opposition to Roosevelt's plan was not based on support for the Court but rather on a preference for a constitutional amendment to give the Congress appellate power over Supreme Court invalidation of congressional acts. Ackerman writes that the "Supreme Court *killed the debate by making its switch in time*" (315) and taking the "wind out of a debate over formal amendments that threatened to weaken the Court permanently." (345) This in turn leads Ackerman to his "central thesis: in the American system, *the Supreme Court largely determines whether a constitutional revolution will be codified in Article Five terms.*" (315)

LAWYERS, FORMALISTS & AMENDING THE AMENDMENT PROCESS

Having painstakingly laid out this historical argument, Ackerman also launches an attack on lawyers for their mono-causal world view. These "hypertextualists" argue that either the Constitution is followed to the letter or there is lawlessness. The "book's central target is hypertextualism – the naive, but orthodox, view that Article Five provides a framework

within which modern lawyers can explain all valid amendments since the Founding." (115)

Finally, in the last few pages of the *We the People*, Ackerman offers two new proposals, one for appointing Supreme Court Justices and another for amending the Constitution. Worried that the New Deal precedent of transformative legal appointments "may be abused by future Presidents with far more equivocal mandates than Roosevelt's" (405), Ackerman proposes requiring a two-thirds vote in the Senate for nominees to be appointed. (407) As for amending the Constitution, Ackerman proposes formalizing the process he sees repeating itself throughout American history, successful mobilization of We the People through consecutive elections: "Upon successful reelection, the President should be authorized to signal a constitutional moment and propose amendments in the name of the American people." (410) If approved by Congress, the amendment would be placed on the ballot in the next two presidential elections and added to the Constitution if approved by the voters.

A CRITICAL ASSESSMENT

We the People suffers from a confusion of analytic terms, from particularism, and from an ad hoc or post hoc quality to much of the analysis. To start, Ackerman mislabels his key argument. He calls the change he chronicles *unconventional* but, of course, if something happens repeatedly it is hardly unconventional. A more accurate description might be un-formal, or un-textual. For Ackerman unconventional simply means action not conforming to the procedures of Article V. Indeed, his whole point is that the text is not a good guide for understanding how Americans have interpreted and reconstituted their Constitution. America has been changed through political contestations. What Ackerman labels unconventional turns out to be "political." There is nothing

unconventional about political change.

Ackerman makes an argument about political change, not about the amendment process. The meaning of many constitutional provisions has certainly changed over time, but this is not the same as constitutional amendment. To put the point another way, Ackerman confuses political practice with constitutional change. Political practice can and has changed but it doesn't follow that the Constitution has been amended. Perhaps it is just less relevant? Or flexible enough to countenance a broad array of political arrangements? Paradoxically, while critiquing formalism, Ackerman reveals himself to be a formalist as well. To the formalist, Ackerman writes, "[i]f there are no formal amendments, there can be no legitimate change, and that is that." (260) But to Ackerman, if there is major political change there must be constitutional change, and that is that. For Ackerman, change in political understandings must be understood as change in the constitutional text. This is the argument of a formalist.

Realigning Elections or Eras

Ackerman has written a fascinating study of three historical periods in which major political changes were made. But the events he chronicles are more about politics than they are about Article V. Political scientists have also focused on political change, identifying elections as key mechanisms by which policy changes.

As James Sundquist explains, this theory of "realigning elections or eras" as it is called, posits that certain elections reflect a "shift in the distribution of basic party attachments" that restructures the political system in a new and stable way.¹ In particular, Sundquist notes

that the Civil War era and the New Deal are among those periods which "have been universally identified by historians and political scientists as the most significant political upheavals since the two-party system was established in the 1830s"² In examining these periods, Sundquist points to many of the same factors Ackerman identifies. Sundquist argues that for a realigning election to occur, there must be a five-stage process starting with an underlying grievance that is both broad and deep. Second, political elites must suggest different remedies for it and those of the incumbent, third, must provoke resistance. Fourth, the debate needs to sharpen, with the parties and candidates taking opposite positions from each other. Finally, voters must break their existing party ties and bind themselves to the new party configuration in a relatively stable way.³ This five-stage process is similar to Ackerman's. From this perspective, Ackerman is providing a solid historical account of how political change occurs in realigning eras. But this has little or nothing to do with amending the Constitution.

I Know It When I See It –

Constitutional Moments and Mandates

A major thrust of Ackerman's argument is that at constitutional moments Americans enter into higher lawmaking and the voice of We the People speaks authoritatively, amending the Constitution without following the procedures of Article V. But what are the criteria for knowing when this is happening? What is higher law? How does it differ from majority-supported law? How do we know it when we see it?

Ackerman's choice of constitutional moments excludes key periods of change in Amer-

1 James L. Sundquist, *DYNAMICS OF THE PARTY SYSTEM: ALIGNMENT AND REALIGNMENT OF POLITICAL PARTIES IN THE UNITED STATES* 6. Revised edition. Washington, D.C.: Brookings, 1983.

2 *Id.* at 47.

3 *Id.* at 41-47.

ican politics and in constitutional meanings. Take, for example, the issue of civil rights in the 1960s. Breaking with all previous law, the Congress enacted a number of far-reaching civil rights acts that amounted to a revolution in political practice. As Ackerman would no doubt point out, there was no Article V amendment process involved. But Ackerman does not consider this a constitutional moment. Perhaps this is because there was nothing that looked liked Ackerman's five-stage process. The 1964 election, for example, was not simply a vote about civil rights policy and national-state relations. It was also a vote about nuclear war and Goldwater's trustworthiness ("in your heart you know he might"). This, in turn, suggests that Ackerman's argument is really about the politics of realigning elections and the changes they bring, not constitutional change.

Or consider the process of incorporation through which many of the first ten amendments to the Constitution have been held by the Court to apply to the States. While there was no formal Article V process, neither was there anything resembling Ackerman's five-stage process. This suggests, again, that Ackerman is providing the political history for realigning elections, not a theory of constitutional change.

Ackerman also fails to answer Michael McConnell's argument that Ackerman's theory requires that the year "1874 be recognized as inaugurating a new and successful constitutional moment in which the People authorized the construction of a racist 'Jim Crow Republic.'" (251 n. 26) In a footnote covering four pages, Ackerman denies McConnell's claims but misses the bigger point: lots of important things happen in the political world that are not captured by his notion of constitutional moments.

The People?

The great dramatis personæ of *We the People* are, "the People." Throughout the book, Ack-

erman discusses how "the People" have acted in ways that legitimate constitutional change outside of the Article V framework. However, positing a clear view to the American public requires great subtlety, empirical sophistication, and care, a formidable task which Ackerman does not complete. Rather, he reacts to criticism of his vague notion by denying that he intends any "overly anthropomorphic understanding" which suggests that "the People" were the name of a superhuman being who could 'speak' at an election in the same way that you or I might speak at a lecture podium." (187) Rather, he writes that "the People" is the "name of an extended process of interaction between political elites and ordinary citizens." (187) If what Ackerman is writing about is a process, it would have been a lot simpler to drop the grand but misleading moniker "We the People." If he had, his analysis would come right back to the realigning election literature in political science, a literature that Ackerman ignores but where his eontribution appears to lie.

Ackerman's focus on "the People" also leads him to invest the public with extraordinary power. In discussing the 14th Amendment, Ackerman writes, "it was the People themselves who took this decision [about the 14th Amendment] away from competing political elites in Washington and decided it on their own responsibility." (162) This is too much. Political elites were key in structuring the issue, bringing it to the public, organizing debate around it, and interpreting the election results. Indeed, *We the People* focuses almost entirely on elite behavior. Ackerman is carried away by his own misleading rhetoric.

This is particularly clear in the unpersuasive way he glosses over the fact that the 13th and 14th amendments were ratified under deeply coercive circumstances. As Ackerman painstakingly details, Southerners were repeatedly threatened that lack of ratification meant continued denial of congressional rep-

resentation as well as further occupation by the Union army. "The People" may have spoken, but they did so with a gun to their head.

Particularism and Unsupported Claims

We the People offers an exciting and riveting historical account of three great moments in American history. Ackerman is not trained as an historian, however, and this ought to make the reader cautious about uncritically accepting the particularistic, ad hoc, and unsupported generalizations he draws from his admirably detailed narrative. It may well be that careful attention to historical detail (at which he largely succeeds) makes generalization (at which he is less successful) problematic. Reactive decisions taken by political elites under enormous pressure are treated by Ackerman as coordinated steps in a planned process. His history is careful enough to reveal major differences between the historical periods he studies, but rather than examine those differences he stretches his analytical framework beyond the breaking point in an unsuccessful attempt to line them up in support of his thesis. A couple of examples illustrate these problems.

Particularism plagues Ackerman's efforts to squeeze Reconstruction and the New Deal into the five-stage process he identified in his study of the Founding, and especially his treatment of what he calls the "paradox of resistance." (164) In the Reconstruction era, he argues, both President Johnson and the Court contributed to the legitimacy of the 14th Amendment by working to defeat it, while in the New Deal the Court's opposition "helped broaden the field of debate" and "contributed to the democratic character of the outcome." (312) Perhaps, but this makes *all* resistance important by definition. The Southern states were doing quite an effective job at strenuously opposing Reconstruction, and Conservatives, Republicans, and many business interests were vociferously opposed to the New Deal.

Ackerman does not provide evidence of the independent contribution of the President and the Court.

Ackerman's general argument requires there to be strenuous opposition to change so that issues can be fully contested and elections can become constitutional moments providing the moral legitimacy necessary for constitutional change. But this leads him to uncritically praise actions that threatened grave injury to key institutions. Ackerman argues that at the height of the controversy over the 14th Amendment, both the President and the Court "executed brilliant 'switches in time,' retreating before impeachment and jurisdiction-stripping in ways that saved them from permanent damage." (211) What was so brilliant about them? President Johnson was impeached and only avoided conviction and removal from office by one vote and the Court was seen as caving in to congressional pressure. Both institutions suffered damage because of their resistance to change, resistance which proved to be futile. Similarly, in his New Deal discussion, Ackerman makes a virtue out of a vice; the Court obstructed the New Deal and paid an enormous and long-lasting price. It was simply written out of economic policy and remains inconsequential in this fundamental policy arena to this day. Ackerman's question, did the Court retreat too soon?, is bizarre.

His discussion of transformative judicial appointments also suffers from his exclusive attention to particulars that support his theses. In discussing the New Deal, Ackerman claims that it is "rare for Presidents to use Supreme Court nominations for transformative purposes." (352) If he is right, then there is something particular about the New Deal that doesn't fit his five-stage pattern. But he's not right! The use of judicial appointments to transform constitutional understandings, or preserve them against transformation by others, has a long tradition in the U.S. It starts, of

course, with the Federalists packing the federal courts in the wake of Thomas Jefferson's election in 1800, and his similar actions upon ascending to the presidency. It continues through presidents Jackson, Lincoln and Grant, all of whose actions are mentioned by Ackerman. In more recent times, clearly presidents Nixon, Reagan, and Bush have attempted to use Supreme Court nominations for transformative purposes. Ackerman's history is both particularistic and misleading.

The most striking of many examples of ad hoc argument comes towards the end of the New Deal chapters, where Ackerman presents his "central thesis: in the American system, *the Supreme Court largely determines whether a constitutional revolution will be codified in Article Five terms.*" (315) This is an entirely new claim. Ackerman has presented no discussion of it in his earlier cases and it doesn't appear to fit them. It may well be that in the New Deal period the Court's switch in time made it unlikely that a constitutional amendment would be successful, but this is simply a particular claim about a particular historical event.

ACKERMAN'S AIMS OR THE FRUSTRATED LIBERAL

Given the difficulties I have identified, the reader may wonder what is driving Ackerman. Fortunately, he provides a clue late in the book: "I write as a member of a generation that, over the last twenty years, has conspicuously failed to gain broad and deep popular support for any major constitutional initiative. During such times as these, our principal task is to keep alive the American tradition of popular sovereignty by preserving, as best we can, the memory of previous achievements." (344) This seems more than a little harsh on his "generation." How many generations have gained "broad and deep popular support" for "major constitutional initiative[s]"? While I don't know the answer to what is motivating

Ackerman, I suspect that he is a frustrated liberal. As such, he understands that Article V makes formal constitutional change in a liberal direction virtually impossible in modern America. This is because popular majorities can be frustrated by minorities in just a handful of small, unrepresentative states, joined by a few conservative states. A frustrated liberal might be tempted to search through American history to find examples of change not constrained by Article V. This may explain the argument of the book and its troublesome analytic, historical, and theoretical claims.

Ackerman as frustrated liberal may also explain his proposals for increasing the number of votes needed to confirm Supreme Court nominees and for revamping Article V procedures. If the historical record suggests there is nothing new or different about contested Supreme Court nominations, then perhaps Ackerman is concerned with conservative presidents successfully packing the Court. If so, raising the barrier for appointment may constrain presidents to appoint centrists. This proposal requires critical examination and Ackerman doesn't provide it.

Ackerman's proposal to revamp Article V comes at the end of the book and nearly took my breath away. After 409 pages arguing that Article V's requirements are not an impediment to constitutional change because of the unconventional patterns he has highlighted, the proposal is a shocker. If Ackerman is right, this proposal isn't necessary. As the old saying goes, if it ain't broke, don't fix it. What is the problem? What would usefully support his proposal is an examination of failed constitutional moments; times when large majorities of Americans consistently supported a particular outcome but were frustrated by the Article V requirements. Ackerman provides no examples.

Further, the proposal credits that small segment of the American public that bothers to vote with a level of knowledge, understanding,

and foresight that lacks support in any serious literature. From social science survey work to social choice theory, the opportunity for manipulation under such a scheme seems vast. At the very least Ackerman needs to offer a full and developed defense for this argument.

CONCLUSION

Despite its flaws, *We the People* presents a historically rich examination of several periods of

political realignment and political change in the United States. On this level, it makes an important contribution. As a theory of constitutional change, however, its contribution is more problematic. Attacking formalist notions of constitutional change, Ackerman reveals himself to be a formalist as well. Ackerman's plea is that it is "about time for lawyers to move beyond their myopic focus on the work of courts." (252) It is a pity he didn't heed his own words. 