

## **The Decline of Mitteleuropa**

### **A '89er's thoughts on the fading light of Constitutionalism**

**Gábor Halmai** reviews *The Defence of Constitutionalism. The Czech Question in Post-national Europe*, by **Jiří Přibáň**. Karolinum Press, Charles University, 2017

Jiří Přibáň is a leading Czech academic and public intellectual who graduated from Charles University in Prague in 1989, the year of the Velvet Revolution, in what was, at that time, still Czechoslovakia. He was appointed professor of legal theory, philosophy and sociology at Charles University until he moved to the School of Law and Politics of Cardiff University. But even living in Wales, through his articles and interviews, Přibáň is frequently present in Czech public life, and has cultivated personal relationships with a number of figures from the modern Czech art scene (hence the book is illustrated with several contemporary Czech art works). As Petr Pithart, the last Prime Minister of the Czech Republic when it was still part of Czechoslovakia and former President of the Senate of the independent Czech Republic, writes in his preface to the book, the author acts like Socrates walking the streets of his home town, obliged to no one, a rival to nobody, speaking his mind freely. The last essay of the book demonstrates that Přibáň has found a home in Wales, too, where – quoting George Voskovec – he also can hang his hat (expats like myself cannot hope for more.)

This collection of essays, which first appeared in Czech, concerns the transformation of constitutionalism in the Czech Republic and beyond. The book's subtitle is a reference

to the Czech politician Tomáš Garrigue Masaryk's study, *The Czech Question*. Masaryk, after unsuccessfully trying to change the Austro-Hungarian monarchy, became a devoted proponent of an independent Czechoslovakia and its first President. As Přebáň claims, when the 1992 preamble of the new Czech constitution incorporated the principle of a civic nation 'in the spirit of the inviolable values of human dignity and freedom as the home of equal and free citizens', it hinted at Masaryk's belief in the universal validity and critical power of democracy and liberty. Přebáň's essays are not about the nation's historical struggle for survival and independence, but rather the decline of democratic constitutionalism and civility in post-national Europe, with a particular emphasis on the region once known as Central Europe. He observes sadly that instead of the Masarykian ideal of the nation as a community united by the universal ideas of mutual equality and freedom of citizens, the current political imagination in Central Europe has increasingly been influenced by the political demons of the 1930s: 'by the feelings of ethnic exclusivism, hatred of everything foreign, and the idea of the state in the service of exclusively national interests'.

Přebáň thinks the political extremism in Hungary since 2010, when Viktor Orbán came to power, in Poland after PiS' electoral victory in 2015, but also in Slovakia, is a symptom of a much deeper crisis of Central European statehood. For him, the Austrian presidential election and the 2013 Czech parliamentary election, where Andrej Babiš' ANO already represented 'a new approach to politics in which politicians and political parties are not needed because they can easily be replaced by experts and business management,' similar to the first direct presidential election, after which Czech

President Zeman tried to move towards a semi-presidential system. The success of the radical right in the 2016 Slovak parliamentary elections, the results of the 2017 Austrian parliamentary elections with the Freedom Party as part of the coalition government as well as Babis' success at the Czech parliamentary election, also in 2017, and Milos Zeman's at the presidential elections in 2018 all happened after the publication of the original Czech edition of the book. As Přebáň foresaw, these events had already reshaped the meaning of Central Europe in 2014, and cannot merely be the consequence of the migrant crisis, which began in 2015. Using Jacques Rupnik's term of 'early-onset fatigue', Přebáň argues that 'the region's political elite is still battling over the nature of the state and struggling for a sense of state sovereignty instead of dealing with much more specific political issues and topics'.

As the author makes clear in another essay in the collection, it did not begin like this. Unlike the 68ers, who felt there was an alternative both to Soviet totalitarianism and the consumerist societies of Western democracies, for the 89ers, among them Přebáň in Czechoslovakia (and the author of this review in Hungary), the main goal was the replacement of failed socialism and single-party repressive government with a market economy and liberal democracy (this 'dual transition' scenario contrasting with the 'single transition' approach of Southern Europe in the 1970s, where the only aim was to go from a quasi-democratic or authoritarian regime to democracy). He also claims that the 89er generation was a liberal generation in the truest sense of the word, for which the first imperative was that freedom takes precedence over equality. The big question is whether these elite preferences matched those of the general population.

Let me reflect on this issue with reference to Hungary. Here, the transition to democracy was also driven by the fact that a large share of the population gave high priority to not only freedom itself, but especially 'market freedom', which meant that people expected the new state to produce speedy economic growth, with which the country could attain the living standards of the West rapidly, and without experiencing painful reforms. In other words, one can argue that the average Hungarian looked to the West as a model in 1989, not so much in terms of its economic and political systems, but rather in terms of its living standards. As Hannah Arendt argued, it is impossible to establish a republic based on freedom without liberation from poverty and misery. Claus Offe predicted the possible backsliding effect of the economic changes and decline in living standards, warning that this could undermine the legitimacy of democratic institutions and turn back the process of democratisation. This failure, together with the emergence of an economically and politically independent bourgeoisie, the accumulation of wealth by some former members of the communist nomenclatura, unresolved issues in dealing with the communist past, the lack of retributive justice against perpetrators of grave human rights violations, and a mild vetting procedure and lack of restitution of confiscated properties, created a climate of disappointment. With regard to transitional justice, the Czech Republic chose another road. As Přebáň explains, unlike Hungary (and Poland, for that matter) where Communists transformed themselves into Social Democrats and capitalist entrepreneurs, social democracy in the Czech Republic grew out of opposition to the communist regime. Therefore, he argues, the de-communisation processes, represented by the rehabilitation and lustration laws, derived from the

argument that democratic transitions must entail a change of personnel. Consistent with the premise of militant democracy, he argues that it was correct and necessary to defend the constitutional order.

Elsewhere in the book, the author proposes to use tools of militant democracy against politically organised manifestations of anti-democratic political parties and movements, such as the Czech Workers' Party, which was dissolved by the Supreme Administrative Court. But while he argues for the rigorous application and enforcement of democratic self defence in the field of political association, he also thinks that freedom of expression must be clearly distinguished from the freedom of political association and assembly; and in order to protect freedom of expression for everyone without discrimination, the state must be libertarian. This appeal for clear differentiation is surprising because Přebáň also acknowledges that every society has its own unique history, complete with trauma and misadventure. Therefore, for instance, Holocaust denial can be a criminal offence in Germany, Austria, Hungary and many other European countries, including the Czech Republic. Why then allow a ban of the neo-Nazi Workers' Party in the Czech Republic or the similar Magyar Gárda in Hungary, but not punish the 'Der Stürmer'-like propaganda by the members of those dissolved organisations, which can represent a 'clear and present danger' and even lead to violence against certain group of people, as was the case with refugees during the migration crisis in many Central European countries. This was a time when Czech President Milos Zeman declared: 'I do not want Islam in the Czech Republic', and Viktor

Orbán, Hungary's Prime Minister, seconded: 'We would like Europe to remain the continent of Europeans' and 'we want to preserve Hungary as a Hungarian country'.

While it is not the sole reason, the migrant crisis certainly contributed to the emergence of East and Central European populism. Out of the fifteen countries in the region, seven populist parties currently hold power, two belong to ruling coalitions, and three are the main opposition force in their countries. Writing, as he did, before the victory of populist parties in the Italian election, Přebán observes that Europe is splitting into a culturally more advanced 'old' Europe, which – as Habermas says – wants to build federalism and spread democratic values across the world, and a 'new,' non-core Europe. Here Přebán quotes the favourite Hungarian writer of the reviewer, the late Péter Esterházy, who was proudly promoted from an Eastern European to the rank of Central European, and finally became a New European. Similarly, Iván T. Berend, a Hungarian historian living in the US, claims that Central Europe has ceased to exist, and there is again only East and West. On the other hand, Přebán in his note to the reader of the English edition, written in September 2016, mentions the general differences in values regarding Brexit and concludes that the present European crisis has turned out to be not just economic and political, but also intellectual. Although he believes with Husserl that a European is someone who aspires to universal understanding and humanity, he adds that civilisations can decline, as happened with the Venetian maritime republic from 1516, when it set up the Ghetto Nuovo for its Jewish inhabitants. To the signs of the intellectual crisis, and the loss of prestige, respectability and credibility of politics, Pithart in his preface, written after 7 November 2016, adds Donald Trump's election in the US,

where, similar to some East and Central European countries, we observe a fascination with authoritarian regimes such as Russia and China. We all remember Hungarian Prime Minister Viktor Orbán's famous 2014 speech proclaiming his intention to turn Hungary into an 'illiberal state,' among others, following the models of Russia and China.

As a Socratic observer, instead of providing solutions for the fading liberal constitutionalism in East and Central Europe, Přebáň – as Pithart says – sends warning signals. These signals are very pessimistic about the universality of critical thinking. This tradition, he argues, like any other attempt at a definition of universal 'Europeaness,' besides a network of budget airlines, the Erasmus undergraduate exchange programme, or Champions League football, is a paradox, because the essence of every collective identity lies in the difference between 'us' and 'them'. He thinks it is wrong to seek a common identity and values, where there is no glue in the form of political organisations, such as European political parties, or where there is a complete absence of a European civil public, whether in the form of a European press, trade unions, charities, and so on. What Europe really needs is common politics with a pluralistic system of political parties, special interests, and conflicts. At the national level in the Czech Republic, as well as in other backsliding East and Central European member states of the EU, the civil public, Přebáň warns, has no choice but to bypass the party and power apparatus and protest directly in campaigns of civil disobedience or open revolt.

Let me add to this that achieving Přebáň's main goal with this book, namely to defend constitutionalism in a reinstated Central Europe, requires a civic interest in constitutional matters based on a certain constitutional culture. This constitutional awareness, which was mostly missing in the countries of East and Central Europe after the democratic transition, means that citizens have to endorse what John Rawls once called 'constitutional essentials'; they have to be attached to the idea of constitutionalism and, from the debates about it, a 'constitutional identity' can emerge. According to Rawls, the core of this kind of constitutional patriotism is a constitutional culture centred on universalist liberal-democratic norms and values, refracted and interpreted through particular historical experiences.