**Beyond the constitution**

Ammar Ali Jan January 29, 2020

The world today is witnessing a fascinating rebirth of popular republicanism. The central feature of this phenomenon is the mass public participation of citizens in defence of rights guaranteed in the constitution.

From India to Lebanon and from the US to Chile, movements have invoked their country’s constitutions to attack the excesses of right-wing governments, turning a legal document into a mass political weapon. Even in Pakistan, recent movements for ethnic rights and student unions have invoked the country’s constitution to demand justice and greater representation.

It is pertinent to ask the reasons for such widespread appeal of constitutionalism today as a potential unifying force against tyrannical regimes. The more intriguing fact is that the constitution is being invoked by left-wing protesters who often view constitutional details and the law as mystifications of actual social relationships. What explains this reversal?

Modern constitutions are intertwined with the rise of capitalism and the Republican revolutions of the 18th and 19th centuries, leading to novel problems in the political, economic and social dimensions of life. The political question that guided Republican thinking was the creation of a new basis for sovereignty that could replace absolutism with public reason and political participation. The economic question consisted of placing adequate measures in defence of private property to facilitate the rising bourgeoisie. Finally, the ‘social question’ revolved around ensuring that the state provided certain entitlements to its citizens in order to prevent the eruption of revolution, a fact that haunted constitutional thinking in the 18th and 19th centuries.

It is easy to see how these different imperatives would collide and contradict each other, leading to a complex set of conflicts that consistently threatened constitutional regimes. Balancing the desire for national unity with individual freedom, as well as bringing together pursuit of personal profits with collective prosperity remained a challenge for disparate governments. After multiple revolutions and Two World Wars, a compromise was reached in the shape of the ‘welfare state’ model where corporations were permitted to pursue their profits while the state was committed to redistributing a part of the wealth. The political form of this compromise was liberal democracy which allowed for (unequal) representation of different interests, ensuring that capitalism was finally in sync with the social and political questions it helped generate.

The entire architecture of welfare democracy, however, began dismantling in the 1980s when the welfare state faced a massive debt crisis that undermined its sustainability. The response of global powers and International Financial Institutions was to impose privatization and deregulation in order to drastically reduce the role of the state in directing the economy. This meant that Capital was no longer constrained by social or political considerations, widening the schism between private wealth and the general interest.

The aggressive commodification of natural resources such as water and the transnational movement of industry in search of cheap labour meant that capitalism began exceeding the territorial and institutional limits that were set upon it during the age of welfare states. The financial crisis of 2008 accelerated this process as billionaire bankers were bailed out while millions of people were abandoned to a life of extreme financial uncertainty.

This undermining of the economic commitments towards citizens went hand in hand with an undermining of the constitutional rights granted to citizens. The Italian philosopher Giorgio Agamben pointed out in the early 1990s that Western democracies were increasingly invoking a “state of exception” to suspend legal protections within their countries. While they were often limited to regulating the movement of refugees and immigrants, it soon became apparent that the ambit of these exceptional measures would be widened against vulnerable communities.

From the ‘Patriot Act’ to the imposition of emergency in France and Eastern Europe to discriminatory laws in India, there has been a growing tendency of erasing the legal framework to protect a defaulting status quo. The use of pervasive surveillance technologies against citizens only confirms that the economic emergency is now intimately tied to a legal emergency. What is worse is that the political Centre, from Bush to Obama and from Blair to Cameron, had an undeclared consensus on this new regime of impoverishment and global surveillance.

The perverse appeal of Far-Right authoritarian figures is that they have removed the veil of liberal politeness from the authoritarian infrastructure that already shaped our lives, thus making their clownish behavior appear more authentic than the traditional political managers of the system. They have also managed to position themselves as anti-status quo by scathing critiques of the mechanisms of procedural democracy while strengthening the myth of the ‘free market’. A recent example of this process was the election campaign of British Prime Minister Boris Johnson, a man born and raised in privilege, who campaigned as a representative of the “will of the people” against the overbearing bureaucracy at Westminster.

In this context, it makes sense why the Left all over the world would hold onto bourgeois legalities in order to confront the onslaught of right-wing authoritarianism. It appears as a strategic maneuver to express the gap between the historically formulated ideals of contemporary nation-states and the exclusionary practices of existing governments.

From the Yellow Vests in France to the anti-CAA protests in India to the impeachment proceedings against Trump, the Left is invoking constitutional guarantees to check the dangerous onslaught of the Right. It is also not surprising that those defending the constitution today in India and Pakistan are being termed traitors, a bizarre allegation that transforms the state’s foremost legal document into subversive literature.

Yet, a danger inherent in this approach is that it provides reactionary forces with a monopoly over the language of change while the Left, a force historically associated with transformation, appears to be defending a defunct system. The situation becomes even more untenable when we consider that we live in “the Age of Anger” (to borrow from Pankaj Mishra) in which many ordinary people are extremely suspicious of institutional politics.

The paradox for progressives is that they cannot ignore the ongoing constitutional struggles as the latter are providing the terrain on which an opposition to the Right can be expressed. Yet, this necessary phase will be incomplete and prone to failure unless a new articulation of the political, economic and social spheres is formulated.

This means we are in search of new ideas that can move beyond the debates of constitutional procedures and recognize the growing protest movements as nuclei of a ‘constituent power’ that can rewrite the rules of the game in favour of the public. The ongoing anti-government movement in Chile provides a glimpse of what the next stage could be for struggles pivoted upon the constitution. The protesters have recently demanded a new constitution that guarantees social rights and reverses the growing inequality in society. This move from defending existing provisions to demanding new configurations of power will be of decisive importance if the ongoing struggles are to defeat authoritarianism and build a radically different and better society.

The modern concept of ‘revolution’ appeared in the political lexicon precisely when the demands of an agitated public exceeded the institutional frameworks of society. The polite debates on legal reforms in late 18th century American and France in 1789 and early 20th century Russia transformed into revolutionary upheavals against the system precisely because the ruling classes were unable to respond to the growing crisis in society.

If the contemporary status quo continues to prove itself incapable of reform, and if the growing protest movements developed a unified vision for the future, we might be on the cusp of a new revolutionary era in modern history.

The writer is an historian and a member of the Haqooq-e-Khalq Movement.

Email: ammarjan86@gmail.com