

POLITICAL JUSTICE IN POST-COMMUNIST SOCIETIES: THE CASE OF HUNGARY

György Bence

Václav Havel's great essay "The Power of the Powerless," written in the late 1970s, includes a parable about a butcher who had to put a sign in his shop window, among the sausages and the meat, which read: "Long live the Great Socialist October Revolution!" Havel's point is that the average citizen who wanted nothing more than to make a living became involved in the Great Lie.

And yet, according to Havel, there was always an alternative. It was completely within people's power to renounce the game. If they decided to stop lying and accepting lies, they could attain the state of "living in truth." Back in the 1970s, I thought that Havel was asking for too much from the poor butcher. Would it not be enough if the butcher played the game strictly according to the rules established by the communist bosses, if he did nothing beyond what was absolutely required of him?

My skepticism toward Havel's position evaporated during the first months of his presidency of Czechoslovakia. It turned out that he was not drawing vindictive conclusions from his exalted demand of "living in truth," a demand which only exceptional people such as Havel himself had been able to live up to. In his new position, his lofty ideal has on the contrary served him as a source of tolerance and forgiveness toward the former opponents of Havel and his friends.

Communism coerced the citizen into active complicity with the system, unless that citizen was prepared to drop out of normal civic activities. It is wrong to condemn people simply because they tried to survive by not challenging the system openly. Former dissidents should be the first to understand this, and Havel does.

Havel's position implies either a blanket amnesty for representatives of the previous regime or strict adherence to due process and the rule of law. According to him, former leaders should not be indicted simply because they held high posts in the party or government. Any indictment should be based on specific charges, substantiated by evidence, not merely on membership or position.

There is another approach to political justice in post-communist societies, one we

were able to see with our own eyes. In the great days of the Romanian uprising, in December 1989, the enraged crowds clamored for the blood of the oppressors: Death to the tyrant! Death to Securitate agents! And summary justice was done, right there, on television.

These are the two extremes that define the outer limits of political justice in post-communist Eastern Europe. What will emerge as a more regular pattern will most likely fall between these two extremes. In Czechoslovakia, the fate of former communist leaders will not depend solely on Havel's high morality. In Romania, let us hope that it will not be the crowd that has the last word. Hungary has already plotted a middle course in meting out political justice: there will be no blanket amnesty, but extreme sanctions will also be avoided. I have certain misgivings about this moderate course, but before addressing them, let me examine the political atmosphere surrounding the debate on political justice in Hungary.

Hungary's communists, or former communists, have lately undergone a sudden, albeit understandable, metamorphosis. They have become very fastidious in matters involving the fine legal points and ethical standards of political behavior. The communist press is full of laments about the illegitimate pressure exercised by the newly created parties, the dangers of political discrimination in the professions and the civil service, the likelihood of a wholesale proscription of innocent representatives of the old regime, and many other potential abuses. This communist indignation is, obviously, hypocritical. Who was it who only recently exercised dictatorship by a single party? Can a system of political discrimination more thorough than the infamous nomenklatura ever be imagined? Were the hand-picked civil servants in the communist countries really so civil?

And yet there is an element of reality in the communists' allegations. There have not been, as of now, any actual cases of political discrimination, but a flood of wild statements of intent has come from some of the newly created parties: they say that a "clean sweep" must be made, presumably by the new government. A campaign poster of the Democratic Forum, the party that won the 1990 general election, depicted an overflowing garbage can with a big broom next to it and the caption: "Spring cleaning is coming!" But at other times the major parties, including the Democratic Forum, have gone out of their way to reassure officials of the old regime.

All in all, the public mood in Hungary has not been excessively ugly. True, the notion of a big purge has been raised repeatedly, but public reaction to it has been far from unanimous. More important, major political leaders have been careful to still such voices, to allay the fears of those who might be victimized. Consequently, there is a good chance that the transition to democracy can be completed without excessive injustice and without wasting the human resources necessary to rebuild the country.

To minimize injustice is not, of course, to eliminate it. A consensus has been building among the more thoughtful political leaders on ways to proceed. The best way to

reduce injustice to an acceptable minimum, they say, is to apply political justice in a regulated fashion; this will require extraordinary measures. Some injustice is unavoidable, but at least it will not be mob justice lying outside the bounds of rational control. Political justice should be dispensed by an organized tribunal with judicial powers lying outside the framework of ordinary courts--not by the mob.

Raising the question of political justice from the point of view of civil rights is not necessarily a symptom of nostalgia for the bad old days of the communist regime and the dissidents' moral purity. At that time, all injustice emanated from those in power, whose opponents at least had the luxury of indulging in the moral comforts of innocence.

Political justice is already being applied in Hungary, although on a small scale and in a restricted way. A certain category of former political leaders have been required to undergo a parliamentary investigation to reveal and account for their assets. A case of exceptional justice, this type of investigation clearly oversteps the bounds of regular legal procedure and threatens serious abuses of civil rights. Meanwhile, the popular demand for political justice is gaining momentum. New political cases can be expected to arise, and the danger of abuse will grow with their number.

Finally, by raising the question of political justice, we are also reformulating two fundamental questions about the ongoing transition to democracy throughout Eastern Europe: Is a peaceful transition at all possible? Will there be a "second revolution"?

Let us begin with some further comments on the distinction between ordinary justice and political justice. This distinction may sound old-fashioned in the refined ears of a Western audience, but in Hungary it has come under fierce attack from the best lawyers in the independent Legal Studies movement. Hungary's lawyers tend to adhere to the old style of thinking. For them, there is a clear difference between proper legal reasoning and political rhetoric. Once the basic legal principles have been laid down, they maintain, there is a secure, albeit complicated, way to give an authoritative answer to a legal problem. The principles are to be set out by the constitution or by long tradition or, preferably, by both. With the exception of the most trivial cases, legal reasoning is more than mere classification and deduction, distinguished from political argument by its appeal to rationality.

From this perspective, political justice is almost a contradiction in terms. It means, in the most extreme cases, that legal principles are being thrown overboard as part of a quasi-legal procedure. A verdict is then reached by a direct appeal to imprecise political considerations. In less extreme cases of political justice, only a few principles are given up, usually reluctantly, as a concession to the exceptional character of the political situation.

Three basic types of political justice can be distinguished: restitutive political justice, punitive political justice, and political amnesty. Let us begin with a brief discussion of restitutive political justice and mention amnesty for the sake of completeness. Then, let us define a new set of categories within punitive political justice, and end with a discussion of

how punitive political justice is being applied today across Eastern Europe, and in Hungary in particular.

Restitutive political justice is being administered on a large scale in Hungary. Powerful lobbying groups have been organized by former defendants in show trials, other political prisoners, labor camp inmates, and their friends and relatives. They are represented by some of the country's best lawyers as they fight for individual retrials, the revocation of sentences for entire categories of people (such as participants in the uprising of 1956), and financial compensation. These efforts have been largely successful.

Calls for revenge are rarely heard, but the victims of communist injustice, understandably, do not want to see their tormentors, bestial interrogators, partisan judges, and brutal jailers, remain free and unscathed to enjoy the fruits of their labors. This feeling is shared by a large part of the public, reaching far beyond the circles of the victims themselves.

The younger generations who did not live through the last wave of communist terror are even more affected by the revelations than the victims themselves. For them, the memoirs and historical accounts published since the recent lifting of censorship have shattered a world of illusions. Until that moment, they had believed that it was possible to live honestly and relatively peacefully, even though they knew that the older generation had not forgotten the skeletons in their closets.

In these circumstances, it is not surprising that no important political force has demanded political amnesty for the representatives of the old regime. The leaders of the reformist wing of the Communist Party, now belonging mostly to the Hungarian Socialist Party, were so blinded by the success of the first stage of the transition to democracy that they now believe they are immune to any prosecution, and have taken no interest in the fate of their former comrades now regrouped as communists in the fundamentalist Hungarian Socialist Workers' Party. Only time will tell whether this is a dangerous mistake. The new opposition parties, who have no members or supporters in jail, have also exhibited no interest in the question of amnesty as long as the other side does not insist on it.

Whatever reasons the Hungarian communists have for not attempting to win guarantees that would safeguard them from the same legal proceedings that might be initiated against their victorious opponents, the most important question here is how political justice is being applied to communists throughout the region, and not just in Hungary. There are three types of political justice described in legal literature, which should show us whether Eastern Europe fits into the traditional patterns.

1. Prosecution for an ordinary crime. This is the least questionable version of political justice. When an ordinary crime has been committed, there is no need to stretch the law, since the public and the victims are satisfied to see a political opponent exposed as a thief, embezzler, or petty tyrant who abused his power for selfish and criminal gain.

2. A political trial based on provisions for the state's self-defense. Even the most liberal legal systems contain some provisions explicitly aimed at protecting the state against subversion or political acts such as treason or sedition. Formally, there is nothing wrong with using these provisions against a political opponent. In extreme situations, especially when the targeted opponent is able to initiate a violent act to avoid prosecution, there is a good chance that justice will be expedited by questionable means.

3. Revolutionary justice. While both types 1 and 2 involve the special risk that the parameters of legality, as defined by statutes, established legal principles, and institutionalized legal tradition will be overstepped, this risk is openly accepted as a matter of practical necessity. Revolutionary justice, at its most extreme, is dispensed by lay tribunals, convoked ad hoc especially for that purpose, and based directly on the legally unbounded will of the people, the spirit of the revolution. Usually, however, some pretense of legality is maintained, and an attempt is made to assimilate the proceedings and principles invoked into the normal course of justice.

The categories above are helpful in sorting out the judicial initiatives taken so far in the different East European countries undergoing democratic transition. Proceedings of type 1 have already taken place in several countries and, undoubtedly, we will see more and more of them. The differences between the countries will depend only on the degree of shamelessness former communist leaders have exhibited in abusing power for personal gain. The moral indignation of the public is justified, and the legal means of retribution already exist. The only danger is that the courts, having been compromised by their less than independent stance under the old regime, might display undue haste and severity in staging show trials for mass consumption.

Examples of the first type are, of course, familiar everywhere: graft, corruption, nepotism. In Hungary, the local party bosses were singled out first, probably because they lived in greater physical proximity to the population than did the national leaders. One prominent national figure, the former minister of defense, General Czinge, was convicted on local charges. He had specialized in brutality toward his subordinates, whom he also used for personal services, and in collecting juicy pieces of real estate purchased at nominal prices from local councils.

A typical type 2 case, the charge of treason against the former communist leader, Erich Honecker, of the former German Democratic Republic. According to reports from Czechoslovakia, treason proceedings will be initiated against Vasil Bilak and the other high party functionaries who had called in the Warsaw Pact troops in 1968. This seems to be an open and shut case, even according to the "socialist legality" prevailing in those days. Nonetheless, we should be aware of the potential dangers. If this becomes a precedent, it could lead to revolutionary--or rather counter-revolutionary--justice pure and simple, with all its dire consequences. Such type 2 cases will likely appear in larger numbers in the other East European countries, too. They all raise the painful question of legal continuity in the process of transition.

In Romania, we saw a case of revolutionary justice, type 3, the so-called trial and summary execution of Nicolae and Elena Ceaușescu. Since then, other strange applications of political justice have taken place there. The quality of the proceedings on the first day of the Securitate's "Gang of Four" trial on Romanian television was not very much above that of a classic show trial, with the minor difference, of course, that Maria Bobu and her co-defendants were, in fact, guilty.

In Hungary, political justice has followed a different course from Czechoslovakia, the German Democratic Republic, and Romania. No mention has been made of political amnesty. Type 1 proceedings are not widespread, although a few of the former leaders have been charged with crimes for personal gain, as has already been mentioned. The issue of treasonous activities by former leaders, either under the previous regime or during the transition, has barely been raised. Type 2 proceedings do not seem to be on the agenda of any important political group or party. As for the type 3 cases of revolutionary justice, all the new political forces would no doubt vehemently deny that they are planning anything of that kind.

There is, nevertheless, a public outcry for political justice aimed against the greatest beneficiaries of the old regime. This outcry is partly spontaneous and partly instigated by demagogues. But the sentiment is truly shared by a large part of the public, and it is grounded in economics. The country is on the verge of bankruptcy. The standard of living of whole segments of the population, especially the elderly and retired, is already at an intolerably low level. Hardships are expected to increase. In contrast, the former communist leaders are living quite comfortably, sometimes even opulently, on generous state pensions. They often enjoy illicit benefits from their former positions, for instance in the form of valuable real estate. And as they are the only social group with adequate financial means, they use the country's new economic freedoms to become capitalists. This, at least, is the perception of the less privileged strata of society. And demagogues stand ready to stir up vindictiveness and manipulate the desperate.

Those who are responsible for Hungary's economic disaster should be singled out and have their financial advantages curtailed by an extraordinary legal procedure. But the legal complexities of this special kind of political justice are great. There is no room here to give complete details, and much information is not yet available, since it exists in unpublished parliamentary records. The discussion about political justice has had a popular as well as an academic side. My account will be slanted toward the latter, since it is there that I personally have been taking part in the discussion, and it is there that the most can be learned.

The issue of confiscation of property as a form of political justice was first raised in 1989. Interestingly, the more liberal of the two communist successor parties, the Hungarian Socialist Party, officially joined in the demand that former leasees pass a property test. Still, it took a long time to transform this demand into a bill.

In the debate over such a bill, three points were hotly contested. First, how many levels of former leaders should be investigated? Second, how far into the past should the investigation delve? Third, should the investigation cover political responsibility or should it be restricted to the financial affairs of former leaders? On each of the three points, the former communists naturally leaned toward the mildest solution.

The provisions of the bill eventually adopted as Law III of 1990 were quite narrow. The investigation reached only as far back as 1980, instead of 1968 as was proposed by the Democratic Forum. The level of persons to be investigated was limited to high party, state, or municipal functionaries, such as Politburo members, government ministers, and county-level party leaders. The issue of political responsibility was excluded from the scope of the investigation. The law, moreover, left open the question of what would happen after the parliamentary commission entrusted with the investigation had reached its conclusions.

Most probably as a consequence of these relatively mild provisions, the commission held only one full working session, which yielded no dramatic results; it did not meet again, and eventually faded away. These meager results notwithstanding, a critical threshold has been crossed. From political slogans, political justice is being transformed into legislative reality. Some scholars interested in human rights, and legal matters in general, have perceived this as a challenge. On extremely short notice, a conference entitled "Political Justice by Fiat of Successor Regimes" was organized on 14 January 1990 at the Department of Social and Moral Philosophy of Budapest University. Historians, political scientists, philosophers, legal scholars, and practicing lawyers came to share their thoughts. The two best represented groups, lawyers and philosophers, took different sides in the discussion, with some notable exceptions. Some lawyers did warn against an uncritical commitment to political justice. Some philosophers, under the influence of December's events in Romania, insisted on the differences between revolutionary and regular justice, while other philosophers stressed the imperative of curbing moral indignation, however justified, because the rule of law could not otherwise be preserved, let alone be placed high on the agenda in Hungary.

Most of the lawyers, however, were convinced that the only practical question for the present was how to dispense political justice, not whether it was appropriate to dispense it. They began with the assumption that an extraordinary judicial procedure should be instituted in order to establish political responsibility for Hungary's economic disaster. But in order to mitigate the disturbing aspects of this initiative, they stressed the key need to establish the truth, with sanctions of a milder, non-criminal character.

It was at this conference that the idea of moral or political pillory first arose in Hungary. Let us suppose that a defendant was found guilty by a special tribunal trying him or her on *ad hoc* charges not provided for in any statute, such as gross negligence or irresponsible acts of government. Not even in this case would criminal charges be brought against the person: he or she would only suffer the ignominy of the compulsory publicity given to the delinquencies, through television, the press, and even graffiti. The problems

connected with ex post facto law or, in the language of the United States constitution, with a bill of attainder, were also discussed by several participants in the conference. So were terms for a statute of limitations for political crimes.

A further contribution to the public debate about political justice, both on the political and scholarly levels, was a proposal made by the Independent Lawyers' Forum, a professional group responsible for initiating the Opposition Round Table (EKA) talks in 1989. The forum presented a draft bill with appropriate justifications which will undoubtedly constitute an important first step in the work of the new parliament and the ministry of justice. First, the Forum adopted the principle of collective indictment from Law III of 1990, stressing its similarity to objective responsibility in Hungarian tort law. As is the case with an automobile driver who is expected to drive carefully and not to cause harm to others, the managers of the national economy were expected to be careful and to avoid an economic disaster. My main objection to this approach is that it could undermine the autonomy of the executive branch of government in the future. It would create the precedent to justify launching special proceedings against the minister responsible for any policy considered disastrous, not just one linked with the ousted communists.

Second, the sanctions envisaged by the proposal include measures which are clearly of a confiscatory nature. Here, the similarity with tort law breaks down. The state of the national economy would not be improved, or fully compensated by the confiscation of property accumulated by former government ministers. Hence, this is clearly a punitive measure.

Third, the forum wanted to extend the time limit of the investigation as far back as the adoption of the first communist constitution in 1949. No statute of limitations, they argued, should operate after that date because communist courts were not independent, and, therefore, there was no real chance of prosecution until now. This argument does not take into account the rationale behind a statute of limitations and related provisions. This is an enormous subject, but two features stand out. The first is the difficulty of providing proof after a long period of time has passed. The second concerns the inherent conservatism of the law and, as such, is particularly relevant to the present subject. In the course of time, both good and bad consequences accrue to the original action which initiated a whole process, however evil it might first have been. The law is, as a rule, reluctant to overturn long-established conditions in the private lives of people. All this is a matter of degree, of course, depending on the seriousness of the original act. There is obviously a difference in this respect between criminal acts, such as murder and torture, and the kind of irresponsibility displayed by the communists in their management of the national economy.

In conclusion, it seems that the attempts to apply political justice in Hungary share the weakness of excessive reliance on legal procedure and action by the state. If the main purpose, as was claimed by many of the lawyers at the January 1990 conference who argued for political justice, is to reveal the truth, establish responsibility, give moral satisfaction to the nation, and not punish those responsible, why must judicial authority be used for this?

Are historians and economists, who have access to relevant data and documents, less capable of establishing responsibility than prosecutors, judges, and parliamentary commissioners? And if tribunals are the chosen method, a variety of private commissions could be set up, with distinguished experts and individuals of great moral authority serving on them.

There are advantages and disadvantages to both approaches. A court can summon witnesses, require them to tell the truth under threat of incarceration for contempt and perjury. And yet it is also bound by, among other things, the rules of evidence. On the other hand, while a non-judicial tribunal has no authority over its witnesses, it is not restricted in its quest for truth by legal technicalities.

Looking at the issue of political justice from the standpoint of the rule of law, an overwhelming advantage lies on the side of private investigation. There is no need in such proceedings to tinker with the statute of limitations, to invent ex post facto provisions, or to use other dubious devices of political justice. The temptation to use legal procedure to overcome the legacy of the past, it may be concluded, belongs more to the problem than to the solution.

FOR FURTHER DISCUSSION OF THE ISSUES ADDRESSED IN THIS PAPER, SEE:

Bence, György, "Azt követelik az emberek..Jogörök, vigyázzatok!" ("The people demand...human rights watchdogs, watch out!"), Magyar Narancs, 21 February 1990.

Bence, György, Agnes Chambre, and János Kelemen, eds., Visszamenő politikai igazságszolgáltatás utódrezsimekben: Az 1990. január 14-én tartott FIL2 Gyorskonferencia előadásai és hozzászólásai (Political justice by fiat of successor regimes. Proceedings of the FIL2 ad hoc conference held on 14 January 1990) (Budapest: ELTE BTK Társadalomfilozófia es Etika Tanszék).

Hankiss, Elemér, "Tegyünk-e igazságot?" (Should justice be done?), Magyar Nemzet, 8 March 1990.

Independent Lawyers' Forum, Alapelvek magyarországi válsághelyzet kialakításának személyi okai feltárásáról és a személyes helytállás kötelezettségéről szóló törvény kidolgozásához (Principles to be used as a basis for an investigation of personal responsibility for the process leading to the crisis in Hungary and for preparation of a bill about the obligation to account for past activities of leading personalities), manuscript, 15 February 1990.

Kircheimer, Otto, Political Justice: The Use of Legal Procedure for Political Ends (Princeton, N.J.: Princeton University Press, 1961).

Magyar Közlöny (the official gazette of laws, decrees, etc.).

Népszabadság (the principal paper of the Hungarian Socialist Party).

LEARNING FROM THE EXPERIENCES OF OTHERS

Jeri Laber

More than a year ago, Human Rights Watch, the umbrella organization that unites Helsinki Watch with the other Watch committees--Americas Watch, Asia Watch, Middle East Watch, and Africa Watch--formulated a position on accountability for past abuses. This position was the result of many discussions within our various boards that stretched over a long period of time.

At the time, the discussion seemed to me to be completely inapplicable to the countries covered by the Helsinki process: First, because we believed that the atmosphere in which such matters could be discussed would never arise in the Soviet Union or Eastern Europe. Repression in those countries would not allow it, and that repression was presumed immutable. And, second, because the crimes of totalitarianism were seen as crimes of society as a whole, and implicated just about everyone in that society.

In the first case, I was obviously wrong: the miraculous events of 1989 have shown that change could and did come to Eastern Europe. But my second reservation about the implication of society as a whole in the crimes of the past totalitarian regimes remains legitimate. It is a feature in many of the speeches made by President Václav Havel, for example. He has made the point that now is not the time for vengeance, and that all of society should atone for its sins.

Havel is guided by spirit of forgiveness, which seems especially remarkable in view of the humiliations and indignities that he and his colleagues suffered during the years of communist control. Moreover, Havel is not alone in preaching forgiveness: I was interested to read that Nelson Mandela has also made statements against vengeance: "Political prisoners throughout the world are very tolerant," he explained. How extraordinary for someone from South Africa, for which many outside observers have been predicting an inevitable bloodbath.

Uruguay's Father Perez Aguirre, who had been imprisoned and tortured, also forgave his torturers: "If there should be a truth-telling," he said, "I'm sure people would find ways of pardoning most of the torturers. We have a tradition of mercy."

György Bence points to the two extremes that "stake out the limits of political justice": Czechoslovakia and Romania. But there is also an irony in this juxtaposition. In countries such as Czechoslovakia, where a spirit of tolerance prevails, the new leadership has also recognized the need for a thorough documentation of past abuses. In fact, the Czechoslovaks have already set up a commission of historians to investigate the abuses of the past. Someone, I think it was Jan Čarnogursky, the deputy prime minister, told me that he hopes that the people under investigation will be "tried, sentenced, and then amnestied." In Romania, on the other hand, where the spirit of vengeance was exemplified by the summary executions of the Ceaușescus, there is also a built-in limit on investigating the abuses of the past: the communists remain in power, and some of them are implicated. Thus, the trials that have taken place to date in Romania are strictly limited to events that took place in December 1989. When I was in Romania shortly after the revolution, I was unable to get much of a rise from anyone when I raised the subject of past abuses. Those who discussed the subject invariably understood it in terms of punitive justice rather than as a necessary precondition for building a new society on an understanding of the past.

Attitudes toward tolerance and vengeance may change in the various countries as the first euphoria of revolution wanes. As Bence points out, the popular demand for political justice may gain momentum in Czechoslovakia, as it apparently is doing in Hungary. And with it comes the danger of abuses.

I liked György Bence's paper. I found it to be interesting and thoughtful in many ways. I especially liked the distinction he makes between ordinary justice and political justice; and the way he sets apart different types of punitive political justice.

I was also interested to learn that the major area of concern in Hungary, as Bence describes it, has to do with the monetary gains made by the former leaders, gains which enable them to maintain a high standard of living as compared to the hardships of most of the population, and make it possible for them to re-form as the new capitalist class. This gives rise to anger and hostility among the public at large. The issue of confiscation of property is a tricky one, indeed, involving *ex post facto* laws, the statute of limitations, the question of who would benefit from confiscation, and so on.

Human Rights Watch, in its position paper on accountability for past abuses, sets forth the position that those who have the highest degree of responsibility for gross abuses should be held responsible. By gross abuses, we mean: genocide, arbitrary, summary, or extrajudicial executions, forced or involuntary disappearances, torture or other gross physical abuses, and prolonged arbitrary deprivation of liberty:

Though we advocate criminal prosecution and punishment for those who have the highest degree of responsibility for the most severe abuses of human rights, we recognize that accountability may be achieved by public disclosure and condemnation in cases of cases of lesser responsibility and/or less severe abuses.

The latter, it seems to me, applies to investigations of the financial assets of the former political leaders. Bence appears to agree with this position when he says that moral or political pillory and compulsory publicity may be the answer.

I also share Bence's view that such investigations might better be the work of historians and economic analysts, rather than of the courts. But the important thing is that the work be done. A new government can prove its goodwill by making known all the information it possesses, by establishing or funding such an investigative commission, or helping non-governmental groups to do this work by cooperating and providing facilities. It should do it soon, while the will and the memory are strong. It should separate the "truth" phase from the "justice" phase. They are interrelated, of course, but the truth phase is necessary for the justice phase to begin, and, even by itself, truth-telling about the past is an essential prerequisite for building a free and fair society. It may not guarantee that such abuses will not happen in the future. But it shows respect for the victims of abuses, and it reasserts the moral values of a society.

Argentina came closest to exposing and punishing abusers of human rights under President Raúl Alfonsín, but the pardons that were issued under President Carlos Menem, who succeeded Alfonsín, undid all the good work. The reason justice got as far as it did was because Alfonsín moved quickly at the time when he was the strongest. In the Philippines under President Corazon Aquino, on the other hand, the initial will to prosecute past offenders was lost because the government waited, and the impetus and the opportunity passed.

In the Soviet Union, past abuses have been limited to the Stalinist years. In Bulgaria, Todor Zhivkov is being made the scapegoat for all past abuses, as is also Erich Honecker in the GDR. In Romania so far, the past is limited to the events of last December 1989.

In Uganda, on the other hand, a Commission of Inquiry into Human Rights Violations appointed by the government of President Yoweri Kaguta Museveni is investigating, with the cooperation of the government, abuses dating back to 1962. Its inquiries are formally separate from the process of prosecution: it establishes the abuses and investigates their causes. If the police wish to take a case to court, they must conduct their own investigation. Although the results of this inquiry are yet to be seen, it is interesting and perhaps significant that one of the more promising examples of such an investigation is occurring in a country that is not a democracy.

I wonder if countries in Eastern Europe have something to learn from all this.

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To me, the financial wealth of former leaders--unless it is of the astounding proportions that characterized the holdings of the Marcos regime where literally billions of dollars were being siphoned off from funds intended for the general good--seems tangential

to other, more significant problems. There are other issues that should be addressed.

What about the secret police and its collaborators? How can such people be permanently demobilized? Is this not a major problem throughout Eastern Europe? Does this not require exposure and intensive investigation? What about rehabilitation, referred to by Bence as restitutive justice? Why is it outside the scope of the present paper? I was heartened by Bence's passing reference to the fact that efforts in this regard have been largely successful in Hungary, and I wish that he had elaborated on them. Other countries in the region have something to learn from Hungary's experience if it has, in fact, been as successful as Bence indicates.

JUSTICE, EXORCISM, AND NATIONAL THERAPY IN EASTERN EUROPE

Vladimir Tismaneanu

An escape from totalitarianism is primarily a psychological test. Even after the political machine of the dictatorship has been dismantled, one is faced with the moral and mental vestiges of the past, with widespread neuroses and feelings of self-contempt. To overcome them is a difficult and painful exercise: it entails the ability of the body politic to recover from the moral numbness imposed by universal mendacity. This complex evolution toward moral recovery cannot be separated from the need to debunk the past and rehabilitate the victims of the countless political crimes associated with communist rule. But we deal here with a dual process: on the one hand, to repair the damage inflicted on individuals and entire collectivities; on the other hand, to restore justice by forcing the culprits to answer for their misdeeds.

In all post-communist societies, public opinion is obsessed with the atrocities and abuses characteristic of communist domination. In this respect, shedding light on the political responsibilities, charging the guilty figures for their role in the national disasters appears as a cure for the wounds of the soul. György Bence's paper is a courageous invitation to lucidity, an appeal for a rational treatment of issues, which are by definition controversial and highly emotional.

Bence correctly points out—in reference to Václav Havel—that what must be avoided is an angelic posture. The nobility of forgiveness has been advocated by many former dissident writers, including Adam Michnik in his celebrated essay on "Maggots and Angels." After all, large segments of society were compelled to participate in the functioning of the ancien régime. The degree of complicity has of course varied from country to country as a function of the permissiveness of the local leadership: responsibilities were more diffuse in Kádár's Hungary, more personalized in Ceaușescu's Romania.

Applying political justice is a national demand in all these countries. The vox populi sounds loud—sometimes hysterical—and asks for punishment against those who ruled these countries for nearly half a century. I agree therefore with those who see political justice as counterbalance to the pressure of the mob. If orderly justice does not do its duty and the former torturers continue to enjoy freedom, the threat of anarchic forms of retaliation remains. Political justice appears, therefore, as an antidote to spontaneous lynchings and the rise of clandestine vigilante operations. I wonder whether Bence's proposal to create

some extrajudicial bodies vested with moral authority would really satisfy the popular appetite for punishment against the luminaries of the old regime. For healing the national wounds, the full disclosure of long-secret information about the repressive apparatus is vitally important. In a country such as Romania, where the Securitate has been only partially purged by the post-Ceaușescu government, this demand for openness is at least as pressing as in Hungary or Poland.

In his illuminating paper, Bence points out that "by raising the issue of political justice we are also reformulating the ultimate question about political transition: Is a peaceful transition at all possible? Is there going to be a 'second revolution'?" Indeed, the continuous pressure on the Krenz and later Modrow-Gysi regimes in the GDR to disband the Stasi and organize trials against Honecker's clique demonstrated clearly that the ongoing revolutionary movement cannot accept half-measures. What Modrow was trying to do consisted of preserving at least some of the repressive instruments which guaranteed the SED's rule--in addition to Soviet troops--since 1949.

To proceed along the lines suggested by Bence, and to draw from the Romanian example of summary and often debatable justice, I do believe that mere simulation of justice is a sure recipe for incensing the populace and fueling public discontent. Moreover, after decades of distorted and totally manipulated justice, when trials were a mockery of legality, people are justifiably suspicious of any attempt at diminishing the magnitude of the crimes imputed to the defendants. Bence mentions the trial of Nicolae and Elena Ceaușescu. It remains one of those episodes about which opinions will forever be divided. Initially, I was inclined to justify the totally objectionable procedure in the name of the exceptional circumstances under which the new authorities were operating. But then, when I realized that the Ceaușescu trial was the first in a series of enigmatic coverups, with the embarrassed judges refusing to allow the defendants to mention the larger scope of Romania's disaster under communism, I came to the conclusion that the matter was more complicated. Indeed, the Bucharest and Timișoara trials have failed to convince the public that the current judicial system is able (or willing) to discover and expose the origins, scope, and implications of Ceaușescu's genocidal policies. The judges have gone out of their way to restrict the discussion to the events between 16 and 22 December 1989. Add to this that many of those investigating the crimes have been members of Ceaușescu's justice system (the minister of justice was Maria Bobu, and many of her proteges have re-emerged after the revolution as born-again democrats). As for the trial of the Ceaușescus, it was a combination of three elements: first, a hasty attempt to silence those who may have turned what was a public trial into an embarrassing settling of accounts within the country's communist "aristocracy"; second, an indication of the conviction of the neo-communist group in power that Ceaușescu's execution would convince the isolated terrorist pockets to put an end to their resistance; and third, a striking example of political clumsiness and contempt for legal principles and procedures. Of these three elements, the "coverup" is perhaps the most significant, especially if one thinks of the aftermath of the execution, with the attempt by the National Salvation Front (NSF) to limit the scope of investigations to the events between 16 and 22 December 1989.

To sum up: in a country such as Romania, where past communist crimes are universally known, and where the intensity of popular rage is extremely high, avoiding political justice in its punitive sense is politically impossible. There are no independent forums to organize the "private commissions" suggested by Bence as a forum of "moral tribunals." This, among other factors, makes the Romanian situation explosive. Neither the Ceaușescu trial nor those of his closest collaborators could mitigate the public need for exorcism. Romanians are still haunted by the memory of their victimization by the Securitate. At the same time, the National Salvation Front government has opposed any serious investigations in the tenebrous archives of that institution. So, with all its weakness, the existing judicial system is the only place to engage in this national exorcism, which is also a national pedagogy. There is no need, of course, to publish the lists of informers; as we have seen in the GDR, this could only envenom the political atmosphere without contributing to any improvement in the nation's morale. But the informers were only the bottom of the pyramid of terror. Society is entitled to know the names of those who organized not only the mass murders in the last days of the dictatorship, but also of those who had been engaged in the Stalinist terror of the fifties and sixties.

All these countries have only just emerged from their Vichys. The issue is to define the concept of collaborationism and to identify objective criteria for distinguishing between spectators, accomplices, and perpetrators.