

**Existence and co-existence in liberal democracy after 1989: a critical Czech perspective**

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**Abstract**

*Existence and co-existence in liberal democracy after 1989: a critical Czech perspective.* – The article deals with the profound forms of existence and co-existence in the Central and East Europe after 1989 with a focus on the Czech Republic. The beginning of the new democracy is considered as to elements of Agamben's state of exception that are explored regarding Havel's concept of non-political politics. The point is that non-political politics putting values above the law failed to establish a pillar of liberal democracy, which is the rule of law.

**Keywords:** Central and East Europe, non-political politics, state of exception, Agamben, Havel

**Klíčová slova:** střední a východní Evropa, nepolitická politika, výjimečný stav, Agamben, Havel

**1989 as an occasion of awakening liberal utopia**

Hegel writes in *Lectures on the Philosophy of History* that the main outcome of the Peloponnesian War was Thucydides' *History of the Peloponnesian War*: "This immortal work is the absolute gain which humanity has derived from that contest."<sup>1</sup> We may thus ask what the main outcome of the thirty years since has been 1989. This does not only concern the history of Czechoslovakia and the Czech Republic after 1989, or only the history of Central and Eastern Europe: 1989 was a miraculous year (*annus mirabilis*) for western liberal democracy. According to Francis Fukuyama, the year 1989 with its concatenating regime changes in Central and Eastern Europe was the definitive proof that liberal democracy is the final stage of history.

In 1989 Fukuyama's belief in liberal-democratic capitalism (which Jacques Derrida understood as one of the blindest and most delirious hallucinations, as he writes in his polemic with Fukuyama in *Specters of Marx*)<sup>2</sup> awakened and came to life. Fukuyama's doctrine puts the pestilential manifestations of global capitalism, such as the debt bondage of poor countries and their exclusion from the world market, the infiltration of mafias into economics and politics, unemployment and ethnic wars out of mind. The regime changes in Central and Eastern Europe induced such euphoria and hallucinations no western political scientists had probably ever anticipated. As Slavoj Žižek says, people from the West, depleted

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<sup>1</sup> HEGEL, Georg W. F. *The Philosophy of History*. Ontario: Batoche Books, 2001, p. 285.

<sup>2</sup> DERRIDA, Jacques. *Specters of Marx. The State of the Debt, the Work of Mourning, and the New International*. New York and London: Routledge, 1994, p. 80.

by liberal democracy, traveled to Central Europe to catch sight of a mass enthusiasm for they themselves were incapable of.

The year 1989 and its euphoria gave skeptical citizens and politicians from the West the possibility of vicariously experiencing euphoria through people in Czechoslovakia, Poland, Hungary, and countries in Eastern Europe. In Žižek's words: "Eastern Europe functions for the West as its Ego Ideal (*Ich-Ideal*): the point from which the West sees itself in a likable, idealized form, as worthy of love. The real object of fascination for the West is thus the *gaze*, namely the supposedly naive gaze by means of which Eastern Europe stares back at the West, fascinated by its democracy."<sup>3</sup>

Central and Eastern Europe were a place where the depleted western democracy reinvigorated their belief in Fukuyama's claim that liberal democracy is the end of history. Human existence was perceived as profoundly liberal one and the feeling of freedom intensified due to its hallucinatory vein that overshadowed malfunctions and shortcomings of global capitalism and liberal democracy at the beginning of the newly established regime.

### **The hallucinatory beginnings of the Czech post-November regime**

Derrida calls Fukuyama's belief in the end of history a blind and delirious hallucination that renders the real problems of liberal capitalism invisible. We have seen this hallucination operate in the Czech lands, and it took many forms in the 1990s. Capitalism was considered to be a communist fiction and only a free-market economy was spoken of. "Freedom and democracy" was understood to be a fairytale realm in which "decent people" who spread truth and love would rule.

Havel's "non-political politics" arose as a protest against the political mechanisms of late socialism. However, the moral values that – according to this conception – we find outside of politics are also a way to understand politics. The core paradox of "non-political politics" is the idea that "non-political" moral values can be the foundation of a political position. Simply put, if we "live in truth" it is already a political behavior. In retrospect, "non-political politics" appears like a thought-substrate of the hallucinatory politics that arose at the beginning of the post-November regime. The Czech dissident philosopher Petr Rezek in his study *A View of Václav Havel From Below*, which he composed just before November 1989, presciently recognized the illusoriness of Havel's conceptions of "living in truth" and "the power of the powerless". "Living in truth" and struggling for authenticity and uniqueness is not, according to Rezek, a political position but an ethical or rather therapeutic mindset.

As Rezek concludes, "living in truth" provides feelings of exclusivity and superiority that satisfy a certain individual need, but it is not possible to derive anything specific out of this for politics. Rezek even delineated beforehand that the post-November politics would become an effectuation of this "living in truth". In his words: "The conception of non-political politics with Havel can be rather interpreted as a search for excitement, vitalization, transcendence of the dull and humdrum, and an opportunity to excel – naturally, without political responsibility."<sup>4</sup>

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<sup>3</sup> ŽIŽEK, Slavoj. *Tarrying with the Negative. Kant, Hegel, and the Critique of Ideology*. Durham: Duke University Press, 1993, p. 200.

<sup>4</sup> REZEK, Petr. *Filosofie a politika kýče*. Praha: OIKOYMENH, 1991, p. 102.

However, in the beginning of the 1990s this non-political politics acquired real political power. The main problem was not that non-political politics refused to accept political responsibility, but rather that they accepted political responsibility when their commitments were to values other than the rule of law. In the beginning of the period right after November 1989 when the foundations of the new regime were laid; this non-political politics became a defining formula for political conduct – one that is disparaging to laws and institutions. This type of politics originated in Heidegger’s ontology that underestimated the concept of law and institutions because it considered their modern form to be a manifestation of the oblivion of Being (*Seinsvergessenheit*). The law and institutions are understood to be elements of *Gestell* that fundamentally enframes the modern world and changes all things into disposable objects whose meanings are relative, projected, or arbitrary.

As Jacob Rogozinsky put it, in Heidegger’s view, the concept of law bears a secondary relevance because of its “ontic character”. The law is subordinated to the injunction of Being regarding “the presuppositions of Heideggerian ontology (...): that Being alone is what ‘provides the measure’, that is the irreducible condition of any reduction, the originary One that precedes all scission, that which prevails and suffers no restrictions – in such a way that the ethical opposition between Being and what ought to be, in dividing Being from itself and in limiting it in order to submit it to an ontic law, does it violence”.<sup>5</sup>

Drawing on the Heideggerian thought, non-political politics neglects one of the pillars of liberal democracy: the rule of law. This – according to Fukuyama and many other liberal theorists – consists in impartiality and equality before the law, and it is the guarantee of freedom and other individual rights. As Adorno had once formulated, so long as bourgeois rights – which have a certain limiting effect on the spontaneity of the individual – are not in effect, instead of a regime of freedom taking hold in a given historical situation there, cliques and mafias will rule. The non-political politicians invoking moral values and Heidegger’s ontological meaning of the world did not focus on the establishment of the rule of law as a system of “bourgeois rights and freedoms” and institutions that would enforce them, but rather were engaging in legal improvisations and created leaky laws that were later patched up with amendments.

### **Havel’s non-political politics as Agamben’s state of exception**

With its generalized moral calls and roots in an ontological order of the world, non-political politics produced the impression that a “free society” made up of “decent people” can get by without rule by law. This superordination of values above the law created a situation reminiscent of the “state of exception” written about by Giorgio Agamben in his eponymous book.<sup>6</sup> Agamben examines the state of exception as a political and legal situation that enables the transformation of a citizen into a being without rights who is turned into “bare life”. Although this being still exists in the legal order, the legal order does not apply to it. Agamben speaks of the peculiar zone of indistinction between the law and sovereign political acts where citizens are effectively stripped of their rights and freedoms.

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<sup>5</sup> ROGOZINSKY, Jacob. Hier ist kein warum: Heidegger and Kant’s Practical Philosophy. In RAFFOUL, Francois, PETTIGREW, David (eds.). *Heidegger and Practical Philosophy*. New York: State University of New York Press, 2002, p. 49.

<sup>6</sup> AGAMBEN, Giorgio. *State of Exception*. Chicago and London: The University of Chicago Press, 2005.

The state of exception creates an indistinct boundary zone between the law and politics in which it is unclear to what extent the laws are in effect and to what extent political power rules independently of the law. It is a state when the law is in force while at the same time exceptions to the law arise which provide the legal framework that enables political power to act without regard for the law and to suspend the civil rights of certain groups of the population at its own whim.

The non-political politics that acceded to political power began to manifest as sovereign political power that has the “moral” justification to call for the laws themselves to occasionally be jettisoned. Its “higher” authority is anchored in a Heidegger’s and Patočka’s grounding such as “authentic” being or “living in truth” which is superordinated above any merely “objective” system – such as a legal system. After November 1989, this Heideggerian “authentic” being became a “moral” source for sovereign political actions for politicians bringing their subjective will to bear. Non-political politicians appropriated the moral justification for suspending the law and their opponents and any inconvenient persons could be de facto turned into Agamben’s “bare life”, which no legal order applies to.

Already in the first democratic elections in 1990, politicians connected with the Občanské fórum (Civic Forum) violated the 48-hour ban on any kind of pre-election campaigning. Jan Ruml, and indirectly Václav Havel were involved in this by having a report on collaboration by the chairman of the *Československá strana lidová* (ČSL/Czechoslovak People’s Party) Josef Bartončík with the Communist secret police (StB) broadcast. This party was the only real electoral opponent to the Občanské fórum for spectrum of non-communist voters.

Cibulka’s *Complete List of StB Collaborators* appeared, in which there was no distinction made between active collaborators and passive subjects who often forced to sign papers or had never actually signed them at all.<sup>7</sup> On the list are also the names of persons who had been objects of surveillance. At the same time, not all of the active collaborators are listed there, but some portion of the public took Cibulka’s list as a veracious document and there were directors of businesses, research institutes, hospitals and other institutions who forced employees listed there in to resign their positions and functions. Some of those on the list had been imprisoned or persecuted in the 1950s for their anti-communist convictions, or they were eminent Czech scientists and writers, and even the head of the Catholic Church in Czechoslovakia, cardinal František Tomášek were included.<sup>8</sup>

More than one hundred thousand names were gradually included in these lists, only a minimal number of them had voluntarily collaborated with the StB, and many had not collaborated at all. There were also numerous persons connected with the Prague Spring of 1968 conspicuously present on the rolls and – other than one or two exceptions – no members of the post-November right wing parties are to be found there. There were also very few names of StB investigators, if any were there at all. As someone remarked, the victims became culprits.

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<sup>7</sup> CIBULKA, Petr. *Cibulkovy seznamy spolupracovníků StB: kompletní seznam spolupracovníků StB*. Olomouc: Votobia, 1999. This book is the reprint of “Cibulka’s Complete List of StB Collaborators” that appeared in the fortnightly *Necenzurované noviny Rudé krávo*, roč. 2/1992.

<sup>8</sup> SALIVAROVÁ-ŠKVORECKÁ, Zdena (ed.). *Osočení. Pravdivé příběhy lidí z „Cibulkova seznamu“*. Brno: Host, 2000.

Václav Havel criticized these lustration laws as legislation that introduces the principle of collective guilt into our legal order; nevertheless, he did sign them as the president of the republic as provisional measures. In this, he differs from the president of the Federal Assembly, Alexander Dubček, who refused to sign them. Later, Václav Havel was even more critical towards them and declined to sign extensions in 1995 and 2000.<sup>9</sup>

It is precisely in Havel's attitude towards lustrations that the moral paradox of non-political politics is illustrated. This politics creates a sovereign moral position that tempts one to underrate the paramountcy of the law and to incline towards its pragmatic circumvention. In consequence of this, leaky laws are created and the principle of collective guilt is brought into effect. However, from Václav Havel's purely moral perspective as a person these effects are hardly acceptable. A politics founded in moral values creates results that are in contradiction with these same moral values. This moral paradox of non-political politics was, in my opinion, one of the main causes of Havel's political tragedy written about by John Keane in his book *Václav Havel: A Political Tragedy in Six Acts*.<sup>10</sup>

### **“Bare life” after the Velvet Revolution**

After the Velvet Revolution in 1989, due to the *Complete List of StB Collaborators* and the leaky lustration laws, a condition or state was created where no one could be certain if he or she would be accused of collaboration without any regard for whether they had actually been involved in any such acts or refused to, or if the StB had ever even shown an interest in them. The accusation of collaboration itself, expressed from certain positions of power such as by someone holding a political position or a broadcast from an influential medium, had the result that the politician, activist or private individual in question lost one of the fundamental rights that the laws affords (constitutional principles and the rule of law). They are viewed as guilty – unless a court determines otherwise. This is “presumption of guilt”, which is in contravention of the legal order as well as of international conventions on human rights. The post-November accusations of collaboration with the StB acquire the character of exclusion from the law – for a period unknown in advance – because the “presumption of guilt” comes into force.

The pathological form of the lustrations as the result of a government directly ruled by moral values is similar to the Stalinist state of exception. This is a comparison that concerns the question of how the law was perceived in relation to political power in the sense of Agamben's state of exception. Such a comparison assumes that we will disregard for the moment all of the vast differences such as the gulag system, repressions, central planning, and communist ideology on the Stalinist side and the liberal conceptions of freedom, the market economy, and plurality of politics and opinions on the side of non-political politics. It is a comparison that should emphasize certain features of post-November politics that otherwise remain telescopically collapsed into the image of euphoria from the newly-won freedom and democracy that became a stereotype in depictions of the “Velvet Revolution” year of 1989.

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<sup>9</sup> DOSTÁL, Vratislav. Lustrace v čase: Havel, Šabata, Dienstbier a Dubček proti ODS. *Deník Referendum* [online]. 13. 2. 2014. WWW: <<http://denikreferendum.cz/clanek/17431-lustrace-v-case-havel-sabata-dienstbier-a-dubcek-proti-ods>>.

<sup>10</sup> KEANE, John. *Vaclav Havel. Political Tragedy in Six Acts*. London: Bloomsbury Publishing, 1999.

The non-political politics that led to the leaky laws created elements of the state of exception which resembled the Stalinist state of exception that are found in the way accusations of collaboration potentially concerned every citizen – with a certain exception of those whose files were buried in the special fund. Such accusations are based in the act of accusation itself, which does not have to correspond to a real form of relation to the StB, and they were used as a means for asserting political or other interests by “non-political” or, later, right-wing politicians. To wit: the accusation of collaboration was an act that stood above the law. If anyone argued against it by appealing to constitutional principles or human rights this argumentation was perceived as an StB collaborator abusing democratic gains to defend themselves.

### **Central and Eastern Europe as a regressive avant-garde**

The era of Fukuyamesque liberal utopia lasted from 1989 until recent years when a populist return to conservative values followed in its wake. What, then, has been the main outcome of democracy in Central and Eastern Europe thirty years after 1989? The fact that in Central and Eastern Europe there exists a mixed political form created by liberal democracy with elements of the state of exception can be considered as the main historical finding. This was an intermediary stage between liberal democracy and “illiberal” democracy as political regimes that develop conservative-populist society-wide projects are termed. “Illiberal democracy” can be characterized by the continued existence of liberal democratic constitutions, laws, and procedures (e.g., parliamentary elections), but political will demands ever more exceptions to the rule of law, so in practice it operates independently of the law.<sup>11</sup>

Boris Buden in the book *Zone des Übergangs: Vom Ende des Postkommunismus (Zone of Transition: The End of Postcommunism)* speaks critically about the promulgation of “transitology” after 1989, according to which Central and Eastern Europe are transitioning into “mature” liberal democracy and should learn from countries that have already attained it.<sup>12</sup> Buden’s book was published in 2009, when the twenty years that had passed since 1989 were being commemorated. However, during the past ten years Buden’s criticism has become dated. In the thirty-year anniversary since 1989 it has been shown that transitology was correct about one thing: Central and Eastern Europe really were in transition the whole time, but exactly in the opposite direction than the transitologists were teaching.

An anti-liberal turnabout took place especially in Russia, Hungary, and Poland earlier than in Western Europe and democracies with illiberal features arose there, which can be considered an anticipation of the potential development of some western European countries. Central and Eastern Europe in this sense created a regressive political avant-garde that conservative populists in the West can learn from. At present, transitology as a whole is turned on its head because the roles of a teacher and a pupil have been reversed. Conservative-populist western politicians are now learning how to win elections and how to govern from Russia, Hungary, and Poland.

A conservative-populist politician can apply Havel’s non-political politics to their projects, because they, too, hold their values to be above the law and only these values are

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<sup>11</sup> ZAKARIA, Fared. The Rise of Illiberal Democracy. *Foreign Affairs* [online]. November/December, 1997. WWW: <<https://www.foreignaffairs.com/articles/1997-11-01/rise-illiberal-democracy>>.

<sup>12</sup> BUDEN, Boris. *Zone des Übergangs: Vom Ende des Postkommunismus*. Frankfurt am Main: Suhrkamp, 2009.

ascribed a more concrete importance. “Decency” means respect for the traditions of patriarchal values and “love” is love for one’s family and nation. And they have one value in common with the non-political politics: both groups speak about truth.

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