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# Revolution of the Spirit

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The Revolution of 1989 liberated millions of people. *Millions*. Thirty-eight million Poles, twenty-three million Romanians, sixteen million Czechoslovakians, sixteen million East Germans, eleven million Hungarians, nine million Bulgarians. A human rights victory on an unprecedented scale, a triumph of human dignity and of the human spirit.

Two hundred years earlier, the storming of the Bastille freed only seven. But the newly formed French National Assembly passed the Declaration of the Rights of Man, "in order that the demands of the citizens, founded henceforth upon simple and incontestable principles, may always be directed towards the maintenance of the Constitution and the welfare of all."<sup>1</sup> This clarion sounds passionately today in Eastern Europe. The demands of the citizens again have made themselves heard; again they have been answered. In the words of Czech playwright and president Vaclav Havel, "Your government, my people, has returned to you."<sup>2</sup>

Yet this Revolution, although built upon its predecessor, will leave a different legacy. The precise content remains disputed. For some, the overthrow of the Eastern European Communist regimes is a straightforward morality play: good triumphs over evil. For others, the drama unfolding portends a Sophoclean tragedy in which nothing is as it appears: freedom will bring revived nationalism, instability, ethnic persecution, and war. For yet a third audience, the Revolution of 1989 is a cautionary tale rich with potential insight: its iconographic power as a saga of human suffering and triumph remains undiminished, but it demands as much reflection as celebration.

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1. The French Declaration of the Rights of Man and Citizen (1789), *reprinted in THE HUMAN RIGHTS READER* 118 (Laqueur & Rubin eds. 1979).

2. Havel, *New Year's Day Address*, N.Y. Times, Jan. 2, 1990, at A13, col. 5.

## i.

The Revolution of 1989 was consciously fought in the name of civil and political rights. Everywhere the rallying cry was an uncompromising demand for free elections and representative government. In Wenceslas Square, the manifesto of revolution was the Declaration of Independence. In East Berlin, even the opening of the Wall did not distract the weekly Leipzig crowds nor deflect their insistence on wholesale political reform. In Hungary, the voters held the opposition and the reformist wing of the Communist party to an absolute standard of parliamentary democracy, rejecting a proposed presidential election almost certain to favor an incumbent party leader. Revelations of corruption fanned these flames to varying degrees in different countries, but the crime was more of governance than of greed. Even in Romania, the citizens who linked arms to face the guns of the *securitate* fought a tyranny that was institutional as well as personal. The battle over the legitimacy of the successor Salvation Front has been a battle not only over Ceausescu's poisoned legacy, but over representative government.

For many observers, particularly among conservatives in the United States, these snapshots of democracy-in-the-making confirm the theoretical and practical superiority of a political system that champions civil and political rights over one with a primary emphasis on economic and social rights. From their perspective, the evidence is clear. The single most important cause and catalyst for change in Eastern Europe and the Soviet Union was economic crisis. Witness the Polish revolution, which began not in 1989 but in 1979. The cycle of price rises, strikes and riots throughout the decade provided an economic spark to political tinder.<sup>3</sup> Conversely, the potential explosiveness of both the East German and the Czech revolutions was tempered in part by a popular fear of exchanging relative prosperity for Polish poverty.

As a Czech journalist assessed the situation in mid-November:

People here are bourgeois. We tend to think about a roof over our heads and a meal on our plates before we think about abstract ideals. So we look around, we like our situation better than Poland's, where there's nothing to eat, or Hungary's, where it costs too much.

Those are essentially aristocratic countries, where people are willing, even happy, to live on debt and glory in a way that we're not.<sup>4</sup>

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3. See generally T. GARTON ASH, *THE POLISH REVOLUTION: SOLIDARITY* (1985).

4. N.Y. Times, Nov. 17, 1989, at A7, col. 6.

But as it became increasingly apparent that the government could no longer deliver even the modest standard of living it had previously achieved, the Czechs reached for a measure of glory themselves. Even then, they thronged the streets and mounted the barricades only after hours, in regular working shifts.

Economic failure also contributed to the spiritual disillusionment of those not yet in material want. Many Hungarians, for instance, were shocked by revelations in early 1989 that almost a *quarter* of their nation lived in poverty. Individual citizens canvassed for their reactions candidly assessed the deeper implications of such a finding, noting that the proclaimed eradication of poverty had been the one achievement Communist governments continued to trumpet against the West.<sup>5</sup>

When the crowds did take to the streets, they sought a political solution to an economic problem. For Milton Friedman, making his case in the *New York Times* on the eve of the new decade, the moral of the story is obvious: "Socialism is a failure . . . . Capitalism is a success."<sup>6</sup> According to his logic, economic prosperity flows only from a free market—as unfettered as possible. State ownership is the antithesis of the free market, thus the unequivocal rejection of state ownership by all the populations of Eastern Europe can only mean vindication of a philosophy of no state interference whatsoever.<sup>7</sup> The only remaining question is how to structure a legal and political system to encourage maximum individual enterprise. The answer is to favor those rights that *restrain* the government from intervention in private activity over those that commit the government to affirmative action. Civil and political rights fall in the first category; economic and social rights in the second. The primacy of civil and political rights is thus presented as the structural implication of a straightforward empirical claim.

The complacency is palpable and misplaced. Even on empirical grounds, the real winner of the Revolution of 1989 is Western European social democracy. The chain reaction across Eastern Europe reaffirms a basic truth: a government that provides *neither* civil and political rights *nor* economic and social rights ultimately cannot survive. The question remains whether a particular polity would be prepared to accept a relative curtailment of civil and political rights in exchange for genuine guarantees of economic and social rights—cradle to grave security and prosperity under a dictatorship. The deeper point is that Eastern Europeans looking west never perceived a choice;

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5. See N.Y. Times, Feb. 6, 1989, at A3, col. 1.

6. Friedman, *We Have Socialism, Q.E.D.*, N.Y. Times, Dec. 31, 1989, § 4, at 11, col. 1.

7. See *id.*

their Western European neighbors are free, prosperous, democratic, and secure.

In the lexicon of United States politics, at least when measured by the yardstick of state intervention, the Western European welfare state comes considerably closer to socialism than capitalism. The postwar Western European governments have built on the basic insight proclaimed by Franklin Roosevelt in 1944: "We have come to a clear realization of the fact that true individual freedom cannot exist without economic security and independence. 'Necessitous men are not free-men.'"<sup>8</sup> They have understood that the nature of a right is ultimately in the eye of its holder. Stanley Hoffmann, for instance, in a study of ethics in international relations, easily dismantles the purported distinction between restraint and requisition:

Both categories of rights, the civil and political as well as the economic and social ones, require from the state a mix of abstention and action. Each one of them, whether it is called a political right or an economic one, demands in effect that the state stop or refrain from doing certain things, *and* provide certain things.<sup>9</sup>

Similarly, in the domestic context, Stephen Holmes challenges the supposed theoretical and historical discontinuity between "constitutional rights and welfare rights"<sup>10</sup> as based on "a misleading contrast between *two kinds of rights*, between rights as liberties from government interference and rights as entitlements to government support."<sup>11</sup>

How individual countries frame and resolve this debate depends in large part on their relative points of departure. The direction of reform in Eastern Europe will clearly be *from* communism *toward* capitalism. In Western Europe, too, the 1980s witnessed a retreat from socialism, a reinjection of market forces to reverse the "Eurosclerosis" of the late 1970s. The election and reelection of conservative leaders in Great Britain and the Federal Republic of Germany, combined with the de facto conservative conversion of incumbent socialist leaders such as French President Mitterand and Spanish Prime Minister Felipe Gonzalez, cast doubt on the entire future of the European left.<sup>12</sup>

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8. Roosevelt, *Economic Bill of Rights* (1944), reprinted in THE HUMAN RIGHTS READER, *supra* note 1, at 269.

9. S. HOFFMANN, DUTIES BEYOND BORDERS 100-1 (1981).

10. Holmes, *Liberal Guilt: Some Theoretical Origins of the Welfare State*, in RESPONSIBILITY, RIGHTS, AND WELFARE 77 (J. Moon ed. 1988).

11. *Id.* at 83.

12. See *Has Anybody Seen Our Philosophy?*, ECONOMIST, Sept. 30, 1989, at 17.

In the 1990s, however, the Western European socialist or social democratic parties are likely to find a new mission in the East. West German political commentator Robert Leicht has observed that whereas social democracy "is structurally endangered in the Federal Republic," partly because it has fulfilled its historical role and partly due to the destruction of its traditional social base, "in the premodern GDR the success story of social democracy is just beginning."<sup>13</sup> More generally, the fledgling Eastern European democracies will be searching for a new synthesis between material satisfaction and moral obligation. They will be struggling for a "society in solidarity," in the words of East German novelist Christa Wolf, "in which peace, social justice, the freedom of the individual and the protection of the environment are maintained."<sup>14</sup> They will be striving for equality, a passion de Tocqueville described as the "deepest and most solidly rooted" of the French Revolution, stronger even than the desire for liberty.<sup>15</sup> And for humanity, "a humane republic that serves man and for that reason also has the hope that man will serve it."<sup>16</sup>

This is not mere romanticism. As liberal (or would-be liberal) societies—assuming they do not plunge headlong into dynastic tyranny—the Eastern European polities of the 1990s will pursue their ideals as a function of long-term collective self-interest. The visible re forging of the social contract in Eastern Europe will not resolve the political debate in Western Europe, but will at least rejuvenate it. Which mix of which rights? Which legal ordering of relative social, economic, and political priorities will strike the best compromise between the competing demands and interests of all members of a given political community?

ii.

Even to reach the threshold of this debate, however, the nations of Eastern Europe must undertake the creation of internal and external structures of stability. The first task is achieving and maintaining domestic peace. The present is already wrestling with the past. The new Eastern European governments must confront their predecessors, and with them, the question of bringing to account, of justice and purification, of legitimacy and authority. For Vaclav Havel, lack of resistance must be equated with complicity, and thus responsibility.

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13. *Der neue Bund*, *Die Zeit*, Jan. 26, 1990, at 1 (translated by author).

14. Wolf, *The G.D.R. Forever*, *N.Y. Times*, Dec. 8, 1989, at A39, col. 2.

15. De Tocqueville, *The Old Regime and the Revolution*, excerpted in *THE HUMAN RIGHTS READER*, *supra* note 1, at 122.

16. Havel, *supra* note 2.

"The sad heritage of the last forty years" must be "accept[ed] as something we have inflicted on ourselves. If we accept it in such a way, we shall come to understand it is up to all of us to do something about it."<sup>17</sup> In other cases, the blame is not so generously distributed among the many. The East Germans forced former leader Erich Honecker from a hospital bed to a jail cell. In Romania, justice was summary and swift, dispensed by firing squad.

In the end, the balance struck in each country will depend on very practical considerations. These are not abstract queries about the rule of law, and the affirmation and creation of rights. They are concrete questions about trials, prison sentences, and executions.<sup>18</sup> What should be done will be constrained by what can be done. For the world at large, the efforts of each Eastern European nation will illumine deeper questions: Can a just polity be founded on injustice? To what extent can a nation exorcise its past? To what extent must it try?

Second is the external task: the common enterprise of rediscovering and re forging a collective identity. It is an effort confronting all of Europe, east and west. Should it be successful, its locus will be the Conference on Security and Cooperation in Europe ("CSCE"), launched and codified in the 1975 Helsinki Final Act.<sup>19</sup> Long an acronym virtually unknown outside selected European capitals, the CSCE is suddenly on every leader's lips as an indispensable structure of stability and collective self-determination. Simultaneously text, structure, and process, it is a commitment by thirty-five nations to a decalogue of substantive human rights and an institutional framework for consensual change.

For years the CSCE was regarded as a Western failure, a dubious and unequal exchange of Western acceptance of the territorial status quo in Europe for a handful of unenforceable Eastern promises on human rights.

The principal Soviet gain, recognition of postwar European frontiers, took effect with the signing of the Final Act, whereas the principal Western achievement, a commitment to greater respect for human rights and freer movement of people and ideas in the Soviet Union and Eastern Europe,

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17. *Id.*

18. For human rights workers asking the same questions in Latin America and Asia, the answers in Eastern Europe will yield a wealth of comparative information. See, e.g., Osiel, *The Making of Human Rights Policy in Argentina: the Impact of Ideas and Interests on a Legal Conflict*, 18 J. LAT. AM. STUD. 135 (1986); Orentlicher, *Settling Accounts: the International Legal Obligations of Governments to Prosecute Human Rights Violations Committed by a Predecessor Regime*, (forthcoming 1990).

19. Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accords) Aug. 1, 1975, in DEPT. ST. BULL., Sept. 1975, at 323.

depended on actions by individual governments after the conclusion of the Conference.<sup>20</sup>

Those governments largely failed to take any such actions.

At the individual level, however, the Helsinki Final Act provided a beacon of hope to dissidents in countries behind the Iron Curtain, linking the oppressed to the free through the proclaimed universality of its norms. Participating governments were required to publish the human rights provisions of the Act to their own citizens, who were then empowered at least to try to hold them to their word. "Helsinki Watch" groups sprang up throughout Eastern Europe and in the Soviet Union for the purpose of monitoring domestic compliance with these international commitments. Members of such groups often paid a heavy personal price: political and psychological harassment, loss of employment, and imprisonment. Yet they persevered, sure of their *right* to a better world. Today they remember: "[the Helsinki Final Act] lit the fires of freedom that are raging in Eastern Europe today."<sup>21</sup>

At the state level, the CSCE codified a link between international peace and domestic prosperity, between a government's posture toward its neighbors and its treatment of its own citizens. "As a result of Helsinki, no one can argue that human rights in one state are the exclusive business of the people of that state, since they have been formally recognized as an element of each state's relations with others."<sup>22</sup> The principle was crucial; the practice disappointing. This was law as regulation, impossible to implement without surveillance, enforcement, and political will.

Now, at last, the Eastern Europeans, and even the Soviets, have provided the necessary political impetus. Along with their Western European neighbors, they will look to the CSCE to provide both symbol and structure, catalyst and constraint. The process will not shed its bureaucratic ballast, nor its humdrum diplomatic complexities. But the power of the Revolution of 1989, and the need to safeguard its gains, may yet invest any successor to the Helsinki Final Act with the transformative power of law as constitution, the constitution of a new Europe.

### iii.

At its most profound, the Revolution of 1989 was a revolution of the spirit. It was so from the beginning. In his chronicle of the

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20. J. MARESCA, *TO HELSINKI* 222 (1987). Maresca was deputy chief of the United States delegation to the CSCE.

21. *Quoted in Newsom, Helsinki, a Framework for Europe*, *Christian Sci. Monitor*, Dec. 14, 1989, at 18.

22. J. MARESCA, *supra* note 20, at 217.



stillborn Polish Revolution of the 1980s, Timothy Garton Ash concluded with an account of the Pope's visit to the monastery Jasna Gora, home of the Black Madonna, in 1984, after Solidarity had apparently been crushed. As a postscript, Garton Ash explained:

It might seem perverse to end a political analysis of a communist country with a mystical appeal to the Mother of God from the battlements of a medieval monastery. Yet the mystic Pope came closer than any hard-nosed political scientist to addressing the ultimate paradox of Poland in 1984. For of course the Pope could not single-handedly blast a way out of Poland's historic stalemate; he could not sweep away the objective constraints of economics, politics or geography; he could not "restore Solidarity." But he could address what he called people's "subjectivity"—their consciousness, attitudes and behaviour. And the central paradox of Poland after the revolution was precisely the gulf between the Poles' objective and their subjective situation; between their *Sein* and their *Bewusstsein*; between their circumstances and their spirit.<sup>23</sup>

This spirit finally triumphed. In country after country, citizens lived, and created, a miracle.

The chief lesson of the Revolution of 1989 is not about the possession of rights but the manner and impact of their exercise. The United States should be particularly receptive to this lesson. Philosophers and political theorists in the United States have discerned a void in the nation's political life that no amount of rational profit-maximizing can fill. Wearying of the sterile dissection of the mechanics of pluralist democracy, in which rights are equivalent to rents, they lament that the whole is no longer greater than the sum of the parts. The response from both left and right has been a reemphasis on community—ranging from pristine visions of a revived colloquy of philosopher-kings to hopeful imaginings of a world in which the voices and values of currently disfavored communities are heard and shared.

These efforts are predictably enmeshed in charges and counter-charges of elitism and cultural relativism. And yet, in response to the more focused challenge of reinvigorating the existing political community, political and legal theorists have rediscovered the value of self-conscious participation in communal political life. They have promoted an understanding of citizenship in which rights of individual private action are accompanied by duties of collective public interac-

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23. T. GARTON ASH, *supra* note 3, at 355.

tion. Their banner is the refurbished tradition of civic republicanism in the constitutional theory of the United States.<sup>24</sup>

As developed and synthesized by Cass Sunstein, civic republicanism is both a complement and a corrective to classical liberalism. It is premised on the following principles:

1) "deliberation in politics, made possible by what is sometimes described as 'civic virtue';"<sup>25</sup>

2) "the equality of political actors, embodied in a desire to eliminate sharp disparities in political participation or influence among individuals or social groups";<sup>26</sup>

3) "universalism, exemplified by a notion of a common good, and made possible by 'practical reason';"<sup>27</sup>

4) "citizenship, manifesting itself in broadly guaranteed rights of participation . . . designed both to control representative behavior and to afford an opportunity to exercise and inculcate certain political virtues."<sup>28</sup>

Debate rages over whether this was the stuff of the American Revolution of 1776. It certainly was the stuff of the Revolution of 1989. Listen again to Vaclav Havel:

Everywhere in the world, people were surprised how these malleable, humiliated, cynical citizens of Czechoslovakia, who seemingly believed in nothing, found the tremendous strength within a few weeks to cast off the totalitarian system, in an entirely peaceful and dignified manner. We ourselves are surprised at it.

And we ask: Where did young people who had never known another system get their longing for truth, their love of freedom, their political imagination, their civic courage and civic responsibility? How did their parents, precisely the generation thought to have been lost, join them? How is it possible that so many people immediately understood what to do and that none of them needed any advice or instructions?<sup>29</sup>

Others in Europe have listened and heard the same message. Garton Ash, for instance, surveys the vocabulary of the Revolution:

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24. For a general overview, see *Symposium: The Republican Civic Tradition*, 97 *YALE L.J.* 1493 (1988).

25. Sunstein, *Beyond the Republican Revival*, 97 *YALE L.J.* 1539, 1541 (1988).

26. *Id.*

27. *Id.*

28. *Id.* at 1541-42.

29. Havel, *supra* note 2.

[W]hen Solidarity's parliamentarians came to give their group a name, they called it the *Citizens* Parliamentary Club; the Czech movement called itself the *Civic* Forum; and the opposition groups in the GDR started by describing themselves as *Buergerinitiativen*, that is citizens' or civic initiatives. And the language of citizenship was important in all these revolutions. People had had enough of being mere components in a deliberately atomized society: they wanted to be citizens, individual men and women with dignity and responsibility, with rights but also with duties, freely associating in civil society.<sup>30</sup>

Deliberation, participation, civic responsibility: these are the familiar and often comforting confines of Enlightenment rationality. Yet underlying these accounts, from Sunstein to Havel, is a more elemental force—one that can only be described as spiritual.

Reexamine the elements of civic republicanism: Inculcation of virtue? Universalism? A common good? These are elements of a transformative vision, presuming an innate human potential unbounded by predetermined preference structures. It is a vision of the power of conviction, of belief in a larger whole.

For a few shining weeks, Eastern European practice confirmed civic republican theory. The Revolution of 1989 brought to life a vibrant conception of the political process, an interactive understanding of the relationship between individual choice and collective action. It demonstrated beyond question the reciprocal empowerment flowing from private participation in the quintessentially public functions. Surely this is the essence of republicanism, of literal self-government.

In 1990, facing the realities of wholesale economic, political, and social reconstruction, these newly elected governments and their constituents will need an avowed politics of public participation, and a continuing politics of faith. They have personal experience of the constructive power of ideals and the corrupting power of their betrayal. They will need help of every kind, but should they succeed, they will have as much to teach as to learn.<sup>31</sup> The harder task, across the Atlantic, may be the opening of the American mind.

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30. Garton Ash, *Eastern Europe: The Year of Truth*, N.Y. REV. BOOKS, Feb. 15, 1990, at 21.

31. West German President Richard von Weizsaecker made a similar point in a speech in Zurich, Switzerland, on January, 17, 1990, calling on Westerners not to be satisfied with "small victory celebrations of the Western way of life" but rather, in this time of upheaval, to find "together with the spiritual impetus of the current freedom movements signs which lead us further." GERMAN INFORMATION CENTER, *THE WEEK IN GERMANY*, Jan. 19, 1990, at 2, col. 3. (Quoting von Weizsaecker).

## iv.

A renewed and reinvigorated search for a better synthesis of rights and responsibilities, liberty and equality, individualism and solidarity. A reckoning with the past, and a catalyst for a collective future. A new paradigm of the political process. These are the potential fruits of the Revolution of 1989. But it is not at all certain that the Eastern European story will have such a happy ending. Pierre Hassner, cultural historian and philosopher, sees a stark choice:

At the crossroads of Western and Eastern influence but devoid of the legacy of Western economic expansion and of Russian territorial [expansion], [the fate of Eastern Europe] is either, by achieving some degree of unity, to inspire West and East with a genuinely European spiritual message, born of its victory over totalitarianism, or to become again a danger for European and world peace through its social and national conflicts.<sup>32</sup>

The ardor will fade. The visions will tarnish. The subjective consciousness of the spirit will give way to objective realities of the flesh. In the final analysis, however, it may not matter. Decades of turmoil and even chaos may ensue, but the lasting lesson of the Revolution of 1789 is that the legacy of the Revolution of 1989 will resonate across centuries. Its power derives far less from its fulfillment than its potential.

As Jon Elster has observed, “[t]he importance of emotions in human life is matched only by the neglect they have suffered at the hands of philosophers and social scientists.”<sup>33</sup> To have watched the Revolution of 1989 is to have born witness to the power of transcendent forces—the faith, vested today less in scriptures than in secular guarantees of human dignity, that moves mountains. It is a triumph that will endure, as the great chronicler of the Revolution of 1789 well understood:

No doubt . . . [it] was a period of inexperience, but it was also a period of generosity, of enthusiasm, of . . . [courage], of greatness—a period of immortal memory, upon which men will look back with admiration and respect when all who witnessed it, and we who follow them, shall have long since passed away.<sup>34</sup>

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32. P. Hassner, *Can the Division of Europe Be Ended?* 17–18 (1989) (unpublished manuscript on file with the author).

33. J. ELSTER, *NUTS AND BOLTS FOR THE SOCIAL SCIENCES* 61 (1989).

34. De Tocqueville, *supra* note 15.

