

## THE TRANSFORMATION OF HEARTS AND MINDS IN EASTERN EUROPE

*Vojtěch Cepl*

The process of transformation in Eastern Europe is not a subject conducive to brief and simple treatment, as the experience of the many countries in this region has varied to a considerable degree. Thus, I shall focus almost exclusively on the experience in Czechoslovakia and the Czech Republic to illustrate the key factors or components in the transformation process. In addition to the fact that my experience of the process is tied to my home country, I choose to focus on it for another reason. It is my opinion that the process of transformation in the Czech Republic has in some ways gone further than in other countries.

I am, of course, mindful of the different historical conditions in the various countries. For example, in Hungary the replacement of the communist regime took place more slowly and organically, and in Poland people put up greater resistance to communist intrusions from the beginning—they never surrendered agricultural land to nationalization or allowed the Catholic Church to be entirely suppressed. Those factors might also account for the difference in the transformation process.

The Czech Republic has taken certain routes that other countries either have not taken or have not taken so completely, particularly in the critical areas of condemnation of communist crimes, lustration, and restitution. I shall not consider East Germany because its experience of being directly incorporated into a fully developed western democratic nation is unique and not comparable to that of other countries. In some respects, however, the Germans did travel along the same route as Czechoslovakia.

After the overthrow of communist regimes in 1989, Ralf Dahrendorf commented very presciently: "It will take six months to reform the

---

*Cato Journal*, Vol. 17, No. 2 (Fall 1997). Copyright © Cato Institute. All rights reserved. Vojtěch Cepl is a Justice of the Constitutional Court of the Czech Republic. An earlier version of this article appeared in the *Journal of Democracy* (Cepl and Gillis 1996).

political systems, six years to change the economic systems, and sixty years to effect a revolution in the peoples' hearts and minds." In this essay, I will deal with the third aspect of the transformation, which is similar to Michael Novak's concept of moral culture, referring to it either as hearts and minds, the rules of human conduct, or the peoples' values. I can state my point about transformation of the moral culture very simply and succinctly: without condemnation, lustration, and restitution there can be no transformation. This is the heart of the matter. I will elaborate on this idea, explaining what I mean and why I believe this is the case.

### Metamorphosis of the Rules of Human Conduct

The slowest, most complex, most elusive, but in my view most crucial part of any process of transformation is the necessary metamorphosis of the rules of human conduct. The rules of human conduct consist of the very concrete norms that exist in the minds of the people and are the basis for their day-to-day behavior patterns and their shared values. These rules and norms inform their thought as to what is right and wrong, proper and improper, appropriate and inappropriate in particular situations, or even what they must do to get by in life. In this way, they know when they are bound to keep their promises, when it is appropriate to ignore a legally prescribed rule or to bribe an official, when a person's conduct amounts to a provocation, and so on.

Knowledge of these rules is not gained from the study of law, rather it is garnered by life experience within a society. They are what is foremost in peoples' minds, not the intricate theoretical principles of how an independent judiciary will protect their freedoms or how a second chamber of parliament will operate as an effective corrective to the dangers of abuse of power by the first chamber. These informal rules are the norms of conduct and shared values that actually operate in everyday life to effect patterns of behavior in society. Formalistic declarations about freedoms and democratic principles that are ignored in practice never enter into this realm.

These norms develop and are internalized gradually in an evolutionary fashion; they cannot change overnight. They change only when there is a real difference in the rules of the game in actual life, and for some people they can never change because habits can be difficult to break. Another factor that works as an obstruction to these changes is the length of time the previous rules were in effect. Nazi Germany introduced extreme changes in these norms, but it lasted only 12 years so that they had not become so deeply ingrained, and the better norms that had existed prior to the regime were still in most peoples'

memory. Eastern Europe had communist regimes in place for two generations, so that the core of the population under 50 never experienced any other societal norms. Fortunately, those over 50 had, and there was a democratic tradition in some countries to fall back on.

The nations in the former Soviet Union, with the exception of the Baltic States, have the most daunting challenge of all because they had 75 years of communism and absolutely no prior tradition of a free society. This difference makes their situation different in kind so that it is simply incomparable. In any transformation, there is only a certain amount of time to effect changes before people wish to settle back down to a normal existence. So paradoxically the slow pace of change for these rules of conduct works against any sort of transformation.

The rules of human conduct are the most difficult to transform because there is the tremendous force of inertia to contend with. Political and legal changes can be modeled on the systems of western democracies; the communist regimes did that to a large extent. In contrast, rules of human conduct are learned by *observing societal conduct* and are not changed by amendments to legal texts but only by people actually modifying their behavior. In this way, a dissonance between the abstract principles of law and constitutional government introduced since 1989 and peoples' actual conduct has developed. These principles must be infused over time into the actual life of society.

### Ritual Purification: Changing the Moral Culture

A few years back, I wrote an article entitled "Ritual Sacrifices" (Cepl 1994). In hindsight, I would change that title because it suggests scapegoating or making innocent people pay the price for something they are not guilty of. It also, to a certain extent, suggests revenge. But if revenge had been our motivation, there are more effective ways of going about it that inflict a far greater sanction than symbolic acts of condemnation, lustration, and restitution.

In place of the title "Ritual Sacrifices," I would now substitute the title "Ritual Purification." That term expresses the outdated notion that, if some evil is introduced into the body politic, whether by usurpers of power or by legitimate leaders acting immorally, order in the moral universe is somehow deranged, and the effects of this are felt even in the natural world (crop failures, pestilence, bad weather). As this idea is seen in the plays of Sophocles and Shakespeare, the proper balance is only reestablished by removing the wrongdoers, punishing them, and reestablishing the status quo ante. I admit that

this idea is outdated, but there is something to it nonetheless. Personally, I do not believe in the moral order as a separate and independently existing part of reality. If it exists at all, it is as a part of the norms of human conduct and human values I am discussing, and the reestablishment of a normal situation in society is closely related to the task of healing the rift between the government and the people who are alienated from it. As I have said, this is done in part by repudiating the past—by symbolic acts of parliament condemning communism, by lustration, and by restitution.

### *Condemning Communism*

In July 1993, the Czech Republic passed the “Act on the Lawlessness of the Communist Regime,” which condemned the communist government, its actions, and the principles that motivated it. It was a simple and powerful repudiation of the past, leaving no room for compromise. Such a simple declaration of values is far more effective than any detailed and precisely worded legal provisions in a statute, and it speaks more directly to the people. Moreover, such a declaration helps to establish an important connection between the peoples’ values and the abstract principles expressed in the constitution. People develop an allegiance to constitutional and legal principles when they better understand that the principles of legality and the rule of law are part of their own values. This “ritual purification” of the past means that such ideas and values as ruled during the communist regime have been definitively condemned and banished. The people can see the body politic as cleansed.

### *Lustration*

Lustration has a similar significance, but one more closely related to reality because the government is actually cleansed of personnel who cannot be trusted to hold power. As a result, the people feel more confidence that their leaders are not merely mouthing democratic ideas while surreptitiously undermining the foundations of democracy.

### *Restitution*

The value of restitution is that the government is rectifying its past misdeeds, that is, it is returning what it stole from the people. Restitution involves the return of the actual piece of property confiscated from people without compensation, or which people forfeited as the result of one of the communist laws. In addition, coupon privatization has an element of restitution because the industrial wealth that was distributed in that process was considered as representing

in the abstract the fruit of the peoples' labor of which they had been *deprived for decades*. While the government acknowledged from the start that not all past injustices could be rectified (hence, the limitations on the return of property), the important thing is that it showed itself *willing to acknowledge past wrongs and to do its best to correct them*. If it had made no effort in that direction, it would have confirmed what the communist regime had done, losing a great deal of credibility in the people's minds both for itself and for *democratic principles*. In addition, restitution, as well as other privatization routes, greatly contributed to psychological changes in the people, as it made most of them into small property-holders and capitalists.

### The Practical Motivation for Condemnation, Lustration, and Restitution

In addition to serving a general symbolic or psychological function in reestablishing a normal relation between the people and the government, parliamentary acts condemning the communist regime, lustration, and restitution have specific and practical purposes. The condemnation of the communist regime, as well as the punishment of crimes committed under it, help prevent people from claiming at some time in the future that communist principles are somehow compatible with democracy and that communism was not really so bad. The punishment of crimes committed under communism helps deter the *possible repetition of such outrageous behavior in the future*.

In the case of lustration, the object was to exclude known communists from holding political office because they cannot be trusted to exercise it consistently with *democratic principles*. Lustration also gives democracy a breathing space, a period of time during which it can lay down roots without the danger that people in high positions of power will try to undermine it (keeping in mind that these people are usually more experienced and organized in the arts of governing and using power). Any fundamental change in a society is, and must be, accompanied by a replacement of the ruling elite. Criticisms of this natural process as McCarthyite, and as offending the principles of legal certainty and stability, are often made by friends of the old order.

As for restitution, the practical motivation for it was to jump start the economy by placing property into the hands of citizens so that they could immediately become private economic actors. There were several privatization methods, and in our experience, restitution was the most natural, simple, and quickest of all of them, and it was the one most comprehensible to the people. The collapse of the judicial

system due to a flood of lawsuits over restitution did not occur, and in fact, the process was relatively dispute free.

## Conclusion

The most elusive, invisible part of transformation, the change of the moral culture, is usually considered as quite secondary, if it is thought about at all. People who say it is better to draw a line and start everything from scratch have not learned the proper lessons from the dearly purchased experience of the communist era.

## References

- Cepl, V. (1994) "Ritual Sacrifices: Lustration in the CSFR." *East European Constitutional Review* 1 (Spring): 24-26.
- Cepl, V., and Gillis, M. (1996) "Making Amends after Communism." *Journal of Democracy* 7(4) (October): 118-24.