

00:00:00

Announcer: From CurtCo Media.

00:00:02

Bruce Ackerman: What we need is elections in which citizens come and say, "Look, we're going down a disastrous course, the same course that is being pursued in Turkey, in Japan, in Brazil. We're going down the path to dictatorship. We cannot do that. This is not the America we had."

00:00:30

Bill Curtis: That was the renowned Yale law professor, Bruce Ackerman. In today's episode of Politics: Meet Me in the Middle, we bring Professor Ackerman back, because the events occurring in cities across America today have made his observations even more prophetic than when we first featured his interview back in May. He says, "Not to become complacent or to take our constitutional rights for granted, and that the only insurance we have against excess executive power is to hold our leaders accountable through our ballot." Frederick Douglass wrote, eternal vigilance is the price of liberty. This week's events show us that those words are as true today as when they were written back in 1888. In this episode, Professor Ackerman reminds us that in order to protect our freedoms, we must always be on guard against all enemies, both foreign and domestic. I'm Bill Curtis. Allow me to introduce our panel. Firstly, connecting through Zoom, our cohost Pulitzer prize-winning historian, bestselling author, and worldwide lecturer, Professor Ed Larson. Nice to see you again, Ed.

00:01:41

Ed Larson: Nice to see you, Bill. I'm still looking forward to talking with Bruce, one of the great names in legal academics.

00:01:48

Bill Curtis: Also Zooming in, Jane Albrecht, an international trade attorney who has represented U. S. interests to high level government officials all over the world. She's also been involved with several U. S. presidential campaigns. Jane, nice to remotely see you as well.

00:02:03

Jane Albrecht: Always good to see you, Bill, Ed. Delighted to be here with Bruce Ackerman.

00:02:07

Bill Curtis: Well, joining by Zoom, our special guest today, as you may have heard, Bruce Ackerman. He is a sterling

professor of law and political science at Yale Law School. He's an American constitutional law scholar and the author of 19 books in political philosophy, constitutional law and public policy. His most recent book published by Harvard University Press is called Revolutionary Constitutions, which takes us on a world tour of constitutional crises while examining today's assault on one of our favorite discussion topics here at Meet Me in the Middle, checks and balances. Welcome Bruce. Nice to see you Zoom in.

00:02:45

Bruce Ackerman: It's a pleasure.

00:02:46

Bill Curtis: Bruce. You don't describe yourself as a political scientist. You are described as a political philosopher. What is that exactly?

00:02:53

Bruce Ackerman: What I've done is to actually spend the time to go through the American constitutional tradition and try to understand how the participants themselves understood things. There's this constant temptation to look back and say, "Oh, well, this is how it turned out, but it's not clear to them that this is how it's going to turn out." Not at all. It's just as obscure as it is to us. We don't know how it's going to turn out 10 years from now. We know we have to struggle to try to solve the problems of the 21st century and our government as they reveal themselves to us. Well, that's just the situation the founders were in. The idea that this crisis which is real, is unique in American history is simply false. The crises of the 1960s in which millions of racist people, not only in the South, but in the United States mobilized Brown against Board of Education. The millions in the White Citizens' Councils were just as mobilized and numerous as the movements led by Martin Luther King for civil rights.

In the 1930s, we had dramatic polarization in the crucial election between Franklin Roosevelt, in 1936, and Alf Landon. Roosevelt makes a famous speech just before the election condemning these malefactors of great wealth and asserting that, "We the people will not tolerate this." The idea was that the 1930s was anything less than this profound confrontation between two polarized ideals of what America should look like resolved by repeated elections. But, the notion that America is just in the good old days, we adjust a spoke in a civilized manner to one another. No, we have constructed and reconstructed the foundations of our democracy time and again, with a good deal of success. The question is, of course, whether we will manage to do it this time.

This is a challenge for every generation, we have as it were, a revolutionary tradition.

00:05:27

Bill Curtis: Were people more interested in fully knowing the facts at that time? Or, were they just as partisan then and heard everything through the filter of their own opinion?

00:05:41

Bruce Ackerman: The American people of today are by far the most educated population in the history of the world. 99% of Americans have high school degrees to be sure. Many college degrees, many high school degrees are not very good. That's qualitatively different from not having any serious education, which was our condition only 50 or 75 years ago. We have two sides of this equation. One side is, we have the most educated, capable population for seeing through and analyzing the news. On the other side, what we have is as a crisis of serious journalism. The number of serious journalists in the United States who are covering state capitals is virtually nonexistent.

00:06:37

Bill Curtis: Why do you feel that's happened, why the seriousness of the journalism research has fallen by the wayside?

00:06:43

Bruce Ackerman: Simple economics. Before the rise of the internet, newspapers around the country were basically financed by [inaudible 00:06:49]. Today, they've lost their (inaudible) and so the serious journalists, let's say something like the St. Louis Post-Dispatch, which was a great newspaper. They have been wiped out by the internet revolution.

00:07:05

Bill Curtis: I'd like to dive in a little bit and define a couple of things. Ed and Jane, is it reasonable for a chief executive during a pandemic to describe himself as a wartime president?

00:07:15

Ed Larson: The constitution gives particular powers to a president in war time because the constitution makes the president and only the president, commander in chief of the army. That's a unique distinction that's in cradled into the constitution. In contrast, the constitution, doesn't give the president any particular power whatsoever in a healthcare crisis because the constitution created a Federal Republic. When they created that Federal Republic certain areas like

education and health and safety were primarily afforded to the States.

But, when you're dealing with individual healthcare, that is historically been a state issue. You don't really have the same sort of idea, but commander in chief, because as we're finding with this pandemic, but it could go back to any other one like the Spanish flu of 1918, it's different in different places. Therefore, one reaction might be appropriate in Alaska or North Dakota, and another reaction might be appropriate in Georgia or California. Therefore, it's a classic issue of federalism. But, when you have a war effort, you don't say that New York should handle world war two, one way and California should have it in another way. Everyone would immediately see that, just absolutely ridiculous.

00:08:39

Bruce Ackerman: Jane, we understand that commander in chief of our armed forces, that's a concept we can wrap our arms around, but domestically, what is contemplated as a chief executive power at a time like a pandemic

00:08:52

Jane Albrecht: Essentially, when Trump calls himself a war time president, it is to a certain degree and to a great degree, symbolic. The degree to which wartime powers in the constitution will kick in is questionable. There are certain areas in the constitution where the president's given certain powers in terms of foreign relations. The power to declare war is really in the hands of the Congress. To me, when he says he's a wartime president, it's mostly symbolic

00:09:20

Bill Curtis: President Trump declared that when somebody is the president of the United States, their authority is total. They have total power.

00:09:28

Bruce Ackerman: Yes.

00:09:29

Bill Curtis: How do you feel about that in this particular circumstances of managing a pandemic?

00:09:34

Bruce Ackerman: The bugs are not a war.

00:09:36

Bill Curtis: You don't think so, it seems like a war.

00:09:38

Bruce Ackerman: Listen, a war is human beings attacking other human beings. This is as Ed pointed out a public health emergency. We want to look beyond Trump. Unless we do something constructive on this front, some future president, two presidents down the line, he will feel himself free to intervene in one or another conflict that he thinks is of great importance, which is deeply controversial in the country and use the equivalent of Trump as a great precedent justifying this.

00:10:10

Bill Curtis: You're hoping for a more benevolent law abiding president. But how does the system, in fact, ensure that we're protected against such things?

00:10:18

Bruce Ackerman: There's no insurance. There was no insurance, that the new deal would be relatively successful. There was no insurance that the civil rights revolution was going to occur. There is no insurance at all. However, there is an opportunity Trump dramatized to the American people, the danger of this kind of unilateral executive power and the next president or the president after that will have the opportunity to have to use a metaphor that Ronald Reagan used and Franklin Roosevelt used, the first hundred days. What should the first hundred days be? What are the really crucial initiatives which we should adopt immediately, so as to assure that another set of abuses, like those of Trump will not occur?

00:11:17

Bill Curtis: In this case, what is Congress's ability to actually make change, that allows anyone who comes into office and assumes the role of King or dictator? What allows us to control that environment? We're going to talk about that when we come back from this break, because I've got to go call my doctor and see if putting Clorox in my coffee is appropriate. We'll be right back

00:11:51

Speaker 2: On medicine. We're still practicing. Join Dr. Steven Tabak and Bill Curtis, for real conversations with the medical professionals who have their finger on the pulse of healthcare in the modern world available on all your favorite podcasting platforms produced by CurtCo Media.

00:12:12

Bill Curtis: We're back with Ed, Jane and Bruce. Bruce, you said the primary number one responsibility is to cast your

ballot, knowing what the issues are and choosing a representative on the basis that they are pursuing the right direction for the future. That is how you would describe that responsibility that we have as citizens?

00:12:32

Bruce Ackerman: You see, there are two different dimensions. We have the fundamental responsibility to train, to educate people, to be good citizens by understanding and talking to the other side in your classrooms. Civics is no longer a central element in the curriculum. This is a tragedy. American history is no longer at the core of our education. At the present time, we have the homeschooling movement, which makes it virtually impossible to have the child hear the other sides because their parents are teaching them.

00:13:16

Bill Curtis: Are you saying that a primary responsibility of the citizen is to educate each other or to insist that we ourselves get educated?

00:13:26

Bruce Ackerman: The fundamental obligation of the older generation to the younger generation of citizens is to educate the younger generation to be citizens in the way that I'm describing it. Then when these people grow up, they have another fundamental obligation, which is the ballot.

00:13:48

Bill Curtis: You are saying that a requirement is to educate ourselves on the issue and cast a ballot accordingly?

00:13:54

Bruce Ackerman: That's right. And, everybody realizes that. If they didn't, they wouldn't show up at the polls at all. The minimal requirement of citizenship is to cast informed vote. The second one is community service. In The Second World War, It took the extraordinary form of the draft. One of the most significant things that has changed over the last 50 years is the 1973 decision to eliminate the draft. The question is whether there's another form of community service that is more appropriate in the 21st century. It's those three requirements to educate the next generation for citizenship, to cast an informed ballot, and to recognize your debt to the community in a way that's meaningful in the 21st century. Those are the three fundamental elements that we need to reconstruct in a world where journalism has fallen apart, where the public school system is in disarray and where we don't have a structure of recognizing in a constructive way, how much we owe to being an American.

00:15:25

Bill Curtis: Bruce, yesterday in our discussion, you were talking about your feeling that there was a disintegration of the constitutional tradition. Tell us what you meant by that.

00:15:35

Bruce Ackerman: Well, the question is, are we a democracy or are we a plutocracy? Is our politics so dominated by big money that this fundamental right of the citizen to cast his ballot for a change or not change, been profoundly undermined by the power of big money? After all, we just see Bloomberg spend a billion dollars of his own money. And, the courts have said, you have a constitutional right to spend your own money. We have not only big money, but we have the courts supporting the power of big money. Is there anything we can do? Well, there is. Working with Congressman RO Khanna K- H- A- N- N- A, he and I have worked out a statute, which is now been, he submitted to for consideration by Congress. What we argue for is this, every registered voter gets 50 democracy dollars to spend in presidential elections. So, each registered voter starts talking to his friends and neighbors, who should I spend this money for? You can't spend for anything else.

00:16:55

Bill Curtis: You're still making it a popularity contest.

00:16:58

Bruce Ackerman: We're making it into an election, each citizen is going to go to the polls and cast his ballot, and now he has an effective way of changing the conversation. The only people who'll get this money are people who say, "I'm not going to use my own path, I'm not going to ask people to cash. I'm only going to finance my campaign with democracy dollars."

00:17:23

Bill Curtis: Well, so that seems like a reasonable concept in this situation where you have to bring that to a body of people to vote on, who are in power. And, those people are in power, perhaps for the wrong reason. Maybe they got their money through special interests or otherwise. How do you convince them to actually vote in a new concept that makes their position weaker?

00:17:48

Bruce Ackerman: You see, you're simply believing that the status quo is invincible. Let's shake the green movement. Environmentalist, they'd love this. They believe in grassroots

participation, all the environs would latch on, so will people who think that the right to bear arms is really fundamental, because they think that they will be financed by democracy dollars by their true believers.

00:18:17

Jane Albrecht: But, if they've chosen, as many of them have done already, not to participate in the public campaign finance system, because it will limit their fundraising and other respects. In other words, they've made the calculation. They think they can raise more without it.

00:18:29

Bruce Ackerman: What I'm talking about is something that looks like big money, compared to what was done before. \$ 50 for every American voter is after all \$ 7 billion.

00:18:42

Bill Curtis: It would be substantial, no doubt. But the question is that the people who are in power got there through being empowered with their own financing methods, and we're asking them to make a change based on the greater good. Generally we haven't seen a lot of politicians looking to make changes and for the greater good in these days.

00:19:03

Bruce Ackerman: Well, that's what happened in the 1960s, the 1930s with Ronald Reagan. You're just freezing this moment of status quo as if it were eternal. If it is then American democracy dies.

00:19:19

Bill Curtis: Totally agree, and frankly, I would like to see all forms of campaigning with advertising, be eliminated the way cigarettes and tobacco has been eliminated. I don't think that-

00:19:32

Bruce Ackerman: Absolutely not. You want ignorant voters.

00:19:34

Bill Curtis: No. What I want is a press that has obligations to do town halls and debates and constructive education as you described before.

00:19:45

Bruce Ackerman: You cannot obligate media, there's freedom of speech in this country.

00:19:51



Bill Curtis: We used to be able to obligate media because they had licenses bestowed upon them by the FCC, and they could obligate them to a lot of things.

00:20:00

Bruce Ackerman: That system died in 1984. What you now certainly, and I applaud you, certainly you're saying, "Aha, there's hope," what we need is elections in which citizens come and say, "look, we're going down a disastrous course, the same course that is being pursued in Turkey, in Japan and Brazil. We're going down the path to dictatorship. We cannot do that. This is not the America we had."

00:20:36

Bill Curtis: Bruce, as long as there are intelligent people like you offering us ideas on how we can adjust the status quo or American democracy, we'll no doubt stay on the right path. Well, that's it for the show. Thank you, Bruce Ackerman for joining us today and giving us some unique concepts to ponder. And, of course, thanks to our co-host Ed Larson and Jane Albrecht. And, thank you for listening. We'll see you next time on politics, Meet Me in the Middle. I'm Bill Curtis. Stay safe, everyone.

If you like, what you hear, please tell your friends and let us know how we're doing by leaving a comment. It really helps if you give us a five star rating and we really appreciate it. You can also subscribe to the show on Apple podcasts, Stitcher, or wherever you listen to your favorite podcast. This episode was produced and edited by Mike Thomas, audio engineering by Michael Kennedy and the theme music was composed and performed by Celeste and Eric Dick. Thanks for listening.

00:21:35

Announcer: From CurtCo Media. Media for your mind.