Cosmin Cercel: Towards A Jurisprudence of State Communism – Law and the Failure of Revolution. London: Routledge, 2019, 240 pp.

ONE HUNDRED YEARS OF SOLITUDE AND THE ETERNAL RECURRENCE OF THE LEGAL FORM

Just as in Macondo in One hundred years of solitude by Gabriel Garcia Marquez, inescapable repetition and determinism of the future based on the recurrence of the past, slightly over hundred years after the October Revolution, the event still haunts the law in Central and Eastern Europe. Moreover, just like Buendias, Central and Eastern Europe still did not cope entirely with their legal culture.

The work I would like to present in the following pages is a book by Cosmin Cercel, an Associate Professor in Law at the University of Nottingham at the time of publishing the book – **Towards A Jurisprudence Of State Communism – Law And The Failure Of Revolution**. Regarding the title, Cercel does not misinform us in any way. The common thread in this book follows precisely the failure of the Communist Revolution and the recurrence of the legal form and its role in state communism.

Cosmin Cercel prepared an outstanding performance for us, which will walk against the mainstream idea of Communism as a lawless and illegal system. Unlike the classic drama, where the reader does not know what happens and is waiting for the twist at the end, in Cercel's book, we know from the beginning. The spot where we may expect the twist – is already at the beginning – of 1842, when Karl Marx published the piece *Debates on the Law on Thefts of Wood*. Alternatively, to be clear, we should have always known about the twist – that legal form survives as an inherent part of the culture. It will not disappear anywhere with the political change, especially not in the authoritarian state.

Cercel gives us a ticket for a ride on how the legality was built and its role in the communist state. The book's narrative shows how the communist state could not maintain the revolutionary view of the state proposed by its radical action. Moreover, therefore the communist state ended up as a reversed dictatorship, formally giving all power to the proletariat, but in reality, making it accessible only to the small number of party members who decided on what was right and wrong. Instead of the Marxist idea of how the superstructure will disappear and how every individual will know and act autonomously while still following the needs and interests of the society, the regime became authoritarian, limiting individual autonomy to a minimum. Limiting not only action but also thinking.

Cercel's insight shows us how this was not a case of the disappearance of the law or pure arbitrariness. It was just the opposite; it was the case of how the legality became a servant in the hands of the Communist Party. At the same time, he warns us that whatever we might have heard in our high school history lesson about Communism, the story is not as simple as it might be often explained, and it deserves a more in-depth insight, which he is going to provide.

Firstly, the most crucial standpoint – the October Revolution never became successful in sustaining the Marxist thesis – that the state and law will wither away: "State interference in social relations becomes, in one domain after another, superfluous, and then dies out of itself." Instead, Cercel explains how the state, obviously not withering away, accommodated its original position, which Marx criticized. It became the instrument of the supremacy of the ruling class over the other classes.

Cercel also problematizes a claim that the 40-year system in power was illegal and criminal and shows how this is much more complicated than we have thought before. According to Cercel, state communism should not be considered illegal but a specific modality of juridical. This is the most visible aim he is following. He problematizes the outcomes that have not previously been put under research – that the law served as the loyal servant of the state, even though it was supposed to wither away.

It is pretty interesting how the more or less recent past of the last 50 years, a period that most of the population might still have in their memory, is also one of those parts of history that are least familiar to us. Coming from the same region, I completely understand and approve of the author's interest in looking into the topic, which requires courage to enter, the often painful experience of how the Jurisprudence worked in the region, and what the thoughts on legal philosophy were.

I consider it exceptionally challenging to access verifiable evidence of that period. Politicians often do not want to enter into the debate about the past; judges and legal practitioners are not interested in revealing their experiences to the public. The argument: "not everything was so bad that days" is often heard in the discussion before understanding that the interview could be more harmful than silence, and it often acts as a chilling effect for others. Communist history is still taboo, which may only be approached by public refusal. That is also one of the reasons there is a lack of research that would not resort to claims about values. The countries of Central and Eastern Europe are probably still waiting for the discussion on the nature of communist law.

Therefore, Cercel's theoretical insight into how socialist jurisprudence developed in the Soviet Union, the shift from the revolutionary law straight to strict positivistic formalism. Comparative contribution towards Central and Eastern Europe is extremely valuable.

METHODOLOGY

The methodology that Cercel follows in the book and his approach to the jurisprudence of state communism is inspired by four primary ideas - Giorgio Agamben's concept of the state of exception, Walter Benjamin's historicism, Jacques Lacan's psychoanalysis and perception of the law as the "Other" in the symbolic stage and Slavoj Zizek's spectre of the ideology.

Step by step, Cercel *"consciously draws on a jurisprudential positivist tradition that aims to dissolve the age-old conflation between is and ought and to liberate both politics and law of their enmeshing,… possibility of liberating politics of its juridical tie*s."

The book is intended to be a critical legal history. Moreover, we can see that Cercel is bound to three theoretical commitments: Firstly, an analysis of legal thought in its context. To reflect on the question of rupture and continuity that emerges at the encounter between present and past. It reflects the difference between regimes of legality. It is an attempt to theorize a form of radical legal comparatism. Secondly, a specific form of legal skepticism implicit in the paradigm of the "state of exception" elaborated by Giorgio Agamben, who claims: "law is made of nothing but what it manages to capture inside itself through the inclusive exclusion of the exception: it nourishes itself on this exception and is a dead letter without it." Agamben's influence is notable, especially considering the ideas in the State of Exception and Homo Sacer. Therefore, there is a connection to the pre-war legal philosophy of Carl Schmitt, whose idea of the state of exception formed authoritarianism over the last 70 years. The connection with the pre-war philosophy is visible. While there could be many other ways to provide insight into the Jurisprudence of Central and Eastern Europe, Cercel s choice is exciting and appropriate simultaneously because the hybrid of the Kelsen – Schmitt – Mahlberg theory is still sensible in the CEE jurisprudence.

Schmitt's state of exception running as the characteristic of the system is an appealing aspect in looking into state communism. As Cercel states: "My investigation follows the paradigm of the state of exception insofar as it aims at looking at moments in law's history in which its articulation is not yet achieved, and the legal structures expose their prejuridical origins." Moreover, he is intending to *"amend the Agambenian project by bringing into discussion the communist experience."* (p. 7)

The third pillar of the work is an *"intellectual debt that surfaces in the context of this book at various points is towards a specific thread of Lacanian psychoanalysis that aims at reading legal and political structures by postulating a determination of the unconscious within these spheres…. Where he is in-*

terested in capturing how such a postulation of an unconscious, and more specifically of a social unconscious that is structured like a language, is able to provide important insights into the ways law articulates itself as a system of symbolization and as a symbolic practice." (p. 8)

Perhaps to limit the book's length, Cercel does not explain the concepts he uses in-depth. This is a disadvantage for a reader who might not be familiar with Agamben's state of exception and Lacan's psychoanalysis, making it difficult to follow the narrative of Cercel without explaining these topics.

In the Introduction, we get the explanation for the choice of methodology. The reason why the author picks Lacanian psychoanalysis is that *"the experience in modernity, and more specifically within the historical conditions of the rise of communism, is haunted by scission between the symbolic dimension of the law and excess that goes beyond symbolization that the law relentlessly aims to capture.*" Cercel proposes Lacanian psychoanalysis as, *"it can surprisingly supplant this theoretical shortcoming by offering a glimpse in the other side of the law and raising important questions about the way in which law's deeper constituents are interwoven with social forces beyond the reach of legal normativity.*" He relies on the interface of philosophy, psychoanalysis, and historiography, doubled by a commitment to a comparative gaze.

The methodology mentioned above should provide insight into the moments of disruption – emergency powers, the instauration of dictatorships, revolutionary upheaval, or the founding of the new constitutional regimes. As Ronald Dworkin proposes, Cercel explains right in the beginning that law cannot conceivably be a chain novel. According to Cercel, the still-dominant jurisprudential position disregards historical experience.

With all these instruments in hand, Cercel announces the primary goal -to problematize the central tenets of post-communist consensus, that is, communism's inner lawlessness.

THE BOOK

The work consists of an Introduction, seven chapters, and a conclusion. In the Introduction, Cercel introduces us to his aims in this work. The very first sentence places us in the exact period, which we are not going to leave for a long time: *"the aim of this book is to bring back law in the history of authoritarianism…this book is about law's power of commanding, limiting and detouring revolutions, inasmuch as it is about political subjectivity falling prey to the language, semantic weight, and history of law.*" (p. 1) As he claims, he will problematize our present using a detour through the past.

We may find a lot familiar with the current situation in legal theory and legal practice of the so-called post-communist countries. As Cercel states, his investigation aims to approach the signature that the past has left over our juridical present and to bring to our ways of understanding the nexus between law and history. As he claims: *"a central tenet of our ideological present, despite its apparent inconclusiveness, is the persistence of the new consensus – slowly emerging since the fall of Berlin wall- around the totalitarian nature of the communist experience, and consequentially of its inherent lawlessness.*" A central topic of Cercel's book is to look into the verification of this consensus. Therefore, he looks for the connection to the current situation, and he finds it in *"the passage from the universalism of the liberal and civilized state to the militantism of the so-called illiberal democracies, from Rule of Law to the proliferation of states of exception sapping the normative foundations of the state, seems to have merely accelerated the specific symbolic effacement of the historical experience of communism.*"

Though Cercel does not continue in explaining the connections between historical experience and the current situation, it is interesting to follow the line *"how a turn towards thorough symbolic expulsions defended by the law is now replacing the liminal recognitions of the emancipatory thrust of communism our political systems were able to accommodate a decade ago.*" A reader interested in the topic of totalitarianism is probably familiar with the work of Hannah Arendt – Origins of Totali-

tarianism, where the totalitarian system is considered pure lawlessness. Cercel offers us a different view through the analysis, which Hannah Arendt did not have an option to observe at the time of publishing her piece.

Cercel criticizes the current approach towards European authoritarianism as a misunderstanding and oversimplifying historical events. Therefore *"this book emerges thus as a reaction to this historical unfolding insofar as its central thrust is to problematize the law by treating it primarily as a historically determined discourse and an active archive of the past."* (p. 4) The contribution he would like to bring is to elucidate the blind spot between the communist past and the law of communism. As Cercel announces, it will be a journey through the glass of communist legal thought and practice. Nevertheless, as he claims: *"I am interested in the specific politics entailed by the operation of the law."* He intends to *"discuss and unravel law's internal tensions, promises, and failures, by putting them in a historical context, which is that of European modernity…and thus move from purely jurisprudential reading towards a historical interpretation that aims to seize the meaning of law within the context of communist movements and regimes."*

The first chapter explains the *"theoretical landscape of the interwar by reflecting on the philosophical and jurisprudential debates informing constitutional praxis and state ideology in Europe at the wake of the Great War."* For this goal, Cercel returns to the discussion between Hans Kelsen and Carl Schmitt. He also provides a brief insight into French legal theory by Raymond Carré de Mahlberg's constitutional theory, which builds on a political theoretical legacy traceable to the late eighteenth century, when the state was a legal form of the nation. He looks for its reflection in the rise of fascism and the Russian Revolution.

Cercel denies the mainstream opinion of the law of the communist state as pure lawlessness, and that idea considers to be a myth. Furthermore, Cercel calls that the critics of the previous regime too hastily describe it under already–known terms of criminal, terrorist, or totalitarian. In the discourse in Central and Eastern Europe, the communist state became equated with totalitarianism. In connection to lawlessness, communism has been understood as putatively unlawful and undoubtedly illegitimate: *"According to this obscure and dream-like history, that communism stops legal history, it cuts through legal continuity, and positively suspends the law to the point of erasing it."* (p. 17) Cercel claims he wants to *"disturb this precisely Apollonian dream."* So he goes back and asks, what exactly was that law supposed to be erased by the communists? His first chapter concludes, *"insofar as the authority is founded on the power of words and narration, the new registers through which the law is framed, interpreted and applied have been altered irremediably by this displacement of language and knowledge. Accordingly, the ethos of crisis is a result of the crisis of meaning, that of legality that can no longer be grounded in something other than itself… The authoritarian drive of the interwar could be read as a failed attempt of filling this void of signification within the law by recourse to the mystique of the state…In these ways the nineteenth-century nationalism is pushed further- the nation shall occupy the central place within the frame of meaning. And as in its ambiguity, the nation shall be ultimately reframed according to the logic of ethnicity and camps. Before communism, law was preparing its own erasure."* (p. 44–45)

In the second chapter, *A criticism of the heaven – Class struggle and the law in theory and practise,* we move back in time. The chapter explains the Marxist legal philosophy, based on anti-legalism and opposition to the justification of the law itself. Cercel focuses on several tasks. Firstly, he needs to *"confront an amphiboly of the subject Marx, understood as a dual origin of a theory rephrasing social thought and of a political movement founding a new practise of opposing the social status quo."* Secondly, to address the question of law, the law has never been the central focus of Marx s writings and continued to remain one of the blind spots of Marxist theory. Cercel repeatedly comes to *"the resolution in Marx and Engels' later works announcing the erasure of law and the state in the class-free society"* (p. 51) … *"as the law thus furthers the plight of the poor class, as it criminalizes its otherwise*

rightful actions and pushes it further outside the structure of the state." (p. 54) In this chapter, Cercel uncovers the exceptional law far before Carl Schmitt, as Marx is already working with this concept in his work *Debates on the Law on Thefts of Wood* (p. 55). A subchapter on one of the most famous influencers – G.W.F. Hegel and the critique of the unity between the universal and particular cannot be missing. Here, Cercel enriches Marxist arguments with Lacanian language of psychanalysis– *"law is both real and ideological, insofar as ideology emerges from real, material structures and hints to an unarticulated real…This dual status of the law shall prove crucial for the later theoretical (mis) understandings and uses of legality in a communist context.*" (p. 67). In conclusion, *"formally, law is a sign of the real, while at the level of content it is just another opiate.*" (p. 67)

The third chapter, *called Revolution under Siege – Law, violence and Marxist legal theory,* is a deep insight into the October Revolution in 1917. As Cercel mentions, it is necessary to understand the three problems he sets up. Firstly, the revolution and its myth. Secondly, the paradox of the region and system where the revolution happened, and the circumstances under which it happened, Cercel considered a historical oddity. Thirdly, the fact that the revolution is not over. Even after 100 years, it still shapes how we understand the law. His task, therefore, is *"to stress the major paradoxes that the unfolding of the October Revolution has unearthed for legal and political philosophy, the relation between revolution and civil war, the dictatorship of the proletariat and finally the place of law within the transitional period starting in its immediate aftermath.*"

As Cercel points *"the inherent tensions of the Bolshevik revolution can easily be read already in this inadequate implosion that goes beyond what was foreseeable: its violence and excesses, its fundamental errors, they all point towards the fact that the revolution should have not happened at all, as if it were not an act, but precisely an impulse.*" (p. 76) As ideologically the revolution was about "withering away of the state," it brought intense state repression, *"the revolution was a senseless move which gave rise to a jurisprudential abomination and moreover to a legal monstrosity.*" (p. 76) Cercel picks an interesting point of not only the Russian Revolution but also the communist coups in Central and Eastern Europe when people lived *"in hybrid societies, which in terms of political practise placed them in front of an insolvable dilemma, that is both supporting the capitalist transformation in displacing the feudal remnants in society and refusing it at the same time.*" (p. 77) That contradicted the original Marx's idea, which claimed that development stages could not be accelerated.

Cercel explores how Lenin and Trotskij modified the idea of the dictatorship of the proletariat, attempted to justify the necessity of terror, and finally claimed that it is violence that decides who is in power. (p. 80)

Cercel here compares Schmitt's distinction and shows how Trotskij used it ten years earlier, as Trotskij writes, *"the enemy must be made harmless, and in wartime, it means that he must be destroyed."* Here compares this with Schmitt in his The Concept of the Political: *"the specific political distinction to which political actions and motives can be reduced is that between friend and enemy… .the enemy is thus solely the public enemy."* (p. 82)

A subchapter is dedicated to Lenin's State and Revolution. Lenin builds on *"the state as a product and manifestation of the irreconcilability of class antagonism."* (p. 85), the state as a particular body of armed men, the transitional dictatorship of the proletariat and transition to communism and withering away of the state, the disappearance of the positive law and return to the ethical rules embedded in the "force of habit". It is interesting how Cercel shows what the system intended to be and what it has become.

The fourth chapter, called Revolution betrayed: The great retreat and the enduring legal canon is a smooth continuation of the problem that Cercel presented in the previous part. It is a philosophical concert of the shift of the revolutionary doctrine of Lenin and Pashukanis to Stalin and Vyshinskij. As Cercel says, *"Stalinism not only appears as a great retreat from the legal skepticism of revolutionary*

communism but also entails a level of change in communist ideology that continues to remain somewhat opaque to our contemporary understanding of its unfolding." (p. 13) Stalinism is about a reversal of the Marxist claim that the law reflects the material basis and this chapter has an aim to reflect the difference and the shift from *"the emancipatory political subjectivity of Marxism and marked a point in the history of law and jurisprudence which, albeit its radical discursive rupture with classical forms of legitimation through law, finds itself in a logic of community and repetition of the same, of an insistence of the legal discourse.*" (p. 99)

Cercel provides undeniable evidence – the development of that idea in different constitutions of Soviet Russia and USSR. Fascinating is the elaborated idea of the art of contradiction *"supporting a return to formalism and positivism, while at the same time pretending that this theoretical gesture is still consistent with Marxist theory."* (p. 105) The same point is made by the withering away of the state, while at the same time, more robust regulation and by non-ideological law and state of exception at the same time.

The way Stalinism acquired to make from the state of exception a dictatorship of the proletariat was by the universal doctrine based on universal power. Cercel's work elaborates this on Vyshinskij's *The Law of the Soviet Union*: *"Dictatorship of the proletariat does not signify anarchy and disorder but, on the contrary, strict order and firm authority which operates upon strict principles, set out in the fundamental law of the proletarian state – the Soviet Constitution.*" (p. 107)

Therefore, the Soviet law under Stalin and Vyshinskij became just an adaptation of the bourgeois law. Class struggle survived, only with the difference in the position of the ruling class, allegedly whose will was now the content of the law. Cercel does not leave the material conditions of the Soviet Union apart, nor does he leave the linguistic and dialectical arguments of Stalinism alone. It leads to the finale of this chapter, which is the most exciting part of the book – *The living dead: law, Stalinism and sovereignty.* The law and the state are renaturalized – as almighty and invincible. (p. 117) Living dead, as Cercel says, "is a misplacement of life. It is a life where it should not be. Although resembling the automaton, the living dead is quite its opposite, for it is not an object brought to life by desire, but an identity that strives still to live." The trope is exciting, and the meaning could be manifold. From the Zizek's living dead – more alive than life itself, having access to the life- substance prior to its symbolic mortification. (p.118) To Kristeva's "corpse seen without God and science". Living dead imposed on society cannot survive by obedience, only by violence. In other words, Marxism is reduced to ritual. The role of law is to offer legitimacy to the state and to serve solely as a disciplining tool.

Chapter five, *The discourse of the master: War, law and communist takeover*, moves us to the next stage – the late 1930s and WWII. The law is now understood as socialist, which formally overcame the class struggle. It is the final approval of the victory of the revolution.

In this chapter, Cercel moves his primary attention from USSR to the Central and Eastern European situation but often references back to the similarities in the development of these countries.

The heritage of Ribbentrop-Molotov is portrayed in the complicated political history of countries like Poland, Hungary, and Czechoslovakia, but mainly Romania. It is an excellent step by Cercel, and the reader enters the chapter with a historical introduction. The second half of the chapter focuses on the situation in Romania during WW II. This chapter reminds the recent Romanian movie *"I Do Not Care If We Go Down in History as Barbarians*"(original: *"Îmi este indiferent dacă în istorie vom intra ca barbari*"), which deals precisely with the same topic of the fascist regime in Romania during WW II and its aftermath. Both of these pieces, released in 2018, are an important signal of critical historiography both in social science and art, that are very helpful and therapeutic for Central and Eastern Europe in the current situation. The chapter follows Antonescu's dictatorship, his trial, and the attitude of the Romanian nation after the war, seeing itself as the victim who had fallen to the fascist conspiracy.

Furthermore, the sixth chapter *Law as state truth: The law-preserving violence and the limits of communism*, brings us to the story of the law in the late 1940s and 1950s, to communist takeover, postwar trials, criminal law reforms, and constitutional thoughts and practices. Step by step, the political pluralism in Romania *"was replaced by the single-party structure, elections have become a matter of intra-party politics, constitutional protections were reframed under the new constitutional regime as to ensure the dictatorship of the proletariat, the judiciary was placed under the political control exercised ultimately by the single party."* (p. 156) In other words, a law was seized by politics. The communist aim was to bring about a new understanding of legality that was built around the strict and unconditional observance of the law. Legality is the wall guarding the exploits of revolution decreed by the law, supported by its force, and resting within the sphere of the hegemonic power. Interesting is the subchapter The Big Other: from politics to biopolitics. The image of legality was essential for take-over the state apparatus, then the legal chain, and continuity with the previously established regime significant for communists after 1947. Once again, we can see the sharp conflict between two different claims – a revolution on the one hand and continuity with the previous regime on the other: *"structurally, what we are witnessing here is a system that is at war with itself, being traversed by a tension between the ideological remainder of revolutionary mobilisation and the formal symbolic raised by the legal framework."* (p. 165) Interesting is the final product of this conflict when communist and fascist ideas merge in one: *"what is worth noting in the intersection between these two intellectual and political trajectories, that is between the remnants of the Romanian fascist ideology and the nascent communist power, is that it is rendered possible by the use and the medium of the state ideology."*

Finally, the seventh chapter, *Exit communism: Legal amnesia and the return of the repressed,* challenges the assumption of a clear dividing line between communist rule and its presumably democratic aftermath. Cercel begins the chapter by grasping the legal and jurisprudential conundrum of how the communist experience in Central and Eastern Europe is treated. (p. 177) In the beginning, we are confronted with the discussion on how much of Marxist and capitalist ideology was in the law of the communist state. The socialist society is portrayed as a "syncretic society", which is a part of the system that is *"traversed not only by a real tension between the forces of production still lagging behind and the new relations of production but also by a more disturbing, second-level replication of this in terms of systemic coherence, which generates syncretism as long as social structure, challenged by economic reality takes on an ideological legitimacy."* The role of the ruling class was replaced by the State, not by the proletariat – *"the revolutionary power and the state persisted and assumed a markedly capitalist character"* (p. 181). The definition of socialist property was a right belonging to the entire people, represented by the state. (p. 182) In practice, it meant that the state replaced the capitalist class. In conclusion, the socialist society was full of contradictions, which are still visible in the remaining catchphrases in Central and Eastern European countries, like "what belongs to everybody, belongs to nobody" or "who does not steal from the state, steals from his own family".

Cercel focuses, just as in the previous chapter on Romania, on a specific form of a dual state, actively seeking to overcome its contradictions. It had to be done by coercion, and suppression of the dissent, concluding in *"the brutal repression ushered by communist states in the case of the working-class uprisings during the second part of the last century."*

In the 60s, the position of the state and the party simultaneously was strengthened by three interconnected constitutional principles that sustained the primacy of state coercion. (p.188) Those were the unity of the state power, the leading role of the communist party, and socialist legality. The ultimate subchapter deals with the infamous leader of Romania, Nicolae Ceausescu, and Ceausescuism, the outcomes of the constitutional reforms in the 1970s, and the historical turn towards nationalism.

CONCLUSION

Cercel's book attempts to read the law in relation to historical communism. Overall, it is a story of the law – stage by stage, ups and downs, the way through bumpy roads and heavy winds. What Cosmin Cercel proposes in his book is exciting and essential. He defies the mainstream idea of the lawlessness of authoritarian regimes. Challenging the mainstream approach is an excellent step in critical legal studies and critical historiography. While Hannah Arendt and her followers made significant steps in researching totalitarianism in general, Cercel's book is a valuable exploration of the legal theory of these regimes. On ruptures, where the practice failed to follow proclaimed theory, he shows us the ways to totalitarianism.

Cercel is right when he recognizes post-communism as something that characterizes the whole region. What is often overlooked is that CEE is a particular legal culture, as Cercel writes: the similarities to colonized countries, especially if the center of the norm is the West. His intention is, therefore to break away from the limits of a discourse analysis of the construction of communism as a trope present in contemporary historiography and memory, influencing and framing our legal and political present, and to *"bring to light from the corners of historiography a forgotten intellectual history that I esteem important for the understanding our present politico-legal situation. As such my analysis has sought to capture the ways in which communism has brought a specific change in thinking about and practising law in Romania, CEE and more generally, as a matter of theoretical concern, in the world following October Revolution."* (p. 200)

State communism is not a concept out of nowhere. It is connected to a tradition beyond Marxism. *"In spite of the horrors often associated with it, state communism does not constitute a radical break with the past either legally or politically."* He is dealing with continuities and discontinuities in the events of the 20th century and defends the thesis of continuity of development of the juridical phenomenon, which, contrary to folk wisdom, was not broken by the October Revolution: *"state communism does not constitute a radical break with the past either legally or politically."* (p.201) Where we can see the rupture at first sight; for example, *"the moment of rupture brought about by the October Revolution, and indeed by the partially negotiated, partially forced takeovers in Central and Eastern Europe, cannot be forthrightly denied by the survival of the legal form."* However, it can and should be at least problematized. Beyond the law's reach were social forces aiming to reshape the framework of constructing and approaching political reality radically. However, they had to acknowledge at least the existing body of law already in place. On the other hand, the continuity does not have to be clear, as it seems: *"Connecting the October Revolution to the Stalinist transformation is somewhat misleading…. as my investigation highlights the limits of the revolution understood as an overcoming and refusal of the law."* What we might recognize would be a Marxist scandal *"Law's residual existence in a state exhorting the overcoming of class antagonism should have been and should appear to a Marxist analysis of communism as simply a scandal… and it is important to note that a class structure continued to survive within the Stalinist project just as it continued to survive after the takeovers in Central and Eastern Europe."*

A common thread of the book is the failure of state communism to hold to the promises it announced - to get rid of the authoritative law and make the state wither away. While in the ideology, the law was destined for extinction, in practice, it became a tool of the repressive state apparatus. Communism could not dissolve its legal form, which survived through the whole period. The famous *"withering of the state was postponed to indefinitely."*

Cercel comes to several requirements that should be followed if somebody decides on a similar quest as he did. First, that law cannot be approached only as a matter of form. Moreover, it is necessary to be careful about approaching the past from the point of *"view of nowhere"*. Furthermore, dealing with the communist past as either transitional justice or memorial concern thus necessarily involves the work of the legal historian, just as it involves that of the criminal lawyer or the constitu-

tionalist. Besides, it is essential to move away from the *"ex post facto presumption of inherent criminal or genocidal intent lurking on the background of communist politics."* In one breath, Cercel adds, it is not to say that criminal intent was not present in many of the actions taken under the various regimes of legality constitutive of the communist experience or that genocides, in the forms of illegal or legalized killings, never happened.

As Cercel set in the beginning, he aimed to problematize the allegedly solved topic of the nature of the jurisprudence of the totalitarian regime. He has proven faithful to his aims. The whole book is critical and analytical evidence of the main historical error that law is a matter we can easily dispense with.

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