

Waiting for the existential revolution in Europe

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This essay argues, contrary to the widespread beliefs that prevailed after 1989, that the experience of post-communist countries and their peoples, both before and after 1989, can bring something new to our understanding of Europe's present predicament: sometimes as an inspiration, sometimes as a cautionary tale. The lessons offered by post-communist Europe concern some deeply held convictions about the very nature of the EU and its constitutional structure. Only if this experience is absorbed in Europe as its own will post-communist countries truly return to Europe—and Europe become united.

The cautionary tales of post-communist Europe concern the worrying consequences of the suppression of social conflicts "in the name of Europe." Such conflicts often get translated into identity politics, which in the context of European integration often turn against the Union. The second lesson concerns the ill fate of Havel's existential revolution. The attempts of some European constitutionalists to reform individualistic emphasis of the integration project are problematic for the same reason: they turn attention away from politics, where real solutions need to be found. This relates to the third suggestion made here: that the experience of living in a collective dream of socialism can be used as an inspiration rather than as something that needs to be erased from the collective memory of Europe.

[Central Europe] could approach a rich Western Europe not as a poor dissident or a helpless, amnestied prisoner, but as someone who also brings something with him: namely spiritual and moral incentives, bold peace initiatives, untapped creative potential, the ethos of freshly gained freedom, and the inspiration for brave and swift solutions.

Václav Havel, January 21, 1990¹

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¹ Speech to the Polish Sejm and Senate, published as *The Future of Central Europe*, NEW YORK REVIEW OF BOOKS (Mar. 29, 1990), available at <http://vaclavhavel.cz>, where all other texts by Havel quoted here can be found.

1. Introduction

Contrary to what Václav Havel had hoped in 1990, a belief that there was nothing to learn from post-communist countries prevailed in the West.² The French historian François Furet put it bluntly: “With all the fuss and noise, not a single new idea has come out of Eastern Europe in 1989.”³ The “existential revolution” called for by dissident Havel in his famous 1978 essay, “The Power of the Powerless,” did not happen—either in the West or in Havel’s homeland.⁴ Instead, the West took 1989 as “a restatement of the value of what [it] already [had], of old truths and tested models,”⁵ and the people in post-communist Europe swiftly accepted it. The only way to freedom and prosperity seemed to be by way of liberal democracy and market economy. The year 1989 marked the “end of history.”⁶

Today, Europe finds itself in deep crisis: economic, political, but most of all, spiritual. The pressure of “a new global race of nations,” as the British Prime Minister put it in his *EU Speech*,⁷ determines how Europeans (should) live today. China, not America, seems to be the relevant Other, against which Europe is going to define itself. As a result, its citizens are “sidelined and numbed by the repetitive talk of austerity and economic stability, financial leverage and institutional reforms.”⁸ Imaginative political language is rare; instead, economists (and economism) occupy public discourse. To add to these problems, some former post-communist countries seem to be “sliding back to authoritarianism,”⁹ and the Union is uncertain about how to react. Thinking that these developments reflect “a deep-seated nationalism” or “a feeling of

² I use the expression “the West” metaphorically to denote the countries which were on the non-communist side of the Iron Curtain. Since the fall of the Curtain, the border between the East and the West has become contested. See Michał Buchowski, *The Specter of Orientalism in Europe: From Exotic Other to Stigmatized Brother*, 79 *ANTHROPOLOGICAL Q.* 463, 464–465 (2006).

³ Reported in RALF DAHRENDORF, REFLECTIONS ON THE REVOLUTION IN EUROPE 27 (2005 [1990]), who expressed the same view as numerous other observers from the West: see BARBARA J. FALK, THE DILEMMAS OF DISSIDENCE IN EAST-CENTRAL EUROPE: CITIZEN INTELLECTUALS AND PHILOSOPHER KINGS 335–337 (2003) (mentioning Timothy Garton Ash, Jürgen Habermas, and Stephen Holmes, among others).

⁴ Václav Havel, *The Power of the Powerless*, in VÁCLAV HAVEL OR LIVING IN TRUTH 36 (Jan Vladislav ed., Paul Wilson trans., 1986). After 1989, the most articulate formulation of what this revolution should entail was given in Havel’s speech to a joint session of US Congress on Feb. 21, 1990 in Washington. On Havel’s “existential revolution,” see AVIEZER TUCKER, THE PHILOSOPHY AND POLITICS OF CZECH DISSIDENCE FROM PATOČKA TO HAVEL 161–165 (2000); on Havel’s Washington speech see *id.*, at 174–183.

⁵ TIMOTHY GARTON ASH, THE MAGIC LANTERN: THE REVOLUTION OF ’89 WITNESSED IN WARSAW, BUDAPEST, BERLIN AND PRAGUE 156 (1999 [1990]).

⁶ FRANCIS FUKUYAMA, THE END OF HISTORY AND THE LAST MAN (1992).

⁷ David Cameron, *EU Speech at Bloomberg* (Jan. 23, 2013), available at <http://www.number10.gov.uk/news/eu-speech-at-bloomberg/>.

⁸ See the manifesto composed by Moritz Hartmann and Floris de Witte, *Ending the Honeymoon: Constructing Europe beyond the Market*, RE:GENERATION EUROPE (undated), <http://regenerationeurope.eu/1-0-Manifesto-English.html>. The manifesto gave rise to a 5 GERMAN L.J.: SPECIAL ISSUE (2013), edited by its authors.

⁹ See Jan Werner Müller, *Safeguarding Democracy inside the EU: Brussels and the Future of Liberal Order*, Transatlantic Academy Paper Series No. 3 Feb. 3, 2014, <http://www.transatlanticacademy.org/publications/safeguarding-democracy-inside-eu-brussels-and-future-liberal-order>, and the discussion

resentment and victimization”¹⁰ is, however, only partly true. After all, the state of democratic politics in some “old” EU member states is equally worrying, and the EU’s approach to its crisis is far from democratic.¹¹

This essay argues, contrary to the widespread beliefs that prevailed after 1989, that the experience of post-communist countries and their peoples, both *before* and *after* 1989, can bring something new to our understanding of Europe’s present predicament: sometimes as an inspiration, sometimes as a cautionary tale. The lessons offered by post-communist Europe concern some deeply held convictions about the very nature of the EU and its constitutional structure. Only if this experience is absorbed in Europe *as its own*, will post-communist countries truly return to Europe—and Europe become united.¹²

The first three sections which follow this introduction, deal with some consequences of the ideology of the “Return to Europe” for constitutionalism and political culture in post-communist countries. In Section 2, I explain how the ideology of the “Return to Europe” quickly silenced voices seeking to find alternatives to a market economy and even liberal democracy of the West. Section 3 may remind one of numerous “enlargement studies,” which saw the new member states mainly as a threat (or at least a challenge) to the EU’s constitutional culture. The main goal of this Section is different, however: it is to show the lack of serious engagement with problems and conflicts that post-communist countries’ accession to the EU would inevitably bring. Such conflicts did not disappear, however. Instead they started to emerge after the post-communist countries joined the EU. Section 4 argues that it is the repression of social conflicts and the impossibility of translating them into ordinary politics that explains the current turn to authoritarianism and nationalism in some post-communist countries. Here lies the first lesson to be drawn from post-communist Europe. There is no reason to believe that the rest of Europe is different, since it is haunted by the same problem: there seems to be “no alternative” to the current policies addressing the crisis, while democracy is suspended in the interest of European integration and the survival of the Eurozone.¹³

This capacity of European integration to deprive democratic politics of alternatives is bound up with a deeper question concerning the nature of European integration and its constitution. Too many attempts to conceptualize European integration still avoid

at Ungarn—was tun?, VERFASSUNGSBLOG ON MATTERS CONSTITUTIONAL, <http://www.verfassungsblog.de/de/category/schwerpunkte/antworten-auf-ungarn/>.

¹⁰ Both quotations come from Jan Werner Müller, *The Hungarian Tragedy*, DISSENT 5, 7 (Spring 2011).

¹¹ See Michael Wilkinson, *The Specter of Authoritarian Liberalism: Reflections on the Constitutional Crisis of the European Union*, 14 GERMAN L.J. 527 (2013), and also Fritz Scharpf, *Monetary Union, Fiscal Crisis and the Disabling of Democratic Accountability*, in *POLITICS IN THE AGE OF AUSTERITY* 108 (Armin Schäfer & Wolfgang Streeck eds, 2013).

¹² That it is not the case now is, for example, documented by the conspicuous absence of post-communist Europe from most “big narratives” of European integration published since 2004. JAN ZIELONKA, *EUROPE AS EMPIRE: THE NATURE OF THE ENLARGED EUROPEAN UNION* (2006) is rather exceptional, but this, I would argue, is due to the author’s origins (in Poland). WOJCIECH SADURSKI (Polish by origin) in his recent book *CONSTITUTIONALISM AND THE ENLARGEMENT OF EUROPE* (2012) presents the enlargement as a facilitator of processes that were taking place in “Old Europe,” rather than as a source of the EU’s deep transformation and rethinking.

¹³ See Scharpf, *supra* note 11.

social dimension. European constitutional theory plays no small part in this. As Section 5 shows, at present there are two influential, but rather truncated visions of Europe: one presenting Europe as a safeguard of peace, democracy, and human rights; the other viewing the EU through the lens of economic policy management that understands the Market as either an area of free trade or a new regulatory space. The social question that invokes solidarity and redistribution does not figure among such accounts. Section 6 puts this issue into the context of European constitutionalism, exemplified by the work of its key proponent, Joseph Weiler. I investigate whether the more recent attempts by Weiler to construct a deeper ethos of European integration can be somewhat helped by Václav Havel's call for "existential revolution," discussed in Section 7. The following Section 8 rejects this option, which can be presented as the second important lesson of post-communist Europe and its transformation in the 1990s. The coda brings in perhaps the deepest—and non-transferable—experience of communism, which goes before 1989 and is most controversial. It suggests that the living in a "collective dream [that] dared to imagine a social world in alliance with personal happiness, and promised to adults that its realization would be in harmony with the overcoming of scarcity of all"¹⁴ should not be swept aside as post-communist Europe's nightmare. It can still inform the EU's ambition to create "an ever closer union among the peoples of Europe."

2. In the name of a "Return to Europe"

After 1989, any alternative which tried to preserve something positive that may have been achieved when the "really existing socialism" was being built was firmly rejected. As the former grey-zone technocrat Václav Klaus quipped in 1990, shortly after he became the Minister of Finance in the first post-communist government of Czechoslovakia,¹⁵ the "Third Way [trying to find a middle way between a socialist planned economy and a capitalist free market] is the fastest way to the Third World."¹⁶ He soon took over the leadership of the transformation, together with other free-market liberals in post-communist Europe supported by an army of Western advisers prescribing "shock therapy."¹⁷ The dissidents' notions of civil society and anti-politics,

¹⁴ SUSAN BUCK-MORSS, *DREAMWORLD AND CATASTROPHE: THE PASSING OF MASS UTOPIA IN EAST AND WEST*, at ix (2000). This is also the message of BORIS BUDEN's book, *ZONE DES ÜBERGANGS: VOM ENDE DES POSTKOMMUNISMUS* (2009).

¹⁵ On Klaus's background in the 1968–1989 era, see GIL EYAL, *THE ORIGINS OF POSTCOMMUNIST ELITES: FROM PRAGUE SPRING TO THE BREAKUP OF CZECHOSLOVAKIA* 78–86 (2003).

¹⁶ *Third Way, No Way? Notes for the World Economic Forum, Davos, 26 January 2000*, <http://www.klaus.cz/clanky/1186>, referring to Klaus's 1990 Davos speech.

¹⁷ A programmatic text can be found in Jeffrey D. Sachs, *What Is to Be Done*, *THE ECONOMIST*, Jan. 13, 1990, at 19. On the forceful rejection of the third way in Poland, see Dorothee Bohle & Gisela Neunhöffer, *Why Is There No Third Way?: The Role of Neoliberal Ideology, Networks and Think Tanks in Combating Market Socialism and Shaping Transformation in Poland*, in *NEOLIBERAL HEGEMONY: A GLOBAL CRITIQUE* 89 (Dieter Plehwe, Bernhard Walpen & Gisela Neunhöffer eds, 2006). East Germany must not be forgotten in this context, since "East Germans remained the most reluctant converts to the civic mission of capitalism": see CHARLES S. MAIER, *DISSOLUTION: THE CRISIS OF COMMUNISM AND THE END OF EAST GERMANY* 192 (1997). The advocates of what could be called the "third way" lost the 1990 elections, however, and East Germany ceased to exist—on the political map at least, if not in the minds of its former citizens.

transcending both politics and economy,¹⁸ were soon dumped by the new post-communist elites. Most dissidents left politics soon after 1989, and their place was assumed by “grey-zone” technocrats and former members of *nomenklatura*, who quickly learned the new language of democracy, human rights, the rule of law, and, of course, market economy.¹⁹

It was the language that post-communist Europe had to use if it wanted to “return to Europe” from where the region had been, in Milan Kundera’s metaphor, “kidnapped” to the East.²⁰ This goal was almost immediately translated into “joining the EU” in 1989. An early programmatic document of the Czechoslovak opposition thus stated boldly: “[w]e are striving for our country to once again occupy a worthy place in Europe and in the world. . . . We are counting on inclusion into European integration.”²¹

The fierce critic of the “ideology called transitology,”²² Croatian writer Boris Buden, shows that the Return to Europe was a matter of culture too. Since the liberal-democratic capitalist system represents the purest *cultural* embodiment of modernity, and the Soviet-style totalitarianism its total negation,²³ post-communist Europe found itself helplessly left behind. All it could do was to “rectify”²⁴ the past forty years of communism and spend the years after 1989 in the “misery of catching-up” with the West.²⁵

The more spiritual reasons for the reunification of post-communist Europe with the West were soon accompanied by more pragmatic ones. The economic protectionism of the EU helped persuade the leaders of post-communist countries to seek full EU membership, despite the existing members’ reluctance to admit post-communist countries into their ranks.²⁶ After they had finally decided to open the club to these countries,²⁷

¹⁸ See particularly Falk, *supra* note 3, at ch. 8; Jeffrey C. Isaac, *The Meanings of 1989*, 63 SOCIAL RESEARCH 291 (1996); and DAVID OST, SOLIDARITY AND THE POLITICS OF ANTI-POLITICS: OPPOSITION AND REFORM IN POLAND SINCE 1968, ch. 2 (Philadelphia: Temple University Press 1990). See *infra* note 119 and accompanying text.

¹⁹ See GIL EYAL, IVÁN SZELÉNYI & ELEANOR TOWNSLEY, MAKING CAPITALISM WITHOUT CAPITALISTS: THE NEW RULING ELITES IN EASTERN EUROPE (1998).

²⁰ Milan Kundera, *Un occident kidnappé, ou la tragédie de l’Europe centrale*, 5 LE DÉBAT 2 (1983). Kundera speaks of Central Europe’s being kidnapped from the West, but “the West,” for most people in 1989 in Central Europe, meant “Europe” or “the European Union.”

²¹ *What We Want*, CIVIC FORUM, Nov. 26, 1989, available at <http://chnm.gmu.edu/1989/files/download/1347/fullsize>.

²² Boris Buden, *Children of Postcommunism*, 159 RADICAL PHIL. 18 (2010). This article is ch. 2 of BUDEN’s fascinating book, *supra* note 14.

²³ See Luciano Pellicani, *Modernity and Totalitarianism*, 112 TELOS 3 (1998).

²⁴ See Jürgen Habermas, *What Does Socialism Mean Today? The Rectifying Revolution and the Need for New Thinking on the Left*, 1(183) NEW LEFT REV. 3 (1990).

²⁵ *Das Elend des Nachholens*, as reads the title of ch. 3 of BUDEN, *supra* note 14.

²⁶ See MILADA ANNA VACHUDOVA, EUROPE UNDIVIDED: DEMOCRACY, LEVERAGE, AND INTEGRATION AFTER COMMUNISM 82–98 (2005).

²⁷ It was Germany’s self-interest which helped to persuade other governments of the need to offer a realistic prospect of full membership to the post-communist countries. See Marcin Zaborowski, *More than Simply Expanding Markets: Germany and EU Enlargement*, in QUESTIONING EU ENLARGEMENT: EUROPE IN SEARCH OF IDENTITY 104 (Helene Sjursen ed., 2006).

liberal democracy and market economy were the key criteria for membership.²⁸ As the next Section argues, they became as “unquestionable goods” as socialism was in the pre-1989 period.

3. Constitutional submission

The “There Is No Alternative” to the liberal democracy and market economy narrative²⁹ presented the people in post-communist Europe with something that was disturbingly familiar to them. When they lived in “really existing socialism,” they were left with no choice but to submit to the laws of historical necessity steering them to a better (socialist) future. Throughout the 1990s, they were again simple “marionettes in a historical process that takes place independently of their will and drags them with it to a better future”³⁰—this time liberal democracy and market economy, which awaited them at the end of history.

There is a rich literature concerning the impact of the accession of post-communist countries to the EU on the functioning of their political systems.³¹ Many analysts today agree that while post-communist countries were successful in building democratic *institutions*, they were much less so as regards democratic *culture*—one Czech commentator describes this as “democracy without democrats.”³² Accession to the EU contributed to this in various ways: the need to transpose the sheer amount of *acquis* turned parliaments in post-communist countries into “approximation machines,” while the political process was not expected to generate its own solutions to problems, since they all came from the EU. Some effects, such as the empowerment of the executive at the expense of other branches of government or the detachment of supranational norms from societal needs, were not specific to the post-communist context.

Attention is also paid to the impact of EU membership on the members’ constitutional culture. As regards this aspect, however, the focus is more on the functional needs of European integration and the question whether the post-communist

²⁸ The “Copenhagen criteria,” now codified in the Treaty Establishing the European Union, 1992 O.J. (C191) 1; 31 I.L.M. 253, art. 2 [hereinafter TEU] (through reference in art. 49 TEU). On the role of the criteria in the process of preparing and negotiating accession, see VACHUDOVA, *supra* note 26, at 95–96 and 121–123.

²⁹ See Anna Grzymala-Busse & Abby Innes, *Great Expectations: The EU and Domestic Political Competition in East Central Europe*, 17 E. EUR. POL. & SOCIETIES 64 (2003). For those who do not remember, or do not know, “There Is No Alternative” was the slogan of Margaret Thatcher, with which she defended her neoliberal policies of the 1980s. See IAIN McLEAN, *RATIONAL CHOICE AND BRITISH POLITICS: AN ANALYSIS OF RHETORIC AND MANIPULATION FROM PEEL TO BLAIR*, at ch. 8 (2001).

³⁰ BUDEN, *supra* note 14, at 22.

³¹ For an overview, see VACHUDOVA, *supra* note 26, at 224–232. See also 17(1) E. EUR. POL. & SOCIETIES: SPECIAL ISSUE (2003); SPREADING DEMOCRACY AND THE RULE OF LAW? THE IMPACT OF EU ENLARGEMENT ON THE RULE OF LAW, DEMOCRACY AND CONSTITUTIONALISM IN POST-COMMUNIST LEGAL ORDERS (Wojciech Sadurski, Adam Czarnota & Martin Krygier eds., 2006); and Jacques Rupnik & Jan Zielonka, *Introduction. The State of Democracy 20 Years on: Domestic and External Factors*, 27 E. EUR. POL. & SOCIETIES: SPECIAL ISSUE 3 (2013).

³² JIŘÍ PEHE, *DEMOKRACIE BEZ DEMOKRATŮ: ÚVAHY O SPOLEČNOSTI A POLITICE* [Democracy without Democrats: Thoughts on Society and Politics] (2010).

constitutionalism would not hamper the effectiveness of EU law in the new member states, rather than whether there was something that should remain protected or even taught to the West.³³

Many people, for example, predicted that the EU constitutional orthodoxy would face problems in post-communist Europe because of the newly discovered sovereignty. It was sometimes said that “while Western Europe is leaving the twentieth century for the twenty-first, Eastern Europe is leaving the twentieth century for the nineteenth.”³⁴ True as these early diagnoses might be,³⁵ the challenges that the EU constitutional orthodoxy is now facing in some of the member states have to do with something else. They relate to the “There Is No Alternative” narrative. When these countries negotiated their membership, domestic constitutional debates (if there were any) mostly dealt with the question of how most effectively to give precedence to EU law’s primacy and direct effect.³⁶ Raising the possibility of a conflict between their respective normative foundations meant not only joining the ranks of domestic Euroskeptics and nationalists, but also appearing helplessly backward: heading towards the nineteenth century.

Thus when the power of the European Council to suspend the voting rights of a member state violating the EU foundational values was questioned before the Czech Constitutional Court, the court replied that “these values were in principle in conformity with the values that formed the very foundations of the material core of the constitutional order of the Czech Republic.”³⁷ Their violation would, in the court’s opinion, “simultaneously mean the violation of the values on which the materially understood constitutionality of the Czech Republic rests.”³⁸ It would later come as a surprise to some Europeanists who assisted in drafting the integration clauses of the accession states’ constitutions to make the application of EU law more effective,³⁹ that this law could exhibit some deeply problematic features which they would like to see resisted.⁴⁰

The 2012 decision of the same court, which declared a judgment of the Court of Justice of the European Union (CJEU) to be *ultra vires*, therefore appeared strikingly

³³ See especially the numerous contributions in *THE APPLICATION OF EU LAW IN THE NEW MEMBER STATES: BRAVE NEW WORLD* (Adam Lazowski ed., 2010).

³⁴ DAHRENDORF, *supra* note 3, at 149–150 (Dahrendorf himself did not fully endorse the claim). See, e.g., Wojciech Sadurski, *Constitutionalization of the EU and the Sovereignty Concerns of the New Accession States: The Role of the Charter of Rights*, EUI Working Paper Law 2003/11, <http://hdl.handle.net/1814/1363>.

³⁵ I made the same observation in Jan Komárek, *European Constitutional Pluralism and the European Arrest Warrant: Contrapunctual Principles in Disharmony*, Jean Monnet Working Paper No. 10/05, <http://centers.law.nyu.edu/jeanmonnet/archive/papers/05/051001.html>.

³⁶ See Anneli Albi, *Selected EU Judgments by CEE Constitutional Courts: Lessons on How (Not) to Amend Constitutions?*, 3 CROATIAN Y.B. EUR. L. & POL’Y 39 (2007).

³⁷ Czech Constitutional Court, Nov. 26, 2008, Pl. ÚS 19/08, *Lisbon Treaty I*, English translation available at http://www.usoud.cz/en/decisions/?tx_ttnews%5Btt_news%5D=484&cHash=621d8068f5e20ecadd84e0bae0527552.

³⁸ *Id.* ¶ 209.

³⁹ See Albi, *supra* note 36.

⁴⁰ See Anneli Albi, *Ironies in Human Rights Protection in the EU: Pre-Accession Conditionality and Post-Accession Conundrums*, 15 EUR. L.J. 46 (2009).

inconsistent with the line taken by the earlier Czech court.⁴¹ Although one should not read too much into the judgment, which was intended to be read primarily in the domestic context,⁴² there is something deeply disconcerting about it: the reaction it provoked in certain circles. In his speech to the Hessen Regional Parliament delivered shortly after the Czech Constitutional Court's decision, the German Constitutional Court President Andreas Vosskuhle praised the decision. In his opinion, it "followed" the German example.⁴³ Anybody who has read the Czech decision and has even a sketchy knowledge of the German jurisprudence concerning *ultra vires* review of the EU, however, would agree that this was utter nonsense.⁴⁴ The two judgments are similar only at the most superficial level: as examples of national courts' "resistance." The form, and ultimately the substance, of both decisions could not be more different. Damian Chalmers then took the decision as an example of the ECJ's arrogance when engaging national constitutional courts.⁴⁵ But that view is also mistaken, I believe.⁴⁶

I would suggest that these are not simple misreadings of the decision and its context. I worry that, yet again, there is no serious engagement with post-communist Europe. Its experience is taken only to confirm the existing opinions and biases, formed quite independently of what is going on there. One is reminded of a similar "dialogue" that had been taking place between some economists in the West and their reform-minded colleagues behind the Iron Curtain since the early 1950s.⁴⁷ The *opinions* of Eastern economists did not matter in that "dialogue"; what was needed in the West was empirical *facts* to be fed into *their* models of economic equilibrium (in the case of mathematical neoclassical economists),⁴⁸ or to be used by early neoliberals as indisputable evidence that a planned economy cannot work.⁴⁹ This "dialogue" (and its importance for the formation of neoliberal economic thought) was never acknowledged in the West since, from its point of view, no dialogue actually existed. It was just a flow of information (and yes, some teaching and learning—from the West to the East).

⁴¹ Analyzed most recently in Michal Bobek & David Kosař, *Report on the Czech Republic and Slovakia, in THE NATIONAL JUDICIAL TREATMENT OF THE ECHR AND EU LAWS: A CONSTITUTIONAL COMPARATIVE PERSPECTIVE* 157 (Giuseppe Martinico & Oreste Pollicino eds, 2010).

⁴² That is how I read the judgment: see my case comment, Jan Komárek, *Playing with Matches: the Czech Constitutional Court Declares a Judgment of the Court of Justice of the EU Ultra Vires*, 8 EUR. CONST. L. REV. 323 (2012).

⁴³ Andreas Vosskuhle, *Bewahrung und Erneuerung des Nationalstaats im Lichte der Europäischen Einigung*, Speech delivered before the Hessen Regional Parliament (*Landtag*), Wiesbaden, Mar. 1, 2012.

⁴⁴ Commenting on the decision of his former colleagues, Jiří Malenovský (now a ECJ judge) characterized it as a "caricature of the German jurisprudence." See Jiří Malenovský, *60 let Evropských společenství: od francouzského "supranacionálního" smluvního projektu k jeho německému "podústavnímu" provádění*, 151 PRÁVNÍK 673 (2012).

⁴⁵ Damian Chalmers, *The European Court of Justice Has Taken on Huge New Powers as "Enforcer" of Last Week's Treaty on Stability, Coordination and Governance. Yet its record as a judicial institution has been little scrutinized*, EUROPP BLOG (Mar. 7, 2012), <http://blogs.lse.ac.uk/europpblog/2012/03/07/european-court-of-justice-enforcer/>.

⁴⁶ See Komárek, *supra* note 42, at 335–336.

⁴⁷ See Johanna Bockman & Gil Eyal, *Eastern Europe as a Laboratory for Economic Knowledge: The Transnational Roots of Neoliberalism*, 108 AM. J. SOC. 310 (2002).

⁴⁸ Bockman & Eyal mention Harvard professor Wassily Leontief as an example (*id.* at 329–330).

⁴⁹ Friedrich von Hayek and Milton Friedman are discussed by *id.* at 331–337.

This exchange, whatever one calls it, had a real influence on the formation of economic policies in post-communist Europe and the establishment of the (neo)liberal consensus in 1989 and the early 1990s.⁵⁰ This relates to the second theme I would like to explore here, which concerns the economic part of post-communist Europe's transformation and its ultimate accession to the EU. As I will explain, it cannot be ignored, even if we focus on constitutionalism and democracy. Quite to the contrary: we cannot understand the problems of EU constitutionalism without understanding its political economy.

4. Suppressing social conflicts

The apparent triumph of liberal democracy and market economy had another, and for the present crisis of the EU much more important, consequence: the losers in the period of democratic transition had no voice in the process; in some instances, they even contributed to their own degradation in the name of a “better future” at the end of history. One cannot overlook, once again, the deeper continuity of the post-communist experience with the times of the building of an actually existing socialism, noted above. One commentator from the West, for example, wrote:

If the people of formerly communist Europe can endure the hardship that the policies of stabilization, liberalization, and institution-building inflict, they will emerge at the end of the greatest upheaval that any democratic government has ever brought deliberately upon its own people, at the other end of the valley of tears, into the sunlight of Western freedom and prosperity.⁵¹

Tears there were, indeed, but to speak against economic reforms meant to speak against the Return to Europe and democratic transformation at the same time, since both were tied to market economy. Moreover, the market-building project was identified with state building,⁵² and also concerned the much desired (re-)modernization of post-communist society on its return to Europe from its “Eastern kidnapping.”⁵³

The experience of some dissidents also spoke against any state intervention in the market economy. Justifying his original support for Václav Klaus's neoliberal reforms, Havel said, “We wanted a *normal* market system of economics.”⁵⁴ As Barbara Falk

⁵⁰ See *supra* note 17, and more generally, JOHANNA BOCKMAN, *MARKETS IN THE NAME OF SOCIALISM: THE LEFT-WING ORIGINS OF NEOLIBERALISM* (2011). The term “neoliberalism” is now used in ideological battles much like “communism” used to be. In this essay, I essentially mean “a theory of political economic practices that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterized by strong property rights, free markets, and free trade.” The role of the state is minimal: see DAVID HARVEY, *A BRIEF HISTORY OF NEOLIBERALISM* 2 (2005). It is notoriously difficult to define neoliberalism today; see, e.g., Philip Mirowski, *Postface: Defining Neoliberalism*, in *THE ROAD FROM MONT PÈLERIN: THE MAKING OF THE NEOLIBERAL THOUGHT COLLECTIVE* 417 (Philip Mirowski & Dieter Plehweteds eds., 2009).

⁵¹ Michael Mandelbaum, *Introduction*, in *MAKING MARKETS: ECONOMIC TRANSFORMATION IN EASTERN EUROPE AND THE POST-SOVIET STATES* 1, 15 (Shafiqul Islam and Michael Mandelbaum eds., 1993).

⁵² See Stephen Holmes, *The Politics of Economics in the Czech Republic*, 4 E. EUR. CONST. REV. 52 (1995).

⁵³ See *supra* text accompanying note 23, and also EYAL, *supra* note 15, at 160–169, describing the rituals of post-communist life, consisting for example of conducting a small, but well-attended and televised ceremony celebrating the fact that the Czech Republic's budget year 1993 ended in surplus.

⁵⁴ Quoted in FALK, *supra* note 3, at 331 (original emphasis).

explains, “[n]ormal meant the opportunity to unburden oneself of politics because a normal situation was one where economics dominated politics, and not the other way around,”⁵⁵ as experienced in planned economies before 1989.

Those most affected by the reforms thus sometimes supported them in the name of the “greater good.” This is best illustrated by the example of the Polish opposition movement, Solidarity, which started out as an independent trade union in 1980, but was in fact a coalition of workers (such as its leader and later President of Poland Lech Wałęsa) and liberal intellectuals (Adam Michnik, Bronisław Geremek, and Tadeusz Mazowiecki).⁵⁶ As David Ost documents in his study of Solidarity’s transformation after 1989,⁵⁷ as soon as the prospect of democratic reform’s success became clear, the leaders of Solidarity—mostly the liberal intellectuals—started to play down the importance of the active citizenry (“civil society”), where the labor class had a prominent place, and began to stress the foundations of democracy in private property and free market.⁵⁸ Some of them, such as Adam Michnik, even presented labor activism as a threat to democracy and future reforms. Liberal intellectuals of Solidarity thus radically reinterpreted the notion of civil society, the central conceptual innovation of the Central European dissident movement.⁵⁹ While in the early 1980s they saw labor activism as “the embodiment of the free, autonomous public activity that they believed to be the grounding of a democratic system,”⁶⁰ in 1989 and thereafter, they defended their neoliberal economic reforms, which were manifestly against the interests of the labor class, “on the ground that this was what building civil society [and hence democracy] was all about.”⁶¹ They came from the adoration of labor to the fear and even disdain of it.

As Ost emphasizes throughout the 1990s, “Solidarity consistently sought to organize labor anger away from *class* cleavages and toward *identity* cleavages instead.”⁶² This is what explains Solidarity’s metamorphosis into illiberal populist right, represented by the Kaczynski brothers, and similar developments in other post-communist countries,⁶³ including Hungary, which is now troubling European liberals so greatly,⁶⁴ or the Czech Republic—which is all the more peculiar, since it was one and the same

⁵⁵ *Id.*

⁵⁶ On the history of Solidarity, see OST, *supra* note 18.

⁵⁷ DAVID OST, *THE DEFEAT OF SOLIDARITY: ANGER AND POLITICS IN POSTCOMMUNIST EUROPE* (2005).

⁵⁸ See *id.* at 40–43.

⁵⁹ See FALK, *supra* note 3, at ch. 8; Isaac, *supra* note 18; and OST, *supra* note 18, at ch. 2.

⁶⁰ See OST, *supra* note 18, 192.

⁶¹ *Id.* at 192.

⁶² *Id.* at 35. For a restatement, see David Ost, *The Invisibility and Centrality of Class After Communism*, 22 INT’L J. POL., CULTURE & SOC’Y 497 (2009).

⁶³ Briefly explored in OST, *supra* note 57, at 180–184, with further references. See also Ivan Krastev, *The Strange Death of the Liberal Consensus*, 18 J. DEMOCRACY 56 (2007) (written even before Orbán’s Fidesz took power in Hungary!).

⁶⁴ See Müller, *supra* note 10—although it must be stressed that Müller is far from blind to “the plight of the victims of post-communism”: *id.* at 9. It seems, however, that Müller ascribes this plight to the failure of reforms, leading to “capitalism, in its worst, corruption-ridden form to boot” rather than their “success,” if success is measured by what at least some Western advisers wanted to achieve at the beginning of transition.

person, Václav Klaus, who first imposed his “no alternative” on the citizens only to turn to nationalism when these policies started to create true social conflicts.⁶⁵

All this could sound like a biased leftist critique of economic reforms that were “necessary,”⁶⁶ but Ost’s argument is broader than that. It is a strong defense of the centrality of class conflict in liberal democracy. Ost explains that “[h]istorically, mobilization of non-elites along class lines has been the best way to secure democratic inclusion since in this way, interests can be negotiated, with the differing sides recognized as essential parts of the same community.”⁶⁷ He is acutely aware of the controversy concerning the relevance of social class in today’s politics; he nevertheless warns that “[t]o say class is no longer relevant because it no longer explains social dynamics or because we live in a postmodern world where such narratives no longer make sense—this is to concede the terrain of class organization to others.”⁶⁸

Marco Dani argues that the post-war constitutional settlement in Western Europe was able to accommodate class struggles into its structures, particularly through political rights, which “could give rise to a type of adversary politics primarily centred on redistribution,”⁶⁹ but is very pessimistic about the ability of the EU to replicate such structures at the supranational level. At the same time, he refers to recent findings by Neil Fligstein, who in his *Euroclash* finds that three main constituencies emerge from the adjustment of European society to economic integration: the winners (or insiders), losers (or outsiders), and most importantly, a more ambiguous swing constituency, “situational Europeans.”⁷⁰

Dani opines that these three constituencies “have not evolved in social classes and political parties,” but that is only partially true. Such conflicts do get articulated politically, but at the national level.⁷¹ Like post-communist Europe, where real social conflicts arising from the reforms were suppressed in the name of the Return to Europe (and later translated into the language of illiberal nationalism), in the context of

⁶⁵ See SEÁN HANLEY, *THE NEW RIGHT IN THE NEW EUROPE: CZECH TRANSFORMATION AND RIGHT-WING POLITICS, 1989–2006*, at ch. 8 (2006).

⁶⁶ But see Maurice Glasman, *The Great Transformation: Polanyi, Poland and the Terrors of Planned Spontaneity*, in *THE NEW GREAT TRANSFORMATION? CHANGE AND CONTINUITY IN EAST-CENTRAL EUROPE* 191 (Christopher G.A. Bryant & Edmund Mokrzycki eds., 1994) [hereinafter *THE NEW GREAT TRANSFORMATION*], with a comment by Steven Lukes, *Is there an Alternative to Market Utopianism?*, in *THE NEW GREAT TRANSFORMATION*, 218.

⁶⁷ Ost, *supra* note 62, at 498. See also Ost, *supra* note 57, at 29–34. For a historical argument in this vein, see GREGORY M. LUEBBERT, *LIBERALISM, FASCISM, OR SOCIAL DEMOCRACY: SOCIAL CLASSES AND THE POLITICAL ORIGINS OF REGIMES IN INTERWAR EUROPE* (1991).

⁶⁸ Ost, *supra* note 57, at 204.

⁶⁹ See Marco Dani, *Rehabilitating Social Conflicts in European Public Law*, 18 EUR. L.J. 621 (2012). Dani does not use the term “class conflict,” and uses “social conflict,” instead; in the context of his study, they can be considered synonymous. For a wider political-historical argument, see STEFANO BARTOLINI, *THE POLITICAL MOBILIZATION OF THE EUROPEAN LEFT, 1860–1980: THE CLASS CLEAVAGE* (2000).

⁷⁰ Dani, *supra* note 69, at 638. NEIL FLIGSTEIN, *EUROCLASH: THE EU, EUROPEAN IDENTITY, AND THE FUTURE OF EUROPE* 211–213 (2008).

⁷¹ See Hanspeter Kriesi, *The Mobilization of the Political Potentials Linked to European Integration by National Political Parties*. Paper presented at the Conference “Euroscepticism,” Amsterdam, July 1–2, 2005; and HANSPETER KRIESI ET AL., *WEST EUROPEAN POLITICS IN THE AGE OF GLOBALIZATION* (2008). Cf. Albenaz Azmanova, *After the Left–Right (Dis)continuum: Globalization and the Remaking of Europe’s Ideological Geography*, 5 INT’L. POL. SOC. 384 (2011).

Dani's analysis, Europe plays the part of a protective shield from real issues in a different way: it allows organizing anger away from the conflict between those who benefit from integration and those who are the losers in the process, and navigate this conflict against Europe, or what is worse, the *German* Europe.⁷² It is mostly because the EU is seen as the problem, rather than the solution. To turn Europe into the solution to many a European citizen's precarious situation, however, would require opening the question of what Europe should represent—something that concerns the EU as a whole, and not just its post-communist part.

5. European Union's civilizing mission

The difficulty of translating social conflicts arising from the process of European integration into something other than identitary politics of Euroskepticism and nationalism⁷³ reflects a deeper problem affecting European democracies today: their decreasing capacity to make *political* choices over their macroeconomic policies,⁷⁴ resulting in their inability to address the social question: "the capacity of a society (known in political terms as a nation) to exist as a collectivity linked by relations of interdependency."⁷⁵

Many instruments of economic and social policy were de-politicized in postwar Western Europe, and European integration was an important part of this process (together with the globalization of trade and capital movement liberalization).⁷⁶ This in fact reduced the capacity of governments to negotiate social conflicts at a time when the social compromise could no longer be paid out by the real economy at the end of the 1970s. This is what explains the rise of neoliberalism at that time.⁷⁷ At the level of ideas, particularly political and constitutional theory, some influential understandings of the EU have helped to promote this "depoliticization" of economic policy by supranational integration.⁷⁸ One presents the EU in terms of political liberalism, stripped of any critical analysis of the redistributive effects which the constitutional arrangements can bring about. Another is focused on the Market and places the legitimating processes exclusively at the level of the member states.

⁷² See ULRICH BECK, *GERMAN EUROPE* (Rodney Livingstone trans., 2013).

⁷³ For an analysis of this conundrum, see ULRICH BECK & EDGAR GRANDE, *COSMOPOLITAN EUROPE* (Ciaran Cronin trans., 2007).

⁷⁴ See Wolfgang Streeck & Daniel Mertens, *Public Finance and the Decline of State Capacity in Democratic Capitalism*, in *POLITICS IN THE AGE OF AUSTERITY*, *supra* note 11, 26.

⁷⁵ ROBERT CASTEL, *FROM MANUAL WORKERS TO WAGE LABORERS: TRANSFORMATION OF THE SOCIAL QUESTION*, at xx (Richard Boyd trans. and ed., 2003). See also Alexander Somek, *The Social Question in a Transnational Context*, LEQS Paper No. 39, June 2011, <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper39.pdf>.

⁷⁶ See FRITZ SCHARPF, *GOVERNING IN EUROPE: EFFECTIVE AND DEMOCRATIC?*, 28–42 (1999); and Scharpf, *supra* note 11, at 109–114 or CHRISTOPHER J. BICKERTON, *EUROPEAN INTEGRATION: FROM NATION-STATES TO MEMBER STATES*, ch. 4 (2012).

⁷⁷ See DANIEL STEDMAN JONES, *MASTERS OF THE UNIVERSE: HAYEK, FRIEDMAN, AND THE BIRTH OF NEOLIBERAL POLITICS*, ch. 6 (2012), or *THE ROAD FROM MONT PÉLERIN*, *supra* note 50. For a (much) less charitable reading, see HARVEY, *supra* note 50, at ch. 2.

⁷⁸ On the notion of depoliticization, see HERBERT MARCUSE, *ONE-DIMENSIONAL MAN* (1964).

Many accounts of the EU are concerned with the limitations of a nation state or the need to discipline its vices. Jan Werner Müller, in his intellectual history of democracy in Europe, argues that “European integration was part and parcel of the new ‘constitutionalist ethos,’ with its inbuilt distrust of popular sovereignty,” which developed in post-war Europe in reaction to the horrors of Nazism.⁷⁹ The EU (and the European Convention) thus served as an external check on states whose political regimes Müller describes as “constrained democracies.”⁸⁰ It resonates in the literature on EU constitutionalism too: in the work of Miguel Maduro, who partly translates federalist arguments into the context of European integration (without explicitly saying so),⁸¹ and partly promotes extending democratic representation beyond state borders;⁸² or Mattias Kumm and Daniel Halberstam, for whom the EU represents a space where various constitutional principles can compete with each other (Halberstam’s “constitutional heterarchy”)⁸³ or be harmonized through the Dworkinian principle of “best fit” (Kumm).⁸⁴

What they all have in common is their use of the vocabulary of liberal democracy stripped of its economic/social dimension: as if constitutional democracy in the EU traveled back before its post-war transformation analyzed by Marco Dani.⁸⁵ Mattias Kumm’s idea of “legitimatory trinity” of global public law (which he also applies in the context of international law and EU law), according to which human rights, democracy, and the rule of law have become the largely uncontested criteria of law’s claim to legitimate authority, illustrate this well.⁸⁶ One is reminded of another trinity: *liberté, égalité, fraternité*, where the last can be translated as solidarity⁸⁷ in order to realize the contrast.⁸⁸

⁷⁹ See JAN WERNER MÜLLER, *CONTESTING DEMOCRACY: POLITICAL IDEAS IN TWENTIETH-CENTURY EUROPE* 148–149 (2011).

⁸⁰ See also P. ROSANVALLON, *COUNTER-DEMOCRACY: POLITICS IN AN AGE OF DISTRUST* (2008). On the postwar debates on democracy, see Martin Conway & Volker Depkat, *Towards a European History of the Discourse of Democracy: Discussing Democracy in Western Europe, 1945–60*, in *EUROPEANIZATION IN THE TWENTIETH CENTURY: HISTORICAL APPROACHES* 132 (Martin Conway & Kiran Klaus Patel eds., 2010).

⁸¹ Miguel Pólares Maduro, *Europe and the Constitution: What If This Is As Good As It Gets?*, in *EUROPEAN CONSTITUTIONALISM BEYOND THE STATE* 74 (Joseph H.H. Weiler & Marlene Wind eds., 2003).

⁸² Miguel Pólares Maduro, *Reforming the Market or the State? Article 30 and the European Constitution: Economic Freedom and Political Rights*, 3 *EUR. L.J.* 55 (1997) and MIGUEL POIARES MADURO, *WE THE COURT: THE EUROPEAN COURT OF JUSTICE AND THE EUROPEAN ECONOMIC CONSTITUTION. A CRITICAL READING OF ARTICLE 30 OF THE ECTREATY*, ch. 5 (1998).

⁸³ Daniel Halberstam, *Constitutional Heterarchy: The Centrality of Conflict in the European Union and the United States*, in *RULING THE WORLD? CONSTITUTIONALISM, INTERNATIONAL LAW AND GLOBAL GOVERNMENT* 326 (Jeffrey L. Dunoff & Joel Trachtman eds., 2009).

⁸⁴ Mattias Kumm, *The Jurisprudence of Constitutional Conflict: Constitutional Supremacy in Europe before and after the Constitutional Treaty*, 11 *EUR. L.J.* 262 (2005).

⁸⁵ See *supra* note 69 and accompanying text. On the liberal separation of politics and economy, see Michael Walzer, *Liberalism and the Art of Separation*, 12 *POL. THEORY* 315 (1984) or ELLEN M. WOOD, *DEMOCRACY AGAINST CAPITALISM: RENEWING HISTORICAL MATERIALISM*, ch. 1 (1995).

⁸⁶ “Legitimatory trinity” was the term used by Mattias Kumm in a presentation at the London School of Economics, European Public Law Theory seminar, Jan. 19, 2012.

⁸⁷ This is an oversimplification in some sense, since there is a controversy in France concerning the “reduction” of fraternity to solidarity. See, e.g., MICHEL BORGETTO, *LA NOTION DE FRATERNITÉ EN DROIT PUBLIC FRANÇAIS: LE PASSÉ, LE PRÉSENT ET L’AVENIR DE LA SOLIDARITÉ* 628 (1993).

⁸⁸ But it can be indicative of the dominance of Anglo-American political theory, since as Nathan Glazer notes in his *Foreword* to PIERRE ROSANVALLON, *THE NEW SOCIAL QUESTION: RETHINKING THE WELFARE STATE*, at vii, ix (Barbara Harshaw trans., 2000), “only the first two—liberty and equality—have received the wholehearted support of America during our two-hundred-year history.”

In reality, until very recently, *solidarity* was given scant attention in EU political and constitutional theory.⁸⁹

Joseph Weiler's ideas of "constitutional tolerance"⁹⁰ and Europe as Community⁹¹ are different in that they genuinely seek to re-think the liberal tradition of constitutionalism and come up with a new vocabulary, focusing on the notions of *community* (among states) and *transnational human intercourse* stripped of nationality and state affiliation as its principal referent.⁹² Besides its other problems, which I consider in the next section, it nevertheless shares the disregard of the social question in European constitutionalism.

Besides the danger of disregarding the social question, which can lead to its translation into the language of illiberal nationalism, there is another problem with this essentially liberal-democratic reading of the EU: it hides the fact that it could be the current constitutional culture of the EU *itself*, exemplified by its present turn to executive dominance at the expense of control by parliaments and courts, which has contributed to the present turn to authoritarianism in some states.⁹³ To call the EU into action to defend the principles of liberal democracy, as Jan Werner Müller has recently done,⁹⁴ in fact helps the EU to maintain the questionable path to its own form of "authoritarian liberalism" exercised by the heads of (some) states together with the European Central Bank (ECB), the International Monetary Fund (IMF), and financial markets.⁹⁵

The second large group of theories focuses on the market. It comes in two versions: one trying to separate the market from politics, effectively arguing for an ordo-liberal economic constitution;⁹⁶ the other seeing the EU as an additional regulatory space, where no contested choices are being made.⁹⁷ They correspond to the idea that it is still the member states that are in control—as the "Masters of the Treaty," able to legitimize policy decisions made at the supranational level that have redistributive effects.⁹⁸

⁸⁹ See Andrea Sangiovanni, *Solidarity in the European Union*, 33 OXFORD J. LEGAL STUD. 213, 213 (2013).

⁹⁰ Joseph H.H. Weiler, *Federalism without Constitutionalism: Europe's Sonderweg*, in EUROPEAN CONSTITUTIONALISM BEYOND THE STATE, *supra* note 81, 7.

⁹¹ Suggested by J.H.H. Weiler in his seminal *The Transformation of Europe*, 100 YALE L.J. 2403 (1991), reprinted in his collection of essays: J.H.H. WEILER, THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION 10 (1999).

⁹² WEILER, *supra* note 91, at 90–96.

⁹³ See Marco Dani, *The "Partisan Constitution" and the Corrosion of European Constitutional Culture*, LEQS Paper No. 68, Nov. 2013, <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper68.pdf>; or Jacques Rupnik, *How Things Went Wrong*, 23 J. DEMOCRACY 132, 136 (2012).

⁹⁴ See Müller, *supra* note 9; and Ungarn—was tun?, *supra* note 9.

⁹⁵ Wilkinson, *supra* note 11.

⁹⁶ For an overview of these theories, see Christian Joerges, *What Is Left of the European Economic Constitution? A Melancholic Eulogy*, 30 EUR. L. REV. 461 (2005) (who is deeply critical of the ordo-liberal idea of stripping the economic, and by implication the social, from the political); or Manfred E. Streit & Werner Mussler, *The Economic Constitution of the European Community: From "Rome" to "Maastricht"*, 1 EUR. L.J. 5 (1995).

⁹⁷ See GLANDOMENICO MAJONE, DILEMMAS OF EUROPEAN INTEGRATION: THE AMBIGUITIES AND PITFALLS OF INTEGRATION BY STEALTH (2005).

⁹⁸ ANDREW MORAVCSIK, THE CHOICE OF EUROPE: SOCIAL PURPOSE AND STATE POWER FROM MESSINA TO MAASTRICHT (1998). For a sophisticated articulation of this understanding of the EU in terms of public law, see PETER LINDSETH, POWER AND LEGITIMACY: RECONCILING EUROPE AND THE NATION-STATE (2010).

It is, however, less and less possible to imagine the EU member states as independent of the EU and its institutional structures. As Chris Bickerton powerfully argues, the very understanding of the state has changed in Europe due to the interdependence of the EU and its member states, both horizontal and vertical.⁹⁹ The current debates in the United Kingdom concerning the UK's departure from the EU provide compelling evidence of this.¹⁰⁰

But there is a spiritual argument too, going beyond pragmatism of those accustomed to the cold language of cost–benefit analysis. In my view, it is exactly the many people in post-communist Europe—now 11 of the 28 Member States—who see the EU as a civilizing project along Müller's line of reasoning. Whenever concerns are raised about democracy (or the rule of law and human rights, to invoke the other central values of political liberalism), people point to the fact that the return to the totalitarian past is not possible *because of the EU*—irrespective of the actual capability of the EU to prevent that.

Furthermore, seeing the EU as a market ignores policies in fields such as the area of freedom, security, and justice, which increasingly emancipate themselves from their (purportedly) original single market rationale. Both distorted pictures of the EU—the political-liberal and the market-centered—are nicely captured in the recent UK Prime Minister David Cameron's "Europe Speech." In his view, the "main, overriding purpose" of the EU today is "not to win peace, but to secure prosperity" through victory in "a new global race of nations."¹⁰¹

Here I do not want to pursue a rather predictable critique concerning the fact that, with Croats joining the EU, mass killing and atrocities in war will again be something many living European citizens know from *their own* experience (being on both sides, one must add). For them, the credo "never again" is not a platitude. Nor do I want to remind the reader that, for post-communist Europe, membership in the EU is an assurance that they will have more (if ever incomplete) freedom to negotiate their relationship with Russia.

It is in the link between peace in Europe and the ability of European states to negotiate the relationship between markets and people and to address the social question that the civilizing project of political liberals meets the Market.¹⁰² Among the reasons for World War II, which ultimately made European integration possible, was the subordination of "the substance of society itself to the laws of the market."¹⁰³ As Alexander Somek notes, "European intellectual and political history has been witness to a variety of attempts to find a 'third way' over and against the alternative between unbridled capitalism on

⁹⁹ See BICKERTON, *supra* note 76.

¹⁰⁰ For mere legal/constitutional difficulties, see Adam Lazowski, *Withdrawal from the European Union and Alternatives to Membership*, (2012) 37 EUR. L. REV. 523 (2012).

¹⁰¹ Cameron, *supra* note 7.

¹⁰² See Wolfgang Streeck, *The Crisis in Context: Democratic Capitalism and its Contradictions*, in *POLITICS IN THE AGE OF AUSTERITY*, *supra* note 11, 262.

¹⁰³ See KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* 71 (1957 [1944]). For a summary of Polanyi's analysis, see Martin Höpner & Armin Schäfer, *Embeddedness and Regional Integration: Waiting for Polanyi in a Hayekian Setting*, 66 INT'L. ORG. 429, 432–434 (2012).

the one hand and authoritarian socialism on the other.”¹⁰⁴ Western Europe’s embedded capitalism provided a response which had worked for some time—during the period of the *trente glorieuses* (roughly from the end of the war to the mid-1970s).¹⁰⁵ Europe’s turn to neoliberalism at the end of the 1970s seemed to provide a remedy for its failure (which was again due to many external factors).¹⁰⁶ That seemed to work until the present crisis, which threatens the very existence of the integration project.

The EU and its institutions were indispensable in both periods (before the late 1970s and afterwards), to such extent that the current member states have transformed into entities that cannot meaningfully govern their societies without being part of the Union.¹⁰⁷ That means, however, that the EU cannot escape this question and hide behind the walls of technocratic expertise or the vicissitudes of global financial markets. The question of balance between markets and people, implied in the European social question, is deeply political and *must be answered*.¹⁰⁸ What contributes to the de-politicization of this question, however, is the prevailing understanding of European constitutionalism, which reflects the abovementioned truncated visions of European integration.

6. Disenchanted constitutionalist

If there is one person who has ensured that the constitutional reading of European integration is firmly established in the studies of European integration across various disciplines, it is Joseph Weiler. Most of his writings collected in *The Constitution of Europe*¹⁰⁹ provide the starting point for students of European integration, especially those interested in its deeper ethos.

Weiler analyzed what I call above the political-liberal and market narratives of European integration. Only rarely, however, does he touch upon the social question. In the “Transformation of Europe” he gets the closest to this issue when analyzing the impact of the Commission’s One Market Strategy.¹¹⁰ Weiler observes:

A “single European market” is a concept which still has the power to stir. But it is also a “single European market.” It is not simply a technocratic program to remove the remaining obstacles to the free movement of all factors of production. It is at the same time a highly politicized choice of ethos, ideology, and political culture: the culture of “the market.”¹¹¹

¹⁰⁴ Alexander Somek, *Europe: Political, Not Cosmopolitan*, Discussion Paper of the WZB Rule of Law Center SP IV 2011–803, at 35, <http://econpapers.repec.org/paper/zbwwzbrlc/spiv2011803.htm>. See also Alexander Somek, *What Is Political Union?*, 14 GERMAN L.J. 561 (2013).

¹⁰⁵ See BARRY EICHENGREEN, *THE EUROPEAN ECONOMY SINCE 1945: COORDINATED CAPITALISM AND BEYOND* (2007).

¹⁰⁶ See BICKERTON, *supra* note 76, at 125–131; Gareth Dale & Nadine El-Enany, *The Limits of Social Europe: EU Law and the Ordoliberal Agenda*, 14 GERMAN L.J. 613 (2013).

¹⁰⁷ See BICKERTON, *supra* note 76. In this respect Bickerton takes the previous analysis by MORAVCSIK, *supra* note 98, to a conceptual level and provides a challenging perspective for LINDSETH, *supra* note 98.

¹⁰⁸ For conflicting accounts of whether the EU is capable of this, see Floris de Witte, *EU Law, Politics and the Social Question*, 14 GERMAN L.J. 581 (2013); and Dale & El-Enany, *supra* note 6.

¹⁰⁹ WEILER, *supra* note 91.

¹¹⁰ Commission of the European Communities, *Completing the Internal Market*, Brussels, June 14, 1985 COM(85) 310 final.

¹¹¹ WEILER, *supra* note 91, at 87.

This theme is later largely unexplored, however. Most of Weiler's intellectual energy in the 1990s and 2000s was devoted to the political-liberal shortcomings of the EU, particularly its failure to take fundamental rights seriously and its simultaneous adventures in documentary constitution-building.¹¹² The potentially corrupting effects of the Market ideology on the political ethos of European integration are not taken up.¹¹³ Sometimes it even seems that Weiler believes in a sort of natural law of market integration, the virtues (and vices) of which are not critically examined.¹¹⁴

Weiler has only recently grown more perceptive of the vices of the Market. His work in progress, "On the Distinction between Values and Virtues in the Process of European Integration," takes issue with them at several points.¹¹⁵ Weiler thus laments the Market's "very internal set of values and ethos of competition and material efficiency coupled with the culture of rights," which all contribute to "that matrix of personal materialism, self-centeredness, Sartre style ennui and narcissism in a society which genuinely and laudably values liberty and human rights."¹¹⁶ Through this peculiar "culture of rights" the Union, in Weiler's words, "puts into place a political culture which cultivates self-interested individuals," who cannot "internalize that in democracy, them," meaning the failing or corrupt government, "is actually us."¹¹⁷

This last point reaches far beyond the critique of the Market, and concerns the political-liberal vision of the EU as well. It goes even farther, to the very foundations of the integration project. These, according to Weiler, shall consist in "[r]edefining human relations, the way individuals relate to each other and to their community."¹¹⁸ This is the core of Weiler's critique and, in my view, the core of his *oeuvre* concerning European integration. As such, it would require a much more detailed examination, which cannot be pursued here. What I want to do instead, in line with the broader theme of this essay, is to look at the experience of post-communist Europe, both before and after 1989. It can provide some important lessons, if only in the form of a cautionary tale, to those in search of Europe's deeper ethos.

¹¹² See various essays in *id.*

¹¹³ Weiler's programmatic *The Reformation of European Constitutionalism* (1997) 35 J. COMMON MKT STUD. 97 (reprinted in an abridged form in WEILER, *supra* note 91, 221) is quite indicative in this respect: one wants to ask where is (critical) political economy and its own discovery of the process of European integration, exemplified by works of, e.g., Stephen Gill or Bart Van Apeldoorn. For an overview, see Alan W. Cafruny & J. Magnus Ryner, *Critical Political Economy*, in *EUROPEAN INTEGRATION THEORY* 221 (Antje Wiener & Thomas Diez eds., 2d ed. 2009).

¹¹⁴ See Joseph H.H. Weiler, *Epilogue: Towards a Common Law of International Trade*, in *THE EU, THE WTO AND THE NAFTA* 201 (Joseph H.H. Weiler ed., 2000).

¹¹⁵ Joseph H.H. Weiler, *On the Distinction between Values and Virtues in the Process of European Integration*. Paper presented at the IILJ International Legal Theory Colloquium Spring 2010, The Turn to Governance: The Exercise of Power in the International Public Space, Mar. 3, 2010, available at <http://www.iilj.org/courses/documents/2010Colloquium.Weiler.pdf>, and quoted here with the author's permission. Parts of this essay have already been published, as I indicate in further footnotes.

¹¹⁶ *Id.* at 41.

¹¹⁷ Joseph H.H. Weiler, *Editorial. Individual and Rights: The Sour Grapes*, 21 EUR. J. INT'L L. 277, 279 (2010). For a critique pursued in this vein, see ALEXANDER SOMEK, *INDIVIDUALISM: AN ESSAY ON THE AUTHORITY OF THE EUROPEAN UNION* (2008).

¹¹⁸ Weiler, *supra* note 115, at 2.

7. Existential revolution that failed

The dissidents' notion of civil society, which bridged the Anglo-American Lockean and the continental Hegelian traditions, tends to be considered as their most important contribution to political theory.¹¹⁹ It encompasses active citizens who get involved in public affairs outside official political structures, particularly party politics.

Yet, civil society in post-communist countries is weak.¹²⁰ As noted above, moreover, the overall condition of democracy in these countries seems rather bleak, as well.¹²¹ How can we explain this? Contrary to what some people believe, I do not think the reason for this lies in deep continuities between the "totalitarian" past and "liberal" present, or, more precisely, this continuity is not the decisive reason for the worrying state of post-communist democracies. The problem lies in the very notion of civil society (and anti-politics) as developed by dissidents, and its ability to bring about what it promises.

The pursuit of the idea of civil society was, as Barbara Falk notes, a "carefully constructed political strategy," which took account of geopolitical realities and the apparent impossibility of overthrowing the communist regime by force—as the 1956 and 1968 revolutions had taught Hungarian, Polish, and Czechoslovak oppositionists. The target of dissidents' strategy, aimed at civil society, was "not the party-state (this was the grave error of the revisionists in all three countries) but *the people* themselves."¹²² The strategy thus did not intend to challenge the regime itself.

The Charter 77 movement in Czechoslovakia thus made a simple plea to the communist authorities: to abide by the international obligations to respect fundamental human and political rights which they entered into by the Final Act of the Helsinki Accord in 1975.¹²³ Charter 77's spiritual authority was Jan Patočka, a philosophy professor who was officially excluded from teaching, but kept giving unofficial seminars in his living room throughout the 1950s and 1960s.¹²⁴ These were attended by many later dissidents of the Charter 77 movement. Václav Havel read Patočka as a teenager, but entered into a philosophical conversation with him only once: before they were interrogated by the State Police when Charter 77 was published in January 1977. After an interrogation lasting several hours Patočka died, and it was therefore their "Last Conversation."¹²⁵

Charter 77's appeal to the rest of society was primarily to "live in true." In Václav Havel's famous metaphor, it could for example mean that a greengrocer who had been obediently placing in the window of his shop the slogan calling on workers of the

¹¹⁹ See FALK, *supra* note 3, at ch. 8; Isaac, *supra* note 18; and OST, *supra* note 18, at ch. 2.

¹²⁰ MARC MORJÉ HOWARD, *THE WEAKNESS OF CIVIL SOCIETY IN POST-COMMUNIST EUROPE* (2003).

¹²¹ See *supra*, Sections 3 and 4.

¹²² FALK, *supra* note 3, at 316 (emphasis added).

¹²³ On Charter 77 and its philosophy, see TUCKER, *supra* note 4, at ch. 5; or FALK, *supra* note 3, at ch. 6.

¹²⁴ On Patočka and his philosophy, see TUCKER, *supra* note 4, at chs. 2–4. See also Richard Rorty, *The Seer of Prague*, *THE NEW REPUBLIC*, July 1, 1991, at 35.

¹²⁵ The title of Havel's essay on Patočka, where Havel refers to Patočka as his main intellectual influence. See Václav Havel, *The Last Conversation*, in *CHARTER 77 AND HUMAN RIGHTS IN CZECHOSLOVAKIA* 242 (H. Gordon Skilling ed., 1981). See also TUCKER, *supra* note 4, at 88.

world to unite would stop doing so—and thus liberate himself. If everybody did so, the post-totalitarian control of society would break down. That was the “power of the powerless” in Havel’s view.¹²⁶

The reason Havel’s essay resonated so much in the West and still speaks to (some of) us today was that Havel did not limit his ethical claim to the people living in the conditions of post-totalitarianism. What he called for was nothing less than an “existential revolution,” aimed at the crisis of contemporary society as a whole—liberal West and post-totalitarian East alike.¹²⁷ This revolution, in Havel’s words, “should provide hope of a moral reconstitution of society, which means a radical renewal of the relationship of human beings to . . . the ‘human order,’ which no political order can replace.”¹²⁸ In fact, Havel was rather skeptical about the “framework of classical parliamentary democracy,” and suggested the notion of post-democracy, which, however, needed to be developed through practice.¹²⁹ The existential revolution would lead to “[a] new experience of being, a renewed rootedness in the universe, a newly grasped sense of higher responsibility, a newfound inner relationship to other people and to the human community.”¹³⁰

We do not need to go into details of Havel’s diagnosis of the crisis of modernity, based on his reading of the philosophy of Martin Heidegger.¹³¹ Havel’s spiritual affinity to Heidegger needs to be mentioned for another reason. As Aviezer Tucker notes, “the dissident emphasis on personal authenticity, antimodernism, and dismissal of institutions as inherently alienating and corrupt prevented Havel and his fellow dissidents from understanding the significance of reconstructing the institutions of the state, especially those that should enforce the rule of law.”¹³² These misunderstandings proved fatal after 1989, at least to those who hoped that the “Velvet Revolution” would bring about a true moral reconstitution of society. Instead, to use Tucker’s vitriolic but sadly accurate characterization, “[i]n a state of normative confusion and political disorientation, and in a political environment lacking a developed and active civil society, the former dissidents did little to prevent the resurgence of old patterns of political corruption and civil passivity.”¹³³ The Velvet Revolution resulted in the Velvet Corruption,¹³⁴ further contributing to the frustration of the people of post-communist countries.

The dissidents were equally suspect of the very notion of politics. The notions of civil society and the existential revolution were therefore connected by “anti-politics” or “nonpolitical politics.”¹³⁵ They appealed to morality and virtue, and held in deep

¹²⁶ See Havel, *supra* note 4, also available at <http://vaclavhavel.cz>.

¹²⁷ *Id.* §§ XX–XXII.

¹²⁸ *Id.*

¹²⁹ Hence Havel refused to give more precise contours to the idea in his essay.

¹³⁰ Havel, *supra* note 4.

¹³¹ TUCKER, *supra* note 4, at chs. 6 and 7.

¹³² *Id.* at 17. See also *id.* at 247.

¹³³ *Id.* at 247.

¹³⁴ The title of ch. 8 of Tucker’s book, turning from the intellectual history of the Czech dissident movement to economic and political history of post-communist transformation in the 1990s.

¹³⁵ TUCKER, *supra* note 4, at 185–195. See also T.A. Rowland & S.A. Rowland, *Contemporary Central European Reflections on Civic Virtue*, 21 *HIST. EUR. IDEAS* 505 (1995).

contempt Machiavellian technology of power. In the second important essay written before 1989, “Politics and Conscience,” Havel describes what he means by that:

I favor “antipolitical politics,” that is, politics not as the technology of power and manipulation, of cybernetic rule over humans or as the art of the utilitarian, but politics as one of the ways of seeking and achieving meaningful lives, of protecting them and serving them. I favor politics as practical morality, as service to the truth, as essentially human and humanly measured care for our fellow humans. It is, I presume, an approach which, in this world, is extremely impractical and difficult to apply in daily life. Still, I know no better alternative.¹³⁶

Dissidents’ moral scruples about engaging in the “technology of power,” however, meant that the societal transformation was soon dominated by more cynical technocrats coming from the “grey zone”: people who neither actively supported nor opposed the communist regime,¹³⁷ but who had the social capital necessary to guarantee them a place among the new elites. Politically, the most important ones were economists, who came to design reforms deemed necessary. As we noted above, with active support from the West they rejected any “third way” and prescribed neoliberal reforms based on dogmatic readings of new gods: Hayek and von Mises primarily. Václav Klaus’s words are characteristic of the spirit of the time. He once remarked: “I often use the line by F.A. Hayek that the world is run by human action, not by human design. To talk about planning an economic system is to talk in old terms, and I find myself sometimes having to teach Westerners about what the market really means.”¹³⁸ No wonder Klaus was called “a Lenin for the bourgeoisie.”¹³⁹

The free market philosophy therefore positively dissuaded citizens from engaging actively with politics outside elections. First, by excluding any discussion of possible “third ways,” delegitimizing them as socialist and not making the radical break necessary to liberate from communism; second by the free market philosophy’s very desire to rule out any involvement by politics in the operation of the economy. This dogmatic approach found fertile ground in post-communist societies, since it continued on from their previous experience: there is no need for politics, since the Big Theory has answers for everything. *This time for sure.*

8. The hope for Europe?

Reading Weiler’s essay makes dissident experience—not prior to 1989, but dating to the post-communist transformation—directly relevant to his concerns. Weiler’s call is in fact a call for an “existential revolution” in European integration, aiming at individuals, their mutual relationship, and the relationship to community.¹⁴⁰

¹³⁶ Václav Havel, *Politics and Conscience*, <http://vaclavhavel.cz>.

¹³⁷ See EYAL, *supra* note 15. For an interesting argument about spiritual affinity between intellectual dissidents and monetarist technocrats, see Gil Eyal, *Anti-politics and the Spirit of Capitalism: Dissidents, Monetarists, and the Czech Transition to Capitalism*, 29 *THEORY & SOC’Y* 49 (2000). Eyal’s argument is essentially that the two groups shared “an elective affinity between their respective perceptions of the social role of intellectuals and their understandings of how society should be ruled” (at 51).

¹³⁸ TUCKER, *supra* note 4, at 223–224.

¹³⁹ The title of ch. 5 of ABBY INNES, *CZECHOSLOVAKIA: THE SHORT GOODBYE* (2001).

¹⁴⁰ Compare quotes from Weiler (*supra*, text accompanying note 118) and Havel (*supra*, text accompanying note 130).

Like Jan Patočka and Václav Havel, Weiler appeals for citizens' sacrifice and perfection. The former is present in Weiler's understanding of values and virtues, the central categories of his essay. In his view, "a central part of [values'] allure" is that they "contain an altruistic component. Virtues involve exertion. Things that demand sacrifice are cherished more than things that come easily. Sacrifice invests things with value."¹⁴¹ The perfectionist emphasis on individual responsibility is also manifest in Weiler's critique of "the culture of agency," which releases individuals from their responsibility for solidarity and respect for human rights.¹⁴² Weiler's words, that these values "risk the impoverishment of private virtue" since they "responsibilize others, and deresponsibilize the self,"¹⁴³ remind one of Havel's critique of political parties, which release "the citizen from all forms of concrete and personal responsibility."¹⁴⁴

Perfectionism forms Weiler's prescription for Europe's cure as well:

The redress if any, may be found in greater attention to the spiritual dimensions to our lives and that of our children; the way we think of ours and educate, and cultivate theirs. Education to the necessary virtues of decency and true human solidarity, if achieved, can easily enough counteract the almost inevitable impact of the structure and process of governance. If achieved.¹⁴⁵

The last sentence is written in a skeptical key, like Havel's call for anti-political politics, quoted above.¹⁴⁶ There is a danger of the same sad result, Velvet Corruption, which in Havel's case ended in his "political tragedy."¹⁴⁷ Attractive as any ethical call can be for those who are already virtuous, it will not change the worrying course of European integration. It is not steered by philosophers like Weiler, but pragmatic technologists of power: Merkiavellism, not virtuous anti-politics, is what governs in Europe.¹⁴⁸

European constitutionalists should thus become more interested in the constitution of politics, or the political, no matter how unappealing the reference to Carl Schmitt may be.¹⁴⁹ Political theorists of European integration should stop celebrating the "constrained democracy," which forms one of the foundation stones of the European postwar constitutional settlement.¹⁵⁰

This of course does not explain how to politicize European integration and to save its peace mission which, contrary to what many people believe today, is not exhausted.¹⁵¹ Here, I think, to give citizens a vote about who is to become the President of the European

¹⁴¹ Weiler, *supra* note 115, at 11.

¹⁴² *Id.* at 16 and 40.

¹⁴³ *Id.* at 16.

¹⁴⁴ Havel, *supra* note 4, § XX.

¹⁴⁵ Weiler, *supra* note 115, at 44.

¹⁴⁶ Havel, *supra* note 136.

¹⁴⁷ JOHN KEANE, VÁCLAV HAVEL: A POLITICAL TRAGEDY IN SIX ACTS (1999).

¹⁴⁸ See BECK, *supra* note 72, at 45–65.

¹⁴⁹ See particularly Michael Wilkinson, *Political Constitutionalism and the European Union*, 76 MOD. L. REV. 191 (2013).

¹⁵⁰ For a much less celebratory account, see Marco Duranti, "A Blessed Act of Oblivion": Human Rights, European Unity and Postwar Reconciliation, in RECONCILIATION, CIVIL SOCIETY, AND THE POLITICS OF MEMORY: TRANSNATIONAL INITIATIVES IN THE 20TH AND 21ST CENTURY 115 (Birgit Schwellung ed., 2012).

¹⁵¹ See Section 5.

Commission is too little.¹⁵² Those who write about and engage with European politics must make clear what the redistributive consequences of different decisions are. Different social classes may find more affinities irrespective of state borders and some (if not most) Germans may eventually find more sympathy with Greeks and others, once they find out about where the money really goes. The effort on the part of some European institutions to obscure this and to keep Europeans divided along national borders is remarkable.¹⁵³ It is, of course, a much more complicated matter how this socio-economic division should be translated into politics, but that is where the real challenge lies.

9. Coda: Reclaiming the communist past for Europe's future

There is one more lesson of post-communist Europe, however, reaching beyond the experience of dissidents: the lesson of everybody living under the conditions of “really existing socialism.” It is still impossible to say in post-communist countries that life was not so bad before 1989—if you acted as the obedient greengrocer putting the slogan in your window, of course. People in post-communist Europe are not expected to “have critically reflected memory of the communist past.”¹⁵⁴ It seems that it is the West which imposes its own version of history on them. One transitologist, Anders Åslund, thus dismisses any complaint concerning the misery of catching up with the West in the following way: “[e]conomic decline and social hazards have been greatly exaggerated, *since people have forgotten how awful communism was.*”¹⁵⁵ The dealing with the past in post-communist Europe does not seek to find and understand what it was really like to live in the “actually existing socialism.” Instead, it seeks to establish the myth of collective suffering, where it is “them,” the communists, who are responsible for the evil that emerged from the communist experiment.¹⁵⁶

Voices that try to challenge such myths have only recently started being raised. Boris Buden, who can be considered one of them, acknowledges that communism was an emancipation project that failed.¹⁵⁷ He adds, however: “one should never feel

¹⁵² See, e.g., SIMON HIX, *WHAT'S WRONG WITH THE EUROPEAN UNION AND HOW TO FIX IT* (2008).

¹⁵³ As did the ECB in its report, *The Eurosystem Household Finance and Consumption Survey, Results from the First Wave*, Statistics Paper Series 2, Apr. 2013. See also Paul de Grauwe & Yuemei Ji, *Are Germans Really Poorer than Spaniards Italians and Greeks?*, Soc. EUROPE J., Apr. 16, 2013, <http://www.social-europe.eu/2013/04/are-germans-really-poorer-than-spaniards-italians-and-greeks/>, noted on account of the report: “Rarely have statistics been misused so much for political purposes as when recently the ECB published the results of a survey of household wealth in the Eurozone countries.”

¹⁵⁴ BUDEN, *supra* note 14, at 22.

¹⁵⁵ ANDERS ÅSLUND, *BUILDING CAPITALISM: THE TRANSFORMATION OF THE FORMER SOVIET BLOC* (2002), abstract (emphasis added).

¹⁵⁶ See Milan Kopeček, *In Search of “National Memory”: The Politics of History, Nostalgia and the Historiography of Communism in the Czech Republic and East Central Europe*, in *PAST IN THE MAKING: HISTORICAL REVISIONISM IN CENTRAL EUROPE AFTER 1989* (Milan Kopeček ed., 2008).

¹⁵⁷ On the centrality of emancipation in Europe's current predicament, see Alexander Somek, *Europe: From Emancipation to Empowerment*, LEQS Paper No. 60, Apr. 2011, <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper60.pdf>.

ashamed for struggle for freedom. This applies today for all those, who tore down the Wall twenty years ago, but even more for those standing in front of the new ones today.”¹⁵⁸ The *pre-1989* experience of collectivism should not be considered something that needs to be “rectified,” or even as a sign of backwardness, which threatens the establishment of democracy,¹⁵⁹ but something that could serve as a source to overcome “self-centred individualism,” rightly despised by Weiler.

Here, however, I have no advice to offer besides this reminder: Europe has a much better hope of overcoming its current crisis if it becomes spiritually united. Yet this cannot happen through East Central Europe trying to “return” to the West or becoming the West. Rather, it lies in the recognition of its unique experience, which is not to be overcome or, even worse, forgotten, but used as a reservoir for Europe’s future flourishing.

¹⁵⁸ BUDEN, *supra* note 14.

¹⁵⁹ See VLADIMIR TISMANEANU, FANTASIES OF SALVATION: DEMOCRACY, NATIONALISM AND MYTH IN POST-COMMUNIST SOCIETIES 60–61 (1998).