The Round Tables: Then, Now and in a Possible Future. Ten Theses

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09.12.2019 doi: 10.17176/20191209-180831-0

I.

30 years ago, the Round Tables of 1989 negotiated the end of several state socialist regimes. They represented highly innovative forms of both regime transition and constitution making. Following the more complex and less planned Spanish reforma-pactada-ruptura, the Round Table in Poland was to become a model for the rest of Central Europe. Most importantly, a specific scenario was generated for the overcoming of the reform or revolution dilemma that has plagued all radical politics since the early 20th century. Adding the new element of the round table of the opposition (EKA) that established unity and bargaining strategy for the national version (NKA), the Hungarian process fully overcame the liability so often stressed by transition scholarship, one still confirmed in Poland. Now it became clear that negotiated transitions do not have to involve undemocratic concessions to the earlier governmental power.

II.

Yet, the developed form of the round table model was not achieved in either Poland or Hungary, nor especially where the national question partially defeated the model: Czechoslovakia and the German Democratic Republic. As it were teleologically, the developed form of a full round table led democratic regime change was achieved only in South Africa, in the early and mid 1990s (Codesa in 1991, MPNF of 1993, Constitutional Assembly of 1994-1996). It involved: 1. A two-stage process with free elections in between them; 2. The making of two (interim and final) substantively liberal democratic constitutions; 3. The generation of fully democratic rules of constitution making in the interim constitution, 4. along with principled restrictions on the democratic constituent power 5. The latter were enforced by a new constitutional court. 6. Finally, there was a high level of extensively organized public education, discussion and involvement during the second stage of the process, under the interim constitution, producing strong democratic legitimacy for the outcome.

III.

There are empirical as well as normative reasons for considering the South African version of round table led negotiated regime change superior to all others. The empirical reason has to do with its over 20 year period of survival, even in the face of authoritarian-populist challenges under the Jacob Zuma presidency[1], linked to intense grievances that are partly shared with other countries across the globe (inequality, weak welfare state protections, incomplete form of retroactive justice etc.). The not unrelated normative reason lies in the achievement of a complex from of legitimacy consisting of liberal, party-political, and participatory democratic dimensions. The high commitment of the undisputed leader, Nelson Mandela, to all these values was important, but countless militants shared and promoted the same combination. Thus today in South Africa it is much more difficult to represent the new constitution as a product of mere elite agreement, or as old regime imposition.

IV.

The developed model of the two stage process can and should be used to help diagnose what went wrong elsewhere. Here I focus only on Poland and Hungary. In the former, the undemocratic concession of presidential government should have been more completely removed in the eventual interim constitution (The

[1] It is symbolically important, that after Zuma, Cyril Ramaphosa, one of the architects of the South African process has become the president of the republic.

Small Constitution, 1992). Paradoxically it was not under General Jaruzelski but Lech Wałęsa's presidency, that presidentialism revealed its potentially authoritarian features opening the terrain to a populism that was to consume Walesa's own reputation in the end. (Ost *The Defeat of Solidarity*) A final constitution was made in 1997, but in the face of ongoing populist protest and self-exclusion. Even more dramatically, in Hungary where there were no rules for final constitution making in the interim version of 1989, the second stage of the process failed in 1996 in the face of a peculiar Left Right alliance foreshadowing the populist turn to come. Thus, in both countries the liberal democratic constitution of 1989-1990 could be (in my view: falsely) portrayed as a product of nothing but agreement between old and new elites.

V.

The emergence and success of national populism in Poland and Hungary cannot be reduced to the failure of constitution making, nor especially to the negotiated character of the first stage. (as in Mudde-Kaltwasser *Populism* p.37) The latter claim is that of populist leaders themselves, who like Orbán and Kaczyński were originally enthusiastic supporters of the round table process' first stage. But national populism is now (very unfortunately) a world-wide phenomenon that has its causes in very broadly shared democratic, welfare and status deficits. (Arato *How We Got Here*). The most that can be said is where the two stage round table process produced sufficient democratic legitimacy, the constitution was and remains better protected against populist attempts at refoundation, such as the one in Hungary as against the South African case. Even Poland the material constitution has been only partially altered in the face of judicial (and European) resistance, and where the documentary constitution of the regime change and a more democratic electoral rule survive with potentially important options for democratic oppositions.

VI.

Turning to Hungary, it would be a serious mistake to consider the making of the new Basic Law by FIDESZ the missing second stage of the round table process, that the party itself after initial hesitation on this score now prefers to simply denounce. Its ability to impose a new constitution was due to the combination of grave disproportionality in the electoral rule (53% of votes made into 67% of the seats) and the simple one chamber 2/3 amendment rule both inherited from the transitional arrangement. FIDESZ chose not to imitate the highly consensual but failed effort of 1994-1996, which it strongly supported back then. Instead, it carried out a constitutional revolution ("revolution of the voting booths") in the manner of those populists elsewhere who are able to do so, marginalizing opposition and weakening liberal checks and balances during the process and especially in its result. A new "illiberal democracy" has been announced (called NER: system of national co-operation).

VII.

It is controversial whether or not there has been yet another regime change under FIDESZ in Hungary. In general, I conceive of populism in three main forms: as a movement, as a government, and as a regime. FIDESZ was a liberal democratic, but not a populist movement in 1988-1989. After a governmental term and electoral loss in 2002, it did however organize a new populist movement (Civic Circles) that was according to a well-known pattern demobilized after 2010 when FIDESZ became the government. A new constitution such as the Basic Law certainly indicates interest in constructing a new regime. Yet that very constitution is a hybrid of national-populist and liberal democratic elements. Does Hungary have a new autocratic regime (as János Kornai, and János Kis now maintain) or is it a hybrid as the organs of the European Union implicitly insist on treating it?

VIII.

To me the ambivalence is itself a mark of hybridity. But the answer cannot be decided purely theoretically. Following a 1971 essay of Leszek Kołakowski "On Hope and Hopelessness" that dealt with the question of authoritarianism vs. totalitarianism I propose that we treat the question of regime type experimentally. There are grounds for the hypothesis that in Hungary (and even more in Poland) we are facing populist governments that have had to put up with democratic

features like relatively competitive elections, as well as liberal elements as the precariously surviving forms of free communication and private security. We can name this hybridity if we wish "competitive authoritarianism" (Levitsky et.al.). The most important point is that as the recent results in Hungarian (and Turkish!) urban areas have shown, it is still possible for the populist governmental party to lose elections, of course depending on the actions of the fragmented opposition parties (Arato on Verfassungsblog and Szuverén).

IX.

Is such an outcome possible on the national level, given the reconstructed, now even more disproportional and gerrymandered electoral rule? Given the changed electoral rule, the control over electronic media and new forms of clientelism there are grounds for skepticism. Nevertheless, it is up to the opposition parties to try to find out not in theory but performatively whether electoral defeat of FIDESZ is or is not possible. It is clear that only a bloc for democracy has a chance to carry out the experiment. If they succeed, the example of the negotiated process again becomes relevant. Following a friendly suggestion of Kriszta Kovács, I would stress the need to replace the (at best) hybrid Basic Law with its many illiberal and undemocratic elements, along with the FIDESZ electoral rule, by a process that has learned from the round table model. In her cogent view even in the case of the highly unlikely electoral victory of a united opposition, constitutional change after elections would again require a negotiated process between the Orbán regime's remainders and its opposition. And I would add even if a united coalition did attain a constitutional amending majority of 2/3, the FIDESZ example of constitutional imposition should be rejected in favor of a negotiated consensual alternative that was foreshadowed briefly by the rules of 1994-1996 before the collapse of the effort of completing the two stage process. This time however, following the South African model's second stage, extensive public participation, discussion and education too should be organized (a suggestion of mine from 1994 that was rejected by the then coalition parties and their experts).

X.

What if it becomes entirely clear that elections have become fully uncompetitive and ritualized and an autocratic regime form has been consolidated? We have been there before. Put optimistically, it cannot be more difficult to replace the new autocracy than it was to force communist governments to accept regime change. Such a process however is not possible without either external pressure or mobilization from below. What should be the modality of transformation? Here the lessons of 1989 transcending the reform-revolution dichotomy would again become extremely relevant. Surely top down reform by the present incumbents, even under European pressure, would try to preserve as many authoritarian elements as feasible, and thus at best re-introduce hybridity such as existed in Mexico for a 30 year period, and in Chile for one almost as long. Hopefully, the authoritarian logic of external imposition and revolution both are not yet forgotten in a country where they had disastrous consequences. Thus we would do well to try to apply once again the round table led negotiated model, in this case (as against the scenario of IX) starting with its very first stage. If the current rules do not allow democratization, then indeed new rules are needed. If the new rules are not to be imposed by either incumbents or revolutionaries, they must once again be negotiated. First and foremost, a genuinely proportional electoral rule would be required, followed by the reform of structures of the media and of electoral supervision. Is this at all impossible? To my generally skeptical Hungarian friends I would say the following: It was done before under much more difficult and dangerous circumstances! But if accomplished once again, the full logic of the two stage process should now be followed by carrying out the work of a post sovereign constituent power.

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SUGGESTED CITATION

Arato, Andrew: The Round Tables: Then, Now and in a Possible Future. Ten Theses, Verfassungsblog, 09.12.2019, doi: 10.17176/20191209-180831-0.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20191209-180831-0.